UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

THE VILLAGE OF CAMDEN, OHIO,	:	Case No. 3:10-cv-477
Plaintiff,	:	Judge Timothy S. Black
vs.	:	
BOARD OF COUNTY COMMISSIONERS OF PREBLE COUNTY, OHIO,	:	
Defendant.	:	

DECISION AND ENTRY GRANTING DEFENDANT'S MOTION TO DISMISS (Doc. 5); AND DENYING AS MOOT THE DEFENDANT'S MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO QUASH SERVICE

This civil case is before the Court on the Motion of Defendant, the Board of County Commissioners of Preble County, Ohio ("the County Board"), seeking to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (6). (Doc. 5). In the alternative, Defendant's Motion requests that the Court Order a more definite statement and quash service of process. (*Id.*) Plaintiff, the Village of Camden, Ohio ("the Village"), filed a response to the Board's Motions. (Doc. 8). Thereafter, the Board filed a Reply. (Doc. 9). The Board's Motion is now ripe.

I. FACTS

This case presents a dispute over a purported contract entered into between the County Board and the Village for the construction of a sewer line from the Preble County landfill to a water treatment facility owned and operated by the Village. According to the Village, in February 2008, Preble County Engineer, J. Stephen Simmons, presented the

Village Council ("the Council") with a proposal regarding the construction of the sewer line or force main. The Village refers to the proposal as the Preble County Sanitary Leachate Force Main/Sewer Project (the "Project").

According to the Village, the Council accepted the proposal presented by the County Engineer and gave its approval to move forward with the Project. Thereafter, the County Board and the Village approved and executed a "Cooperative Agreement," wherein the County Board agreed to pay approximately 70% of the Project's cost, and the Village agreed to pay the remaining 30% of the Project's cost.

Despite the purported agreement between the parties, the County Board later requested additional proposals from other entities regarding provision and processing of the leachate from the County's landfill. Subsequently, the County Board awarded a contract to complete and provide processing of the leachate generated by the landfill to Lakengren Water Authority, a subdivision located in Preble County, Ohio.

The Village then filed suit against the County Board in this Court asserting the following: (1) breach of contract; (2) breach of joint venture; (3) breach of fiduciary duty; (4) breach of Ohio's public bidding statutes; (5) a claim under 42 U.S.C. § 1983 asserting that the Board violated the Village's constitutionally protected property interest in the Project in violation of the Fifth and Fourteenth Amendments of the United States Constitution and provisions of the Ohio Constitution; and (6) violations of Ohio's Public Records Act and Ohio's Sunshine Law.

II. STANDARD OF REVIEW

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) operates to test the sufficiency of the complaint and permits dismissal of a complaint for "failure to state a claim upon which relief can be granted." To show grounds for relief, Fed. R. Civ. P. 8(a) requires that the complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Further, the complaint must entail more than "labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

The first step in testing the sufficiency of the complaint is to identify any conclusory allegations. *Ashcroft v. Iqbal*, --- U.S. ---, 129 S. Ct. 1937, 1950 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 1949 (citing *Twombly*, 550 U.S. at 555). That is, "a plaintiff's obligation to provide the grounds of [his] entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly,* 550 U.S. at 555. Although the court must accept well-pleaded factual allegations of the complaint as true for purposes of a motion to dismiss, the court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Id.*

After assuming the veracity of all well-pleaded factual allegations, the second step is for the court to determine whether the complaint pleads "a claim to relief that is plausible on its face." *Iqbal*, 129 S. Ct. at 1949, 1950 (citing *Twombly*, 550 U.S. at 556,

570). A claim is facially plausible when the plaintiff "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 1949 (citing *Twombly*, 550 U.S. at 556).

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) asserts that the court lacks subject-matter jurisdiction. Such a motion may consist of a "facial attack," under which the moving party asserts that the allegations of the complaint are not sufficient to establish jurisdiction, or a "factual attack," under which the court may consider evidence to determine if jurisdiction does exist. *O'Bryan v. Holy See*, 556 F.3d 361, 376-77 (6th Cir. 2009).

In considering a factual attack, the court looks at evidence outside the pleadings, and "no presumptive truthfulness attaches to the plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996). Moreover, even under a facial attack, conclusory allegations or legal conclusions masquerading as factual conclusions will not prevent dismissal. *O'Bryan*, 556 F.3d at 377.

III. ANALYSIS

The County Board moves to dismiss Count V of the Complaint, which asserts a claim pursuant 42 U.S.C. § 1983. The County Board asserts that the Village, a political subdivision of the state of Ohio, lacks standing to assert a violation of the Fourteenth Amendment. The County Board also moves the Court to exercise its discretion and

dismiss the remainder of the Village's state law claims pursuant to 42 U.S.C. § 1367(c)(3) should the Court find that the Motion to Dismiss Count V should be granted.

A. The Village's Standing to Pursue a Claim under the Fourteenth Amendment of the United States Constitution

An action for deprivation of civil rights is asserted pursuant to 42 U.S.C. § 1983, which provides that:

> [e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . .subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress[.]

To maintain a cause of action under § 1983, "a plaintiff must allege a 'deprivation of any rights, privileges, or immunities secured by the Constitution and laws[.]'" *South Macomb Disposal Auth. v. Washington Twp.*, 790 F.2d 500, 503 (6th Cir. 1986).

