

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

-----X	:
	:
EMMA J. TYSON, KIM G. TYSON and	:
REGGIE G. TYSON,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
	:
MATTHEW WILLAUER, DWAYNE TAYLOR,	:
SHANNON B. POLLICK, RICHARD C. MULHALL,	:
KEVIN SEARLES, JEFFREY W. RASEY,	:
THOMAS BENNETT, TOWN OF BLOOMFIELD,	:
TOWN OF WINDSOR, and UNITED STATES	:
OF AMERICA,	:
	:
Defendants.	:
	:
	:
-----X	:

MEMORANDUM DECISION

3:01 CV 1917 (GLG)

Defendant Thomas Bennett (hereinafter "Bennett" or "defendant") moves to dismiss [Doc. #24] (1) plaintiffs' Section 1983 claim against him (Count One); and (2) all state constitutional and common law claims against him (Counts Two through Nine). For the reasons set forth below, defendant's motion is GRANTED in part and DENIED in part.

Standard of Review

In ruling on this motion to dismiss, the Court must accept as true all factual allegations of the complaint and must draw all reasonable inferences in favor of plaintiffs. Ganino v.

Citizens Utilities Co., 228 F.3d 154, 161 (2d Cir. 2000).

Dismissal is proper only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). However, while the pleading standard in federal court is a liberal one, bald assertions and conclusions of law will not suffice. Leeds v. Meltz, 85 F.3d 51, 53 (2d Cir. 1996); see also Hirsch v. Arthur Andersen & Co., 72 F.3d 1085, 1088, 1092 (2d Cir. 1995) (holding that conclusory allegations as to the legal status of defendants' acts need not be accepted as true for purposes of ruling on a motion to dismiss); see generally 2 Moore's Federal Practice § 12.34[1][b] (3d ed. 2001).

In exercising supplemental jurisdiction over pendent state law claims, federal courts must apply state substantive law. See, e.g., Promisel v. First Am. Artificial Flowers, Inc., 943 F.2d 251, 257 (2d Cir. 1991), cert. denied, 502 U.S. 1060 (1992). Thus, "a state law depriving its courts of jurisdiction over a state law claim also operates to divest a federal court of jurisdiction to decide the claim." Moodie v. Federal Reserve Bank, 58 F.3d 879, 884 (2d Cir. 1995).

Facts

The Court accepts the following facts as true for the purposes of defendant's motion to dismiss.

Plaintiffs Emma, Kim and Reggie Tyson live in Emma Tyson's home in Windsor, Connecticut. Compl. ¶¶ 1-3. Emma Tyson bought the home on June 22, 1999. Id. ¶ 13. A warranty deed was recorded in the Windsor Land Records on June 23, 1999. Id. ¶ 20.

Defendant Bennett is a Detective employed by the State of Connecticut. Id. at ¶ 7. On or about October 20, 1999, at approximately 5:57 a.m., plaintiffs were asleep in their beds when various defendants, including Bennett, attempted to execute a federal arrest warrant against a Dennis Rowe. Id. ¶ 15.

Defendants entered the Tyson household through the back and front entrances, allegedly with weapons drawn, carrying battering rams and shouting at plaintiffs to "get down." Id. ¶¶ 16, 17.

Defendants searched closets and other areas of plaintiffs' home. Id. ¶ 19. Plaintiffs showed the property deed to defendants to prove that plaintiff Emma Tyson owned the property and that Dennis Rowe did not reside there. Id. ¶ 20.

Plaintiff Emma Tyson suffered an asthma attack at the time of the search and medics were called to administer breathing treatments. Id. ¶ 25.

Defendants apparently stated that they had entered the wrong premises, and left without further explanation or apology. Id. ¶ 21. According to the Complaint, defendants did not conduct any follow-up investigation or inquiry. Id.

