

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

KTK MINING OF VIRGINIA, LLC, <i>et al.</i>,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION: 12-00655-KD-C
	:	
CITY OF SELMA, ALABAMA and	:	
CHIEF OF POLICE WILLIAM T. RILEY,	:	
	:	
Defendants.	:	

ORDER

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and a de novo determination of those portions of the Report and Recommendation to which objection is made (Doc. 42), the Report and Recommendation of the Magistrate Judge (Doc. 40) made under 28 U.S.C. § 636(b)(1)(B) and dated June 10, 2013 is **ADOPTED IN PART** as the opinion of this Court as follows:

- 1) That portion of the Report and Recommendation recommending the dismissal with prejudice of Plaintiff Todd Kiscaden’s claims, all claims against Defendant William T. Riley, Count One (Fifth Amendment and Fourteenth Amendment substantive due process), Counts Two and Three (tortious interference), Count Four (conversion of real property), Count Six (fraud), and Count Seven (for preliminary injunctive relief), is **ADOPTED**. Thus, it is **ORDERED** that these specific claims are **DISMISSED WITH PREJUDICE**.
- 2) That portion of the Report and Recommendation recommending the dismissal of Count Five (negligence and wantonness) is **NOT ADOPTED**;
- 3) Plaintiffs object to the dismissal of Todd Kiscaden. Specifically, Kiscaden alleges that his First Amendment rights were infringed. However, no such claim appears in the Complaint where the First Amendment claim is grounded in the revocation of KTK’s permit.
- 4) KTK also objects to the dismissal of its negligence claim against the City of Selma. The Court agrees that additional facts are needed to determine whether the City may invoke the substantive immunity doctrine.

Accordingly, these specific claims, as set forth in the following Counts, are **NOT DISMISSED** and remain in this case: Count One (First Amendment and procedural due process claim); Count Four (conversion as to personal property); Count Five (negligence and wantonness); Count Seven (permanent injunctive relief); and Count Eight (appeal of the suspension/revocation of KTK's building permit by the City of Selma).

DONE and ORDERED this the **2nd** day of **July 2013**.

/s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE