

63599-9

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No. 63599-9-I

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

ANTONIO ABEL and KEITH FREEMAN,  
Plaintiffs/Appellants,

v.

CITY OF ALGONA; STEVEN T. JEWELL and JANE DOE JEWELL;  
DAVID HILL and JANE DOE HILL; and JOSEPH SCHOLZ,  
Defendants/Respondents

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**REPLY BRIEF OF APPELLANTS FREEMAN AND ABEL**

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 ORIGINAL

**TABLE OF CONTENTS**

	<b>Page No.</b>
<b>SUMMARY OF DISPUTED FACTS AND REASONABLE INFERENCES .....</b>	<b>1</b>
<b>ARGUMENT.....</b>	<b>3</b>
<b>A.    If Scholz and Hill Hired Jewell to Clean House, the           City Both Negligently Hired and Supervised Jewell ..</b>	<b>3</b>
<b>B.    If Scholz and Hill Hired Jewell to Clean House, the           City Breached Its Implied Employment Agreements           With the Police Officers.....</b>	<b>4</b>

## **TABLE OF AUTHORITIES**

Appellants Freeman and Able (the “police officers”) rely on the Table of Authorities and Legal Argument contained in their opening brief.

## **SUMMARY OF DISPUTED FACTS AND REASONABLE INFERENCES**

The Brief of Respondent confirms that the crux of the parties' many factual disputes before the trial court, and on appeal, focus on disputed reasonable inferences arising from disputed material facts.

In short, there are at least two different reasonable inferences from the disputed facts in this case; *i.e.* the reasonable inferences from disputed facts posed by the City; and the reasonable inferences from disputed facts posed by the police officers. Therefore, this Court should reverse the trial court's summary judgment of dismissal, and remand this matter for trial, to allow the fact finder to resolve the factual disputes which belie the factual inferences and interpretations contained in the City's Brief of Respondent.

For example, the parties dispute when the facts of this case begin. The police officers contend that the City's prior Mayor Schulz and present Mayor David Hill sought to clean house at the City without cause, and thereby remove its long term employees and their unions, and start over with new employees ("clean house"), since they were elected as Mayor and City Council Member in 2004. In support of their factual claim that the City sought to clean house, the police officers proffered the testimony of another employee who was constructively terminated by the City (Adena Gustafson; CP 921, 927), a prior council person who had been similarly run out of the City with its repeated police investigations (Dwain Beck; CP 893), and a police administration expert (D.P. Van Blaricom; CP 1190) who

concluded that it was “literally inconceivable” that the police officers’ routine verbal no trespass warning could result in their eight month criminal and administrative investigation.

Indeed, the police officers contend that Scholz and Hill directed Jewell to further their agenda to clean house by conducting five different criminal investigations against Beck, two criminal investigations against Community Service Officer Adena Gustafson, and a criminal investigation against police officers Keith Freeman and Tony Abel. Prior to Jewell’s hiring, the City had not done *any* police investigations of any city council member or police officers. CP 914-939, 897-911, 880, 885-890, 944-952.

As further evidence of their agenda to clean house, the police officers contend that since this matter commenced, only one police officer, and one public works director, remain from the group of employees who worked at Algona in 2003. CP 879, 945.

While the parties may disagree as to what the above evidence means, it is incorrect for the City to ask this Court to limit the police officers’ factual claims to what occurred from May 2005 until November 2006, when what occurred during Police Chief Jewell’s tenure is the result of the City’s admission that it sought to clean house beginning in 2004. In addition, it is equally incorrect for the City to ignore this evidence in their Brief of Respondent because they “consider it unnecessary to engage in a point-by-point discussion of each of those fact”. Brief of Respondent, at p. 4.

To the contrary, if the above facts are proven at trial, the reasonable inferences which arise from them would belie each of the City's factual and legal arguments contained in their Brief of Respondent. For example, if the Respondents engaged in an ongoing and continuous policy and practice to clean house at the City since as early as Scholz and Hill came to power in January 2004, or at least by May 2005 when it hired Respondent Steven Jewell ("Jewell") as its police chief, then one reasonable inference which arises from that is that the City both negligently hired and supervised Jewell, and that it was futile to submit any grievance to the City because that would require that the City agree that it sought to clean house since 2004. CP 893-896, 944-952.

### **ARGUMENT**

**A. If Scholz and Hill Hired Jewell to Clean House, the City Both Negligently Hired and Supervised Jewell.**

Ultimately, the parties dispute whether Scholz and Hill hired Jewell to implement their agenda to clean house of the City's long term employees and their unions without just cause. CP 893. Certainly, if Jewell was hired and retained to do just that, he was unfit as a Police Chief.

In support of their claim that Jewell was hand picked to clean house, and was therefore unfit as a Police Chief for the City, the police officers proffered evidence that Jewell was the only individual interviewed for the position and he was hired after a one-hour interview at a Denny's restaurant without any investigation of his qualifications. CP 894-895; 998-1004.

In support of their claim that the City negligently supervised Jewell, the police officers presented evidence that no one at the City was supervising Chief Jewell as he commenced eight (8) criminal and administrative investigations in eighteen (18) months, when none had been commenced before Chief Jewell was hired, and none have been commenced after his resignation. CP 1046; 1114-1115; 1126.

The trial court erred in granting the City's motion for summary judgment of dismissal of the police officers' negligence claims, and this Court should reverse and remand this matter to trial.

**B. If Scholz and Hill Hired Jewell to Clean House, the City Breached Its Implied Employment Agreements With the police officers.**

Like the implied covenant of good faith and fair dealing which adheres to any contract, the police officers respectfully request that this Court hold that the City's implied agreements should be one which any public servant is deemed owed by both contract and by law, and which specifically precluded Respondents' objective to clean house by turning the police officers' lives upside down based on a simple routine citizen inquiry which is unreasonably transformed into an eight-month criminal and administrative investigation.

If so, then the City has breached its employment agreement with the police officers and should be held accountable for the police officers' damages. CP 950; 954-950; 889-890.

The trial court erred in granting the City's motion for summary judgment of dismissal of the police officers' breach of contract claims, and this Court should reverse and remand this matter to trial.

Dated this 14<sup>th</sup> day of December, 2009.

OLSEN LAW FIRM. PLLC

By:   
Walter H. Olsen, Jr. - WSBA #24462

**CERTIFICATE OF SERVICE**

I certify that on this day a true copy of the REPLY BRIEF OF APPELLANTS was delivered as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 14<sup>th</sup> day of December, 2009, in Kent, Washington.



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