The issue presented here is whether the Village asserts rights protected by the Constitution and laws. The Village alleges that:

> The actions of the Board in awarding the contract for the Project to Lakengren and failing to honor its agreement with the Village or failing to award the Project to the Village during the competitive bidding process deprived the Village of its constitutionally protected property right in the Project in violation of the Fifth Amendment of the United States Constitution and its procedural and substantive due process rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution[.]

(Doc. 1).

However, "the Fourteenth Amendment simply does not prescribe guidelines and impose restrictions upon one political subdivision vis-a-vis another political subdivision." *South Macomb*, 790 F.2d at 505. Instead, "[t]he relationship between [political subdivisions of the state] is a matter of state concern; the Fourteenth Amendment protections and limitations do not apply." *Id.*

The Village argues that because this dispute concerns its rights in a "purely proprietary" capacity, Fourteenth Amendment protection should apply. In support of such a conclusion, the Village cites the Sixth Circuit's opinion in *South Macomb*, wherein the court addressed an argument that the Fourteenth Amendment protection should apply when a political subdivision "is acting in an proprietary, verses governmental, capacity, or when proprietary interests are at stake rather than matters of a state's internal political organization." *Id.*

In addressing the argument, the Sixth Circuit stated that "[t]he distinction between a municipal corporation acting in a governmental verses proprietary capacity . . . has largely been abandoned as 'inherently unsound' in a variety of contexts." *Id.* Thus, it appears as thought the Sixth Circuit does not recognize such a distinction. *Id.* While the Sixth Circuit in *South Macomb* went the additional step of finding that "there [was] no support for the conclusion that [the political subdivision seeking constitutional protection was] acting in a proprietary capacity," such additional analysis does not convince this Court that a governmental/proprietary distinction is recognized in this Circuit. *Id.* at 506.

Here, the Court declines to recognize a distinction that the Sixth Circuit previously described as "abandoned" and "inherently unsound." *Id.* Instead, the Court concludes that the Fourteenth Amendment protections and limitations do not apply to the Village despite its contention that it was engaged solely in a proprietary capacity. Therefore, the Village's § 1983 claim must be dismissed because the protections and limitations of the Fourteenth Amendment do not apply to the Village.

B. Supplemental Jurisdiction Over Pendent State Law Claims

Next, the County Board argues that the Court should decline to exercise supplemental jurisdiction over the Village's remaining claims, which are all based on state law. The Village makes no argument in this regard.

In civil cases where district courts possess original jurisdiction, "the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy[.]" 28 U.S.C. § 1367(a). District courts may, however:

> decline to exercise supplemental jurisdiction over a claim under subsection (a) if--
>
> (1) the claim raises a novel or complex issue of State law,
>
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
>
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
>
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). "In determining whether to retain jurisdiction over state-law claims, a district court should consider and weigh several factors, including the 'values of judicial economy, convenience, fairness, and comity.'" *Gamel v. City of Cincinnati*, 625 F.3d 949, 951-52 (6th Cir. 2010) (citations omitted).

In cases where the district court dismisses the federal claims "before trial, the balance of considerations usually will point to dismissing the state law claims, or remanding them to state court if the action was removed." *Id.* at 952 (citing *Musson Theatrical, Inc. v. Fed. Exp. Corp.*, 89 F.3d 1244, 1254-1255 (6th Cir.1996); 28 U.S.C. § 1367(c)(3)); *see also Gamel v. City of Cincinnati*, No. 1:10cv15, 2010 WL 2179669, at *2 (S.D. Ohio May 28, 2010) (stating that "the dismissal of federal law claims in the early stages of a lawsuit will normally cause the District Court to decline to continue to exercise supplemental jurisdiction over the state law claims").

There are certain situations, however, "where a district court should retain supplemental jurisdiction even if all of the underlying federal claims have been dismissed." *Id.* Such situations include cases involving "forum manipulation" by a plaintiff, situations where the case had been pending in the district court for a substantial period of time before dismissal of the federal claims, where discovery in the federal court is complete or where summary judgment motions before the district court are "ripe for decision." *Id.* (citing *Harper v. AutoAlliance Intern., Inc.*, 392 F.3d 195 (6th Cir. 2004)).

Here, there are no unique circumstances favoring the exercise of supplemental jurisdiction over the Village's state law claims. This case was filed approximately three

months ago, and Defendants first appeared in the case approximately two months ago. At this point, it is unlikely that much, if any, substantial discovery has taken place, and there are no other pending dispositive motions before the Court.

Finally, and perhaps most importantly, the remaining dispute is one between political subdivisions of the state of Ohio and the claims solely involve state law. As noted above, "[t]he relationship between [political subdivisions of the state] is a matter of state concern[.]" *South Macomb*, 790 F.2d at 505. Based on the foregoing, the Court grants Defendant's Motion to Dismiss the remaining state law claims without prejudice.

The remaining portion of Defendant's Motion, for More Definite Statement and to Quash Service is, therefore, moot and denied.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss (Doc. 5) is hereby **GRANTED**.

IT IS SO ORDERED.

Date: 4/28/11

Timothy S. Black
Timothy S. Black
United States District Judge