

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DAVID G. MUCKERMAN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:14CV01844 ERW
)	
ARTHUR W. GENASCI, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff David Muckerman’s “Verified Motion to Dismiss Without Prejudice All Defendants [Except]¹ Arthur Genasci and Motion to Amend the Pleadings Against Arthur Genasci” [ECF No. 7].

On February 13, 2015, Plaintiff filed the pending Motion, stating, “I hereby dismiss my complaint without prejudice against all individual Defendants [except] Arthur Genasci personally and the City of St[.] Charles division of Neighborhood Preservation” [ECF No. 7 at 1]. Plaintiff also states, “I also move to amend my pleadings to additionally include the following scope” [ECF No. 7 at 1]. Plaintiff then makes various new factual allegations, many of which relate to the “City of St[.] Charles division of Neighborhood Preservation” and Defendant Arthur Genasci [ECF No. 7 at 1-8]. The Court notes the “City of St[.] Charles division of Neighborhood Preservation” is not currently a party to this action.²

¹ Plaintiff actually uses the word “Accept” here, but for purposes of this Motion, the Court assumes Plaintiff intended to use the word “Except.”

² The complete list of current Defendants is as follows: Arthur Genasci, Wayne E. Anthony, Harold Ellis, Joel David Brett, Joseph W. Smith, Drew A. Heffner, Joann M. Leykam, Connie McIntyre, Greg Scott, and Kevin Jett.

In their joint response, Defendants Genasci, Anthony, Ellis, Brett, Heffner, Leykam, McIntyre, and Scott state they “do not oppose dismissal as to all Defendants except Defendant Genasci” [ECF No. 8 at 1]. Additionally, in contrast with Plaintiff’s frequent references to the “City of St[.] Charles division of Neighborhood Preservation,” Defendants also note neither the City of St. Charles nor St. Charles County is a party to this litigation [ECF No. 8 at 1].

Because Defendants do not oppose³ the proposed voluntary dismissal, the Court will grant Plaintiff’s Motion and dismiss Plaintiff’s claims against all existing Defendants, other than Arthur Genasci.

As for the Motion to Amend, the Court will not simply consider Plaintiff’s Complaint to be amended to include the new allegations contained in the present Motion, as requested by Plaintiff.⁴ Rather, the Court will grant Plaintiff leave to file an Amended Complaint within twenty-one (21) days of this Order. However, in doing so, the Court emphasizes the new factual allegations appearing in Plaintiff’s Motion to Amend, in their current form, do not constitute the amended pleading. Plaintiff must file a completely new document (an Amended Complaint), and any claim, party, or allegation Plaintiff wishes to be part of these proceedings going forward, including those contained in the present Motion to Amend, must appear in the Amended Complaint. Additionally, based on Plaintiff’s Motion, it appears he mistakenly believes the “City of St[.] Charles division of Neighborhood Preservation” is a current Defendant.⁵ If

³ Admittedly, Defendants Jett and Smith have not responded to Plaintiff’s Motion. However, without a response from these Defendants, the Court will not assume they oppose the voluntary dismissal of claims against them.

⁴ Again, Plaintiff’s Motion states, “I also move to amend my pleadings to additionally include the following scope,” and the proceeding pages contain new factual allegations Plaintiff seeks to be included within the scope of his Complaint.

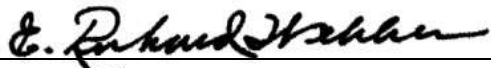
⁵ Again, in its Motion, Plaintiff seeks dismissal of his “complaint without prejudice against all individual Defendants [except] Arthur Genasci personally and the City of St[.] Charles division of Neighborhood Preservation” [ECF No. 7 at 1].

Plaintiff wishes to bring claims against an individual or entity other than Arthur Genasci (including any St. Charles-related entity or entities), such defendant or defendants must be named in Plaintiff's Amended Complaint. Therefore, Plaintiff's Motion will be granted, in part.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's "Verified Motion to Dismiss Without Prejudice All Defendants [Except] Arthur Genasci and Motion to Amend the Pleadings Against Arthur Genasci" [ECF No. 7] is **GRANTED, in part.**

Dated this 12th Day of March, 2015.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE