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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REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL DISMISSAL

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I. PLAINTIFFS' CONSPIRACY CLAIMS ARE BARRED BY THE INTRACORPORATE CONSPIRACY DOCTRINE.

Plaintiffs argue that the intracorporate conspiracy doctrine has only been applied in anti-trust cases and civil rights conspiracy cases brought under 42 U.S.C. §1985, not 42 U.S.C. §1983. However, as indicated in our principal brief, 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); ***Turner v. Viviano,*** 2005 U.S. Dist. LEXIS 35119 (E.D. Mich. 2005); ***Adcock v. City of Memphis,*** 2007 U.S. Dist. LEXIS 22156 (W.D. Tenn. 2007).

In ***Adcock, supra,*** the Court acknowledged that the Sixth Circuit application of the intracorporate conspiracy doctrine in civil rights cases has generally been limited to conspiracy claims under 42. U.S.C. §1985(3). It however stated:

> "The Court finds no distinction between §1985(3) and §1983 conspiracy claims that would prevent the use of the doctrine for such contentions under §1983." 2007 U.S. Dist. LEXIS 22156 at *13 n1.

In this case, Plaintiffs have not provided any legal basis for not applying the intracorporate conspiracy doctrine to claims under §1983.

Plaintiffs next argue that the intracorporate conspiracy doctrine is inapplicable because the Defendants were acting outside the scope of their employment. The problem with Plaintiffs' argument is that there is no allegation in the Plaintiffs' complaint that Defendant Officer Krause and other unnamed officers were acting as anything other than agents within the scope of their employment with the City of Dearborn Heights relative to the conduct complained of. The Plaintiffs' allegations indicate that the City of Dearborn Heights was complicit in the alleged wrongful acts of

the officers. If, according to Plaintiffs, the officers were doing the business of their employer, i.e. generating revenue for the City, their actions cannot be described as being outside the scope of their employment. Even if Plaintiffs are correct that it is for a trier of fact to determine whether Defendants acted outside the scope of their employment, the conspiracy claim against the City would still be barred by the doctrine. The Court in ***Adcock***, addressing a similar argument, concluded:

> Courts have recognized a "scope of employment" exception to the intracorporate conspiracy doctrine, however, which draws a distinction between collaborative acts done in pursuit of an employer's business and private acts done by persons who happen to work at the same place. Under this exception, an intracorporate conspiracy may be established where individual defendants are also named and those defendants also act outside the scope of their employment for personal reasons
>
> In this case, to the extent the **motion to dismiss based on the intracorporate conspiracy doctrine seeks to eliminate the actions of the individual defendants, it is not well taken. The Court finds the plaintiff's allegations place the individual defendants' acts outside of their scope of employment with the [City of Memphis Police Department]. However, insofar as the motion applies to the municipal defendant, it is appropriately raised**. The City of Memphis is a corporation within the meaning of the doctrine as acknowledged by Sixth Circuit precedent. As such, it cannot conspire with its agents and employees. **Thus, the motion to dismiss the conspiracy claims under §1983 against the City of Memphis is granted**. 2007 U.S. Dist. LEXIS 22156 *12-*13. (Ex. A)(Emphasis added).

Thus, at a minimum, Plaintiffs' conspiracy claim against the City of Dearborn Heights fails as a matter of law.

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

Plaintiffs do not dispute the well-settled law that "conspiracy claims must be pled with some

degree of specificity and that vague or conclusory allegations unsupported by material facts will not be sufficient to state such a claim under §1983. ***Gutierrez v. Lynch,*** 826 F.2d 1534, 1538 (6th Cir. 1987).

Plaintiffs argue that they have adequately pled a conspiracy claim. A review of Plaintiffs' complaint demonstrates the opposite. In Count VII, Plaintiffs merely assert that "upon information and belief, the conspirator Defendants acted in concert pursuant to a common design to unconstitutionally, unlawfully, and wrongfully conduct and operate a commercial enterprise under color of state law. . . ." (Complaint, ¶112).

