UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MAHMOUD SAAD, Individually, and
ZIHRA SAAD, Individually,

Plaintiffs,

Case No.: 10-cv-12635

vs.

Hon. Patrick J. Duggan

MICHAEL KRAUSE, Individually and in his official capacity, CITY OF DEARBORN HEIGHTS, CITY OF DEARBORN HEIGHTS POLICE DEPARTMENT, CITY OF DEARBORN, CITY OF DEARBORN POLICE DEPARTMENT, and JOHN DOE OFFICERS I-XXX,

Defendants.

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DEFENDANTS' MOTION FOR PARTIAL DISMISSAL

2 ALR 6th 387

Defendants, CITY OF DEARBORN HEIGHTS, DEARBORN HEIGHTS POLICE DEPARTMENT AND OFFICER KRAUSE, pursuant to Fed. R. Civ. P. 12(b)(6) submit this motion for partial dismissal. In support of this motion, Defendants rely upon the attached brief. Defendants have sought concurrence from Plaintiffs in the relief requested and such concurrence has been denied.

Respectfully Submitted,
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Dated: August 6, 2010

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BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR PARTIAL DISMISSAL

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STATEMENT OF FACTS

This case arises out of an incident that occurred on March 10, 2010, involving the arrest of Joseph Saad. Joseph, who is 61 years old, is the son of the Plaintiffs, Mahmoud Saad and Zihra Saad. According to Plaintiffs' complaint, Joseph failed to come to a complete stop at the stop sign while driving an automobile near the Plaintiffs' home. (Ex. 1, Complaint - Introductory Statement). While being pursued by the police, Joseph pulled into the driveway of the Plaintiffs' home and was at the front door when Defendant Officer Krause shouted out to him. (Complaint, ¶18). Plaintiffs allege that Joseph sought shelter in the basement of their home. (Complaint, ¶39). Plaintiffs also allege that Defendant Krause entered their home looking for Joseph.

Plaintiffs have brought this action under 42 U.S.C. §1983 alleging that Defendant Krause and other unknown officers violated their constitutional rights by intimidating and terrorizing them. Plaintiffs complaint alleges:

- Count I - Excessive Force in Violation of Fourth and Fourteenth Amendments
- Count II - Unlawful and Unreasonable Seizure in Violation of the Fourth Amendment
- Count III- Monell Claim against the City of Dearborn Heights and Dearborn Heights Police Department based on alleged policy of engaging in mass ticket writing
- Count IV - Monell Claim against the City of Dearborn Heights and Dearborn Heights Police Department based on alleged failure to train and supervise officers
- Count V - Monell Claim as in Count IV
- Count IV - Failure to Intervene in violation of the Fourth Amendment
- Count VII - Civil Conspiracy under 42 U.S.C. §1983 and common law
- Count VIII - Assault (Defendant Krause and John Does)
- Count IX - Assault (John Does)
- Count X - Intentional Infliction of Emotional Distress (Defendant Krause and John Does)

- Count XI - Negligent Infliction of Emotional Distress (Defendant Krause and John Does)

- Count XII - False Imprisonment (Defendant Krause and John Does)

Defendants move to dismiss Counts III and VII as well as all claims against Dearborn Heights Police Department.

STANDARD OF REVIEW

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of the complaint. ***Barrett v. Harrington,*** 130 F.3d.246, 251 (6th Cir. 1997). Although the court must accept well-pled facts as true, it is not required to accept Plaintiff's legal conclusions. ***Ashcroft v. Iqbal.*** 129 S.Ct.1937, 1949 (2009)(noting "the tenet that the court must accept as true, all the allegations contained in the complaint are inapplicable to legal conclusions.). While a complaint need not contain detailed factual allegations, the Plaintiff's allegations must include more than labels and conclusions. ***Bell Atlantic Corp v. Twombly***, 540 U.S. 544, 555 (2007); ***Iqbal,*** 129 S. Ct. at 1949. ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not suffice.") To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." ***Iqbal,*** 129 S.Ct. at 1949.(quoting ***Twombly,*** 550 U.S. at 570.) "A claim has facial plausibility when the Plaintiff pleads factual content that allows the court to draw the reasonable inference that the Defendant is liable for the misconduct alleged." ***Iqbal,*** 129 S.Ct. at 1949. The mere possibility that Defendant acted unlawfully is insufficient to survive a motion to dismiss. ***Id.*** The well-pled allegations must nudge the claim across the line from conceivable to plausible. ***Twombly,*** 550 U.S. at 570.

LAW AND ARGUMENT

I. THE DEARBORN HEIGHTS POLICE DEPARTMENT IS ENTITLED TO DISMISSAL OF PLAINTIFFS' CLAIMS AGAINST IT BECAUSE IT IS NOT A PROPER PARTY.