Apparently, Dennis Rowe had at one point lived at plaintiffs' address but had not lived there for approximately

four months before the execution of the arrest warrant at plaintiffs' home. Id. ¶ 22. The arrest warrant listed plaintiffs' address as Rowe's primary residence and two other Bloomfield addresses as secondary residences. See Compl. Ex. A, at 4 (Windsor Police Dept. Incident Report, Supplemental Report dated 10/20/99). Plaintiffs told defendants that the previous owner of the house now lived elsewhere in Windsor, Connecticut. Id. at 5. Rowe was later arrested at that property in Windsor. Compl. ¶ 22.

Plaintiffs claim that neighbors witnessed defendants' attempts to execute the search warrant, and a newspaper apparently later reported that Dennis "Dicky" Rowe, residing at plaintiffs' address, was arrested on drug charges. Id. ¶ 24.

Discussion

Defendant argues that he is entitled to (1) qualified immunity with respect to the Section 1983 claim (Count One), and (2) sovereign immunity and/or statutory immunity from suit on the pendent state law claims (Counts Two, Three, Six, Eight and

Nine)¹ brought against him in his individual capacity.²

I. Section 1983 Claim

Defendant claims that he is entitled to qualified immunity for his actions in assisting the Federal Bureau of Investigations (the "FBI") in attempting to execute its arrest warrant at plaintiffs' home.

Generally, qualified immunity shields defendant from a lawsuit for damages unless a reasonable officer would have known that defendant's conduct violated clearly established law. See Hunter v. Bryant, 502 U.S. 224, 226-28 (1991) (per curiam). In other words, qualified immunity does not protect plain incompetence. Id. at 228. Since qualified immunity is an immunity from suit and not merely from liability, defendant's claim should be resolved "at the earliest possible stage in litigation." Id. at 227; Anderson v. Creighton, 483 U.S. 635, 646-7 n.6 (1987). However, to adequately state a claim of constitutional violation, plaintiffs need not plead facts showing the *absence* of such a defense. Castro v. United States, 34 F.3d

¹ Plaintiffs appear to concede that Bennett is entitled to immunity with respect to Counts Four, Five and Seven, all of which allege negligence. (Pls.' Mem. Law Opp'n Defs.' Mot. Dismiss at 7.) Accordingly, those Counts are dismissed as to Bennett.

² Defendant Bennett also argues that he is entitled to sovereign immunity on the pendent state law claims brought against him in his official capacity. However, since plaintiffs claim to have brought suit against Bennett in his individual capacity only, we need not consider that issue. (Pls.' Mem. Law Opp'n Defs.' Mot. Dismiss at 6.)

106, 111 (2d Cir. 1994). In Castro, the Second Circuit noted that "limited and carefully tailored discovery" may be needed before a defendant's motion for summary judgment will be appropriate. Id. at 111-12. Even on a motion for summary judgment with accompanying affidavits, the court in Castro held that the case was not procedurally ripe for such relief because plaintiff had not yet had the opportunity to conduct discovery on the issue of qualified immunity. Id. at 112.

In the instant case, plaintiffs claim that defendant's conduct violated clearly established law and that it was unreasonable under the circumstances. (Compl. ¶¶ 28, 33, 35-38.) On a motion to dismiss, "it is the defendant's conduct as alleged in the complaint that is scrutinized for 'objective legal reasonableness.'" Behrens v. Pelletier, 516 U.S. 299, 309 (1996). Objective reasonableness would be a defense to Count One; however, at this early stage in the litigation, the question of whether defendant's conduct was objectively reasonable or not involves a factual dispute which cannot be resolved on a motion to dismiss. Accordingly, the motion is denied without prejudice and plaintiffs are permitted to conduct discovery limited to the issue of defendant's qualified immunity claim.

II. State Law Claims

a. Sovereign Immunity

Counts Two, Three, Six, Eight and Nine allege that defendant

committed various state law torts including willful or wanton assault, intentional infliction of emotional distress, invasion of privacy, and trespass.³ Defendant asserts that he is entitled to sovereign immunity on those state law claims even if they have been brought against him in his individual capacity. Plaintiffs argue that the doctrine of sovereign immunity is only applicable where a defendant has been sued in his official capacity. However, the Appellate Court of Connecticut has quite clearly stated that a defendant may claim sovereign immunity even if sued in his individual capacity only. Hultman v. Blumenthal, 67 Conn. App. 613, 615, n.5, cert. denied, 259 Conn. 929 (2002); Martin v. Brady, 64 Conn. App. 433, 436-37, cert. granted on other grounds, 258 Conn. 919 (2001). See also Antinerella v. Rioux, 229 Conn. 479, 498 (1994) (noting without disapproval the trial court's determination that because sovereign immunity applied, neither the state *nor the defendant individually* could be subject to suit).

