IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

ROBERTSON FIRE PROTECTION DISTRICT	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. 18SL-CC00749
	)	
CITY OF HAZELWOOD,	)	Division 12
	)	
Defendant.	)	

MOTION TO DISMISS OR IN THE ALTERNATIVE FOR MORE DEFINITE STATEMENT

COMES NOW Plaintiff Robertson Fire Protection District ("RFPD"), by and through its undersigned counsel, and respectfully requests that this Court dismiss the Counterclaim of Defendant City of Hazelwood ("Hazelwood"), or in the alternative require a more definite statement. In support of its motion RFPD states the following:

ARGUMENT

I. Hazelwood's Count I should be dismissed because Hazelwood lacks standing to bring this claim, in that it is not a person within the protection of the equal protection clauses of the federal or state constitutions.

It is well-settled that "municipalities and other political subdivisions established by the state are not 'persons' within the protection of the due process and equal protection clauses of the United States Constitution." *City of Chesterfield v. Director of Revenue*, 811 S.W.2d 375, 377 (Mo. 1991) (holding that city had no standing in suit against director of revenue to claim that state statute violated equal protection); *Williams v. Mayor and City Council of Baltimore*, 289 U.S. 36, 40 (1933); *City of Trenton v. State of New Jersey*, 262 U.S. 182, 192 (1923); *Committee for Educational Equality v. State*, 294 S.W.3d 477, 485 (Mo. 2009). Likewise, because the federal and state constitutions are the same in their references to "persons," municipalities and

other political subdivisions are not "persons" within the protection of Missouri's equal protection clause. *See State ex rel. Mehlville Fire Protection Dist. v. State Tax Comm'n*, 695 S.W.2d 518, 521 (Mo.App. 1985) (concluding that because political subdivisions are not "persons" within meaning of federal due process clause, they also are not "persons" within meaning of Missouri's due process clause).

In this case, it is undisputed that Hazelwood is a political subdivision created by the State. Answer ¶ 2. As such, Hazelwood is not a "person" within the meaning of either the federal equal protection clause or Missouri's equal protection clause, and therefore has no standing to bring Count I, necessitating dismissal of that claim.

II. Hazelwood's Count II should be dismissed because Hazelwood lacks standing to bring this claim, in that it is not a "taxpayer" within the meaning of the Hancock Amendment.

"The Hancock Amendment makes no pretense of protecting one level of government from another. By its clear language, [Mo. Const. art. X,] [s]ection 23 limits the class of persons who can bring suit to enforce the Hancock Amendment to "any taxpayer." *King-Willmann v. Webster Groves Sch. Dist.*, 361 S.W.3d 414, 416–17 (Mo. 2012); *Ft. Zumwalt Sch. Dist. v. State*, 896 S.W.2d 918, 921 (Mo. 1995). Thus, in an earlier case involving Hazelwood's annexation of the Northwest Area, the Supreme Court of Missouri held that Hazelwood did not have standing to sue under the Hancock Amendment. *City of Hazelwood v. Peterson*, 48 S.W.3d 36, 40 (Mo. 2001).

The clear language of the Hancock Amendment and the decision in *City of Hazelwood v. Peterson* dictate that Hazelwood has no standing to bring suit to enforce the Hancock Amendment under Count II, necessitating dismissal of that claim as well.

III. Hazelwood's Count III should be dismissed for lack of standing, or, in the alternative, because it is not ripe for decision.

Duly enacted Missouri statutes are entitled to a strong presumption of constitutionality. *City of St. Charles v. State*, 165 S.W.3d 149 (Mo. banc 2005). Missouri courts are to resolve all doubts in favor of the procedural and substantive validity of acts. *Id. At 150.* Section 72.418.2 RSMo., as amended in 1996, is no exception. Among other things, that statute sets forth who may vote in fire protection district elections in annexed areas. RFPD was not only entitled to rely on the presumption of constitutionality of that law, it was bound to follow that law in any elections subsequent to Hazelwood's annexation of the Northwest Area. There is no dispute that RFPD did, in fact, follow the procedure set forth in the presumptively valid statute in the three elections it held over the last 22 years in which it placed levy increases on the ballot. RFPD continued to provide service to the annexed area as required by the Court's Orders, Decrees and Judgments. With certain exceptions, Hazelwood generally paid the fees required by the court orders and according to the statutory framework until 2018.