It is well settled that a municipal department has no legal existence independent of the municipality and, therefore, does not have the capacity to be sued. ***Damron v. Pfannes,*** 785 F.Supp. 644 (E.D. Mich. 1992). "A municipal police department is not a legal entity separate from its parent City. To name the department as a separate defendant is redundant." ***Id.*** at 646. See also ***Haverstick Enterprises Inc. v. Financial Federal Credit Inc.,*** 32 F.3d. 989, 992 (6th Cir. 1994) (holding that a suit against a City Police Department in Michigan is one against the City itself because the City is the real party in interest); ***Matthews v. Jones,*** 35 F.3d. 1046, 1049 (6th Cir. 1994)(holding that a police department is not an entity which may be sued under §1983).

In ***Moomey v. City of Holland,*** 490 F. Supp. 188 (W.D. Mich. 1980), the Plaintiff named the Hollard Police Department as Defendant in a civil rights action. The Court dismissed the police department, holding that the Holland Police Department is "merely the creature of the City," and that the real party in interest was the City. ***Id.***

Michigan law also recognizes that a municipal department is not a legal entity capable of being sued. In ***McPherson v. Fitzpatrick,*** 63 Mich. App. 461; 234 N.W.2d. 566 (1975), an action was brought against the Detroit Police Department and several of its officers for false imprisonment, false arrest and battery. The court ruled that it was proper to dismiss the police department from the case holding:

> The formation of any City department be it water, fire or police, together with its rules, regulations, department heads and administrators, is only a means of promoting the efficient operation of a municipality. A municipal department, board or commission, such as the Detroit Police Department, is unable to raise funds for

> payment and is not liable in tort. . . . Therefore, a police department is not liable for any tort actions directly solely against said department . . . . *Id.* at 463

In this case, Plaintiff has named as Defendants the Dearborn Heights Police Department as well as the City of Dearborn Heights. As established by the above-cited authorities, the police department is merely a creature of the City. It is not a separate legal entity with the capacity to be sued. Therefore, all claims against the Dearborn Heights Police Department should be dismissed.

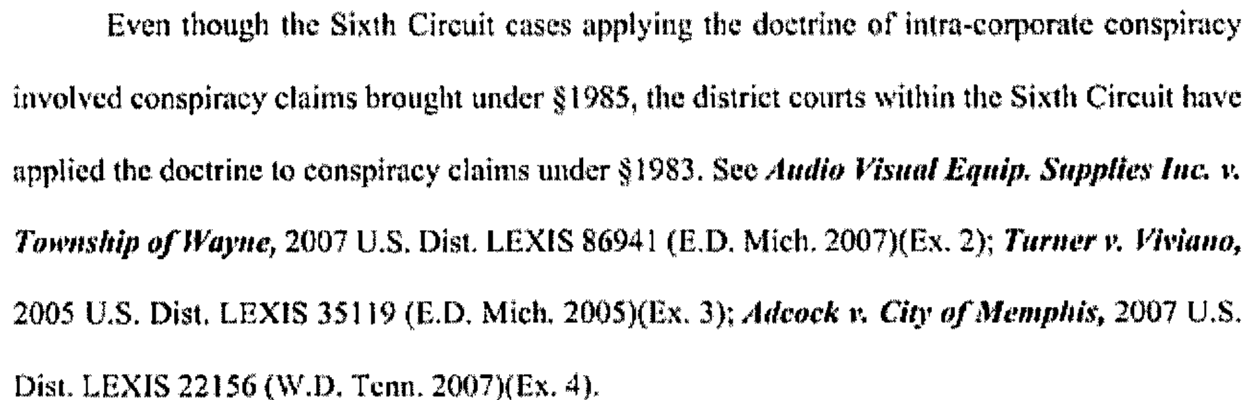
II. PLAINTIFFS' CONSPIRACY CLAIMS ARE BARRED BY THE INTRA-CORPORATE CONSPIRACY DOCTRINE.

Count VII of Plaintiffs' complaint alleges a conspiracy claim under 42 U.S.C. §1983 and Michigan common law against the City of Dearborn Heights, Dearborn Heights Police Department, Defendant Krause and John Does.