In Martin, the court noted that a state can *only* act through its officers and agents, and such agents are protected from legal proceedings by sovereign immunity, even if sued in their individual capacities only, unless they are alleged to have acted

³ Count Two alleges a violation of the Connecticut Constitution, article 1, § 7. In Binette v. Sabo, 244 Conn. 23, 32 (1998), the Supreme Court of Connecticut recognized a Bivens-type constitutional tort action for such violations.

(1) in excess of their statutory authority, or (2) pursuant to an unconstitutional statute. Martin v. Brady, 64 Conn. App. at 436-37 (citing Shay v. Rossi, 253 Conn. 134, 169 (2000); Antinerella v. Rioux, 229 Conn. 479, 487-88 (1994)).

We have examined the complaint in the instant case, and even after drawing all reasonable inferences in favor of plaintiffs, we find that it contains neither express nor implicit allegations that defendant acted in excess of his statutory authority or pursuant to an unconstitutional statute. The Supreme Court of Connecticut "has not set precise standards to define conduct in excess of statutory authority because '[i]t is difficult to describe with 'any degree of specificity' where the line should be drawn between an excessive use of authority and an appropriate use of authority.'" Russo v. City of Hartford, 184 F. Supp. 2d 169, (D. Conn. 2002) (quoting Hultman v. Blumenthal, 67 Conn. App. at 620-21). Plaintiffs need not allege conduct so outside statutory authority that defendant could no longer be considered acting within his official role. Of course, allegations that defendant acted solely "with improper and self-serving motives" would be enough to overcome a claim of sovereign immunity. Shay, 253 Conn. at 173-74; Antinerella, 229 Conn. at 497 (the doctrine of sovereign immunity does not apply when there is "a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority"). However, plaintiffs cannot rely on conclusory allegations of improper

motive without supporting factual allegations. Hultman, 67 Conn. App. at 614.

The fact that defendant is alleged to have committed various intentional torts during the execution of the arrest warrant is not sufficient to take his conduct outside the parameters of his statutory authority. See Martin, 64 Conn. App. at 437 (although the complaint alleged that defendants entered plaintiff's home without a warrant, struck him and threw him to the ground and searched his home based on a search warrant issued in response to an affidavit containing false claims, the court held that the complaint contained "no allegations that defendants were acting in any capacity other than as state officers executing an extradition warrant"). In the instant case, there are no allegations, express or implied, that defendant executed or attempted to execute an arrest warrant in order to promote an illegal purpose. The nature of plaintiffs' grievances contained in the complaint are clearly based upon and arise from actions taken by defendant in his capacity as a state police officer assisting in the execution of an arrest warrant. Plaintiffs have not sustained their burden of alleging facts that would show that defendant's conduct was sufficiently outside the normal scope of his statutory authority as a police officer. Therefore, we hold that defendant is entitled to sovereign immunity on plaintiffs' state law claims. Accordingly, Counts Two, Three, Six, Eight and Nine are dismissed as to Bennett.

b. Statutory Immunity

Since we have held that defendant is entitled to sovereign immunity on the state law tort claims, we need not consider his argument that he is entitled to statutory immunity on those claims under Connecticut law.

Conclusion

For the reasons set forth above, defendant Bennett's motion to dismiss [Doc. #24] is GRANTED in part and DENIED in part. The motion to dismiss Counts Two, Three, Four, Five, Six, Seven, Eight and Nine is GRANTED and those Counts are dismissed as to Bennett. The motion to dismiss Count One is DENIED.

SO ORDERED.

Dated: July 10, 2002
Waterbury, CT

_____/s/_____
Gerard L. Goettel
United States District Judge