Notwithstanding that both parties had been governing themselves according to the existing statutory framework for over 22 years, in paragraph 105 of its Counterclaim, Hazelwood now claims, "RFPD has breached its Contract…" by "overcharging" Hazelwood. The basis of Hazelwood's claim is that RFPD's increased levies were unconstitutional. The problem is that no court in Missouri has ever ruled that section 72.418, RSMo. is unconstitutional and as set out above, Hazelwood has no standing to ask this Court to do so. As such, that allegation by Hazelwood is not a present fact but a mere hope. The best that can be said of Hazelwood's claim is that if any court at some point in the future may hold the statute unconstitutional, then Hazelwood would like to try to bootstrap a breach of contract action back to 1996. The one thing that is clear is that under presently existing facts there has not been and cannot be a "breach

of contract" based on the unconstitutionality of a statute that has not been conclusively ruled unconstitutional.

As set forth above in the discussion of Count I, Hazelwood lacks standing to contest the validity of § 72.418, RSMo. Accordingly, it follows that it lacks standing to raise the constitutional issue as the basis of a breach of contract claim. Standing and ripeness issues are often closely related, as is the case herein. Courts generally address standing issues first and then reach ripeness issues only if standing requirements are satisfied. *Schweich v. Nixon, 408 S.W.3d 769* (Mo. banc 2013). For the reasons set forth above, Hazelwood lacks standing to contest the constitutionality of the statute and thus Count III, which is dependent on a finding that § 72.418, RSMo.is unconstitutional, should be dismissed on that basis.

However, should the Court rule that Hazelwood does have standing to bring its breach of contract claim, the case is not ripe for decision. Ripeness is determined by whether the parties' dispute is developed sufficiently to allow the court to make an accurate determination of the facts and to resolve a presently existing conflict. *Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. banc 2013). Alternatively, RFPD submits that Count III of the Counterclaim should be dismissed on the basis of lack of ripeness due to the absence of any determination that the statute is unconstitutional.

IV. Hazelwood's Count IV should be dismissed for lack of standing, or, in the alternative, because it is not ripe for decision.

In its Count IV, Hazelwood purports to state a claim for "Unjust Enrichment." In fact, it does nothing but restate its "Breach of Contract" claim from Count III and title it differently. Paragraph 114 of the Counterclaim sets forth the operative language of the claim as follows, "Hazelwood conferred a benefit on RFPD by paying <u>contract fees</u> based on null, void and invalid

levy increase elections…." (emphasis added). It is the precise claim made above for contract damages based wholly upon the proposition that § 72.418, RSMo. is unconstitutional.

The same analysis applies. Hazelwood lacks standing to raise the constitutional issue, whether by declaratory judgment, breach of contract, or any other means. However, even if Hazelwood can somehow be deemed to have standing to bring this "Unjust Enrichment" claim, it fails because it is not ripe for decision. On those bases, RFPD requests that this Court dismiss Count IV of the Counterclaim.

V. Hazelwood's Count V should be dismissed because Hazelwood has failed to allege any change in circumstance that could render the continued effect of this Court's judgment inequitable.

Hazelwood's Count V argues, in part, that it should be relieved from the Court's Annexation Judgment pursuant to Rule 74.06(b)(5) on the ground that "it is no longer equitable that the judgment remain in force." This component of Rule 74.06(b)(5) "addresses the situation in which a subsequent circumstance makes enforcement of [a judgment having prospective effect] inequitable." *Juenger v. Brookdale Farms*, 871 S.W.2d 629, 631 (Mo. App. E. Dist. 1994). For the following reasons, Hazelwood's Count V fails to state a claim for equitable relief.