It is well established that there must be two or more persons or entities to have a conspiracy. ***Hull v. Cuyahoga Valley Joint Vocational School Dist. Bd. of Educ.***, 926 F.2d. 505, 509 (6th Cir. 1991). The Sixth Circuit has held that an entity cannot conspire with its own agents or employees. ***United Food & Commercial Workers Local 1099 v. City of Sidney***, 364 F.3d. 738, 753 (6th Cir. 2004), ***Hull, supra*** at 509. "The intra-corporate conspiracy doctrine holds that acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy. Simply put, under the doctrine, a corporation cannot conspire with its employees, and its employees, when acting within the scope of their employment, cannot conspire among themselves." ***Denney v. City of Albany***, 247 F.3d. 1172, 1170 (11th Cir. 2001)(citations omitted). The doctrine applies to public entities and its personnel. ***Id.***

In ***Hull, supra,*** the Plaintiffs alleged a conspiracy between school district superintendent, the executive director of the district and a school administrator, all of whom were employees or agents of the board. The Sixth Circuit affirmed the district court's grant of summary judgment as to the conspiracy claim. The court explained that "[s]ince all of the defendants are members of the same collective entity, there are not two separate people to form a conspiracy." ***Id.*** at 509.

In this case, the alleged conspirators identified by the Plaintiffs are all employees or agents of the City of Dearborn Heights. There is not two separate "people" to form a conspiracy. Accordingly, Plaintiffs' conspiracy claim is barred by the intra-corporate conspiracy doctrine.



Even though the Sixth Circuit cases applying the doctrine of intra-corporate conspiracy involved conspiracy claims brought under §1985, the district courts within the Sixth Circuit have applied the doctrine to conspiracy claims under §1983. See ***Audio Visual Equip. Supplies Inc. v. Township of Wayne,*** 2007 U.S. Dist. LEXIS 86941 (E.D. Mich. 2007)(Ex. 2); ***Turner v. Viviano,*** 2005 U.S. Dist. LEXIS 35119 (E.D. Mich. 2005)(Ex. 3); ***Adcock v. City of Memphis,*** 2007 U.S. Dist. LEXIS 22156 (W.D. Tenn. 2007)(Ex. 4).

Michigan courts have also applied the intra-corporate conspiracy doctrine to bar state law claims. See ***Tropf v. Holzman,*** 2006 Mich App. LEXIS 131 (decided January 17, 2007)(Ex. 5). Thus, under the doctrine of intra-corporate conspiracy, Plaintiffs' claims of conspiracy under §1983 and Michigan common law fail as a matter of law.

III. PLAINTIFFS HAVE FAILED TO STATE A CLAIM AGAINST DEFENDANTS FOR A CONSPIRACY TO VIOLATE THEIR CONSTITUTIONAL RIGHTS PURSUANT TO 42 U.S.C. §1983.

"A civil conspiracy is an agreement between two or more persons to injure another by unlawful action . . . . All that may be shown is that there was a single plan, that the alleged conspirator shared in the general conspiratorial objective, and that an overt act was committed in furtherance of the conspiracy that caused injury to the complainant." ***Hooks v. Hooks,*** 771 F.2d. 935, 954 (6th Cir. 1985).

It is well settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts would not be sufficient to state such a claim. ***Gutierrez v. Lynch,*** 826 F.2d. 1534, 1538 (6th Cir. 1987); ***Pillette v. Detroit Police Department,*** 661 F. Supp 1145 (E.D. Mich. 1987), aff'd. 852 F.3d. 1288 (6th Cir. 1988). "Vague and conclusory allegations of conspiracy unsupported by any facts suggesting conspiracy, are insufficient to state a §1983 claim." ***Pillette, supra*** at 1148. The complaint must set forth specific facts that show the existence and scope of the alleged conspiracy. ***Id.***

Further, as stated above, to survive a motion to dismiss, a complaint must contain sufficient factual matter accepted as true to state a claim for relief that is plausible on its face and a claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. ***Iqbal,*** 129 S.Ct. at 1949.

In this case, Plaintiffs' complaint makes conclusory allegations of conspiracy and is devoid of factual allegations rendering those claims plausible. Plaintiffs allege a conspiracy among Defendants City of Dearborn Heights, Dearborn Heights Police Department, Officer Krause and unknown officers to issue mass traffic tickets to citizens resulting in the violation of Plaintiffs' constitutional rights. Plaintiffs have failed to allege facts sufficient to establish a meeting of the

minds or the existence of an agreement to violate their constitutional rights. See ***Conroy v. City of Philadelphia,*** 421 F. Supp. 2d. 879, 888 (E.D. Pa. 2006)(Plaintiff must allege specific facts that Defendants reached an understanding or agreement to violate Plaintiffs' constitutional rights). Because Plaintiffs failed to allege enough factual matter suggesting that Defendants reached an agreement, Plaintiffs conspiracy claims must be dismissed.