It is evident from the Complaint that Plaintiffs have failed to plead their conspiracy claim with the required specificity. In response to Defendants' motion, Plaintiffs conclusorily assert that Defendants were engaged in a "corrupt commercial enterprise." Plaintiff has not pled "more than vague or conclusory allegations." Based on Sixth Circuit precedent, this is clearly insufficient to state a conspiracy claim under 42 U.S.C. §1983.

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

Plaintiffs argument that they suffered an injury in fact because Defendants' alleged issuance of traffic tickets led to the use of excessive force against them is clearly untenable. There is no nexus between Defendant Krause's alleged use of excessive force against these Plaintiffs and the Defendants' alleged issuance of mass traffic tickets. The only person who can claim an injury from Defendants' alleged issuance of traffic tickets is Joseph Saad, the Plaintiffs' son, who is not a Plaintiff in this case. There is no allegation that Plaintiffs themselves were issued traffic tickets. There is also no allegation that Defendants conspired to use excessive force against Plaintiffs. Therefore, Plaintiffs have no standing to bring the conspiracy claims against the Defendants.

IV. PLAINTIFFS' MONELL CLAIM AGAINST DEFENDANT CITY OF DEARBORN HEIGHTS BASED ON ALLEGED CUSTOM OR POLICY OF ENGAGING IN MASS TICKETING IN COUNT VIII OF PLAINTIFFS' COMPLAINT MUST BE DISMISSED BECAUSE THE ALLEGED POLICY OR CUSTOM WAS NOT THE MOVING FORCE BEHIND THE ALLEGED CONSTITUTIONAL VIOLATION.

Plaintiffs do not dispute that in order to succeed on their claim, they must demonstrate a direct causal link between the City's policy and the alleged constitutional violation. However, contrary to Plaintiff's argument, Plaintiffs have not alleged facts showing that there was a direct causal link between Defendants' alleged policy or custom of writing mass traffic tickets and the alleged use of force against the Plaintiffs. Because Plaintiffs have not alleged facts showing that the violation of their constitutional rights was a direct result of the Defendants' alleged policy or custom of writing mass tickets, Plaintiffs' constitutional claim against the Defendants under Count III of the Complaint must be dismissed.

V. DEFENDANTS' MOTION FOR PARTIAL DISMISSAL IS NOT PREMATURE.

Plaintiffs argue that Defendants' motion is premature because it is generally improper to grant summary judgment without affording the nonmovant a sufficient opportunity for discovery. Plaintiffs are mistaken. Defendants are not seeking summary judgment. Rather, Defendants have filed a motion to dismiss (or partial dismissal) under Fed. R. Civ. P. 12(b)(6) which tests the legal sufficiency of the claims. The Plaintiffs' motion addresses only the issue of whether Plaintiffs have stated a claim entitling them to relief or whether Plaintiffs' claims have been adequately pleaded. Discovery is therefore not needed to respond to the Defendants' motion to dismiss. See ***Chevere v. Chicago Transit Authority***, 1990 U.S. Dist. LEXIS 16730 (N. D. Ill. 1990)(Ex. B)(holding that discovery is not needed to respond to Defendants' motion to dismiss on the grounds that the allegations are insufficient to support the conspiracy claim asserted and that the claim is barred by intracorporate conspiracy doctrine.). Accordingly, Defendants' motion for partial dismissal under

rule 12(b)(6) is not premature.

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

Plaintiffs indicate in their response to Defendants' motion that they do not object to dismissing the Defendant Dearborn Heights Police Department.

CONCLUSION

For the foregoing reasons, the Defendants, CITY OF DEARBORN HEIGHTS, DEARBORN HEIGHTS POLICE DEPARTMENT, AND OFFICER KRAUSE, request this Court to grant the Defendants' motion for partial dismissal.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on September 1, 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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