First, Hazelwood's claim for equitable relief from the Court's Annexation Judgment should be dismissed because the Annexation Judgment merely orders the parties to do what is mandated by statute. In relevant part, the Court's Annexation Judgment ordered RFPD to continue to provide fire services to the Northwest Area and directed Hazelwood to pay for such services in the manner specified by section 321.675, RSMo. Meanwhile, the State's current annexation statute imposes those same obligations, including with respect to the terms of payment. § 72.418, RSMo. Hazelwood cannot complain that it is inequitable to enforce compliance with the State's laws.

Furthermore, the allegations in Count V do not support the claim that enforcement of the Annexation Judgment is inequitable. Instead of addressing the circumstances that controlled the Court's Annexation Judgment, and how they may or may not have changed, Hazelwood's Count VI focuses on the contract the parties executed to implement the Annexation Judgment. In particular, Hazelwood claims that it was entitled to terminate the contract and that it did terminate the contract. But even if this were true, Hazelwood's termination of the contract would not affect the continued force of the Court's Annexation Judgment, not to mention § 72.418. Moreover, Hazelwood's claim for relief from the Annexation Judgment necessarily implies the judgment's continued force and effect. Thus, if Hazelwood's purported cancellation of the contract is relevant to Hazelwood's claim for equitable relief, it is because it demonstrates Hazelwood's willful noncompliance with the Court's orders. *City of St. Joseph v. Lake Contrary Sewer Dist.*, 251 S.W.3d 362, 369 (Mo. App. W. Dist. 2008) ("Generally, a court of equity will not assist a plaintiff who comes to court with unclean hands.")

Finally, Hazelwood's Count V argues that Hazelwood should be relieved from the Court's Annexation Judgment pursuant to Rule 74.06(b)(5) because the judgment is "satisfied." In reality, the Annexation Judgment is in full force and effect, and Hazelwood is in default of its obligations thereunder. But to the extent that Hazelwood's claim is based on the argument raised in Hazelwood's Count VI, that the Annexation Judgment is presumed paid and satisfied pursuant to § 516.350, the claim fails because that statute does not apply to judgment for specific acts. *See* Part VI, *infra*.

For the foregoing reasons, Hazelwood's Count V should be dismissed for failure to state a claim.

VI. Hazelwood's Count VI should be dismissed because section 516.350 does not apply to judgments for specific acts.

By its plain language, § 516.350 does not apply to judgments requiring specific acts. *Longan v. Longan,* 488 S.W.3d 728, 731 (Mo. App. W. Dist. 2016); *Kelly v. City of Cape Girardeau,* 89 S.W.2d 693, 697 (Mo. App. 1936). In *Longan,* the court reasoned that because a dissolution judgment requiring the transfer of title to real estate was a judgment for a specific act, the judgment was not governed by § 516.350. *Longan*, 488 S.W.3d at 730-32. Instead, judgments for specific acts are enforceable through Rule 74.07. *Id*; *see also Kelly v. City of Cape Girardeau,* 89 S.W.2d at 698 (concluding that statute dealing with judgments for specific acts, rather than prior version of § 516.350, governed enforceability of a judgment ordering the abatement of a nuisance).

Given that § 516.350 does not apply to judgments that require specific acts, the statute cannot create any presumption of payment as to the Annexation Judgments. As relevant here, the Annexation Judgments order RFPD to continue to provide fire services to the Northwest area and direct Hazelwood to compensate RFPD for such services, all according to the requirements of Missouri's annexation statute. In others words, the Annexation Judgment effectively orders RFPD and Hazelwood to specifically perform a statutorily prescribed services agreement. As a result, notwithstanding the payment component, the Annexation Judgment is not subject to the limitations in section 516.350, necessitating dismissal of Hazelwood's Count VI.