IV. PLAINTIFFS LACK STANDING TO BRING A CLAIM FOR CONSPIRACY TO VIOLATE THEIR CONSTITUTIONAL RIGHTS.

To bring a claim in federal court, a plaintiff must satisfy the requirements of standing. ***Lambert v. Hartman,*** 517 F.3d. 433, 437 (6th Cir. 2008). This burden can be met by Plaintiffs showing that "1) [they have] suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; 2) [their] injury is fairly traceable to the challenged action of the Defendant, and 3) it is likely, as opposed to mere speculative, that [their] injury would be redressed by a favorable decision." ***Id.*** (quoting ***Daubenmire v. City of Columbus,*** 507 F.3d. 383, 388 (6th Cir. 2007).

Further, even when Plaintiff has alleged injury sufficient to meet the standing requirement, the U.S. Supreme Court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties. ***Warth v. Seldin,*** 422 U.S. 490, 499 (1995).

In this case, Plaintiffs have failed to allege facts that they suffered an injury in fact from the Defendants alleged issuance of mass traffic tickets. There is no allegation that Plaintiffs were issued traffic tickets. Further, Plaintiffs' alleged injury is not fairly traceable to the Defendants' alleged issuance of mass traffic tickets. There is no nexus between Defendant Krause' alleged use of excessive force against these Plaintiffs and the Defendants' alleged issuance of mass traffic tickets.

Moreover, Defendant's ceasing to write these traffic tickets would not redress Plaintiffs' claimed injury of being subjected to excessive force. Because Plaintiffs have failed to allege facts showing that they suffered an injury in fact, or that the alleged injury is traceable to Defendants' actions or that their injury is redressable by the cessation of Defendants' actions, Plaintiffs have no standing to bring their claim of conspiracy to violate their constitutional rights.

V. DEFENDANTS ARE ENTITLED TO DISMISSAL OF PLAINTIFFS' MONELL CLAIM AGAINST DEFENDANTS CITY OF DEARBORN HEIGHTS AND DEARBORN HEIGHTS POLICE DEPARTMENT BASED ON ALLEGED CUSTOM OR POLICY OF ENGAGING IN MASS TICKET WRITING.

Count III of Plaintiffs' complaint alleges that Defendants' policy or custom of writing mass tickets violated Plaintiffs' constitutional rights. Under Monell and its progeny, a city may be held liable only "1) when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury," ***Monell v. New York City Dept. of Soc. Servs.,*** 436 U.S. 658, 694 (1978), and 2) when there is an "affirmative link between the policy and the particular constitutional violation alleged." ***Oklahoma City v. Tuttle,*** 471 U.S. 808, 823 (1985).

In order to impose municipal liability, a plaintiff bringing a §1983 claim against a municipality must identify the policy or custom that caused her injury. ***Ford v. County of Grand Traverse,*** 535 F.3d. 483, 495 (6th Cir. 2008). Once the policy is identified, "a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." ***Bd. of County Comm'rs v. Brown,*** 520 U.S. 397, 403 (1997).

The Sixth Circuit in ***Ford, supra,*** stated:

> The key inquiry thus becomes whether, in viewing the [municipality's] policy in the light most favorable to [plaintiff] there was sufficient evidence for reasonable minds to find "a direct causal link" between the [municipality's] policy and the alleged denial of [plaintiff's] rights. . . . See e.g., ***Blackmore v. Kalamazoo County,*** 390 F.3d. 890, 900 (6th Cir. 2004)("a municipality can be liable under 42 U.S.C. §1983 only if the plaintiff can demonstrate that his civil rights have been violated as a direct result of that municipality's policy or custom.")(citing ***Monell,*** 436 U.S. at 694; ***Garner v. Memphis Police Department,*** 8 F.3d. 358, 364 (6th Cir. 1993)("to satisfy the Monell requirement, the plaintiff must identify the policy, connect the policy to the city itself and show that the particular injury was incurred because of the execution of that policy.")

Ford, 535 F.3d. at 497 (6th Cir. 2008).

In this case, clearly there was no direct causal link between Defendants' alleged policy or custom of writing mass traffic tickets and the alleged use of excessive force against the Plaintiffs. Plaintiffs have not alleged facts showing that the violation of their constitutional rights was a direct result of the Defendants' policy or custom of writing mass tickets. Because Plaintiffs have not alleged a direct causal link between Defendants' policy or custom and the alleged constitutional violation, Plaintiffs' constitutional claim against the Defendants under Count III of the complaint must be dismissed.

CONCLUSION

For the foregoing reasons, the Defendants, CITY OF DEARBORN HEIGHTS, DEARBORN HEIGHTS POLICE DEPARTMENT, and OFFICER KRAUSE, respectfully request that this Court

enter an order granting Defendants' motion for partial dismissal pursuant to Fed. R. Civ. P. 12(b)(6).

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Dated: August 6, 2010

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2010, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

ALL ATTORNEYS OF RECORD

and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: N/A.

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