VII. Hazelwood's Count VII should be dismissed for lack of standing, as barred by the applicable statute of limitations and for failing to set forth facts in support of the claim

A. Hazelwood's Count VII should be dismissed for lack of standing because Hazelwood is not a person, taxpayer, or citizen.

The clear language of the Missouri Sunshine Law limits the class of persons who can bring actions to enforce violations of the statute to "[a]ny aggrieved person, taxpayer to, or

citizen of, this state…." Mo. Rev. Stat. § 610.027.1. None of these terms are defined in the Sunshine Law, but it is clear that Hazelwood does not fall within any of them.

First, Hazelwood is not a "person." Where Missouri statutes lack definitions, "words and phrases shall be taken in their plain or ordinary and usual sense…." Mo. Rev. Stat. § 1.090. Webster's Dictionary defines "person" as "human, individual…." See, Webster's Dictionary, 10th Ed. Courts that have examined the meaning of the word "person" under other statutes have declined to find that the state and its political subdivisions are included within the scope of the term when "person" is used a statute in a general, non-specific sense. State ex rel. Blue Springs School District v. Grate, 2018 WL 2012127, *4 (Mo. App. W.D. 2018). See also, Haggard v. Division of Employment Security, 238 S.W.3d 151, 154-55 (Mo. 2007) (en banc) (same analysis examining the term "corporation"); State ex rel. Ormerod v. Hamilton, 130 S.W.3d 571, 572 (Mo. 2004) (en banc); Casualty Reciprocal Exchange v. Missouri Employers Mutual Insurance Co., 956 S.W.2d 249, 253 (Mo. 1997) (en banc) (examining when a public corporation should be included when the generic term "corporation" is used); St. Joseph Light & Power Co. v. Nodoway Worth Electric Coop., Inc., 822 S.W.2d 574, 576 (Mo. App. W.D. 1992) (analysis of the term "person" as used in section 394.315 RSMo. 1986); Hunt v. St. Louis Housing Authority, 573 S.W.2d 728, 730 (Mo. App. St. Louis Dist. 1978) (examines the meaning of the term "municipal corporation"); City of Webster Groves v. Smith, 102 S.W.2d 618, 619-20 (Mo. 1937) (examines the meaning of the terms "person" and "corporation" and whether they include a municipality).

Similarly, Webster's Dictionary defines "citizen" as "a native or naturalized person…." Webster's Dictionary, 10th Ed. Because Hazelwood is not a "person," it cannot be a citizen either. Finally, there can also be no doubt that the City is not a taxpayer. In fact, on its own

admission, the City of Hazelwood is a political subdivision. See, Answer to Petition at ¶2. Accordingly, the City does not fall within the plain and ordinary meaning of the statute as one entitled to bring an action under the Sunshine Law. This Court should dismiss Count VII for lack of standing.

B. Count VII is barred by the applicable statute of limitations.

Count VII of the Counterclaim seeks relief for two alleged violations of the Missouri Sunshine Law. One of these violations involves a records request made in 2015, and the other involves a records request made in 2018. The portion of Count VII based upon the 2015 records request is barred by the statute of limitations.

Section 610.027.5, RSMo. provides that any "suit for enforcement shall be brought within one year from which the violation is ascertainable and in no event shall it be brought later than two years after the violation." Count VII alleges that the City submitted a written request to RFPD under the Missouri Sunshine Law on February 26, 2015. See, Counterclaim at ¶155. Count VII further alleges that "RFPD failed to provide a proper, timely response to Hazelwood's request as required by §610.023.3, RSMo." See, Counterclaim at ¶156.

The Missouri Sunshine Law requires a public governmental body to act upon a public records request "as soon as possible, but in no event later than the end of the third business day following the date the request was received by the custodian of records of the public governmental body." § 610.023.3, RSMo. Presumably, it was ascertainable in early March of 2015 that the RFPD had, as the City alleges, failed to timely respond to the City's request for records. Accordingly, the City was required to have filed any claim for enforcement of the Act based upon that alleged failure to respond to the request within a year, by early March of 2016.

Even if the alleged violation involving the 2015 records request was somehow not ascertainable in early March of 2015 (a fact which the City fails to allege), the absolute latest time the City could have filed a claim for enforcement of the Act based upon the RFPD's alleged failure to respond to the 2015 records request would have been two years after the alleged violation, or March 2, 2017. Instead, Count VII was not filed until April 6, 2018, more than a year past the expiration of the statute of limitations on the alleged claim. Even if the facts as alleged in the Counterclaim are assumed to be true for purposes of this Motion, it is clear that the City's claim is not timely. This Court should dismiss the portion of Count VII based upon the City's 2015 records request as a matter of law.

C. Hazelwood fails to set forth facts in support of their claim that RFPD violated the Sunshine Law.

The second request for relief set forth in Count VII of the Counterclaim seeks to redress an alleged violation of the Missouri Sunshine Law involving a 2018 records request. The portion of Count VII based upon the 2018 records request fails to state a claim upon which relief can be granted as a matter of law, because the facts as alleged, even if true, do not state a claim for a violation of the Missouri Sunshine Law.

A motion to dismiss for failure to state a claim upon which relief can be granted is solely a test of the adequacy of the petition. Nazeri v. Missouri Valley College, 860 S.W.2d 303, 306 (Mo. 1993) (en banc). In considering whether a petition fails to state a claim upon which relief can be granted, the Court accepts all properly pleaded facts as true, giving the pleadings their broadest interpretation, and construing all allegations favorably to the pleader. Id. The Court will review the petition "in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case." Id. See also, Chochorowski v. Home Depot U.S.A., Inc., 295 S.W.3d 194, 197 (Mo. App. E.D.

2009). Further, a motion to dismiss for failure to state a claim is well taken where the facts essential to recovery are not pleaded. ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 379 (Mo. 1993) (en banc). "A petition must contain allegations of fact in support of each essential element of the cause sought to be pleaded." Id.

In order to properly state claim for a violation of section 610.023.3 of the Missouri Sunshine Law, a claimant must allege 1) that a request for a public record was made, 2) that the custodian of records for the public governmental body received the request, and 3) that the custodian failed to respond within three business days thereafter. Perkins v. Caldwell, 363 S.W.3d 149, 154 (Mo. App. E.D. 2012); Pennington v. Dobbs, 235 S.W.3d 77, 79 (Mo. App. S.D. 2007); Guerra v. Fougere, 201 S.W.3d 44, 47 (Mo. App. W.D. 2006).

The portion of Count VII of the Counterclaim based upon the 2018 records request fails to allege the second of the three elements of a claim for a Sunshine Act violation. While the City states that it sent the RFPD a written request for documents on February 8, 2018 via certified U.S. Mail, it makes no allegation as to when RFPD ***received*** the request. See, Counterclaim at ¶162. As outlined above, the receipt of the request, not the sending of the request, is the trigger of the Sunshine Act's three-day response requirement. Anderson v. Village of Jacksonville, 103 S.W.3d 190, 199 (Mo. App. W.D. 2003). Accordingly, taking the allegations of the Counterclaim to be true for purposes of this Motion, the three-day statutory timeframe required by section 610.023.3 was never triggered, and the 2018 portion of Count VII fails to state a claim upon which relief can be granted. See, Id. at 199-200.

The City further fails to allege the RFPD failed to respond within the three-day timeframe. The City admits that RFPD acknowledged receipt of the request on February 15, 2018. Id. at ¶163. This was the same day that the RFPD received the request. See, Exhibit 1 to

RFPD's Reply to Counterclaim. Clearly, this response was not outside of the three-day timeframe, and fails to state a claim upon which relief can be granted.

Further, even if the City had properly stated a claim for a violation of the Missouri Sunshine Act based upon the 2018 records request, it would not amount to a violation of the statute for the RFPD to have taken additional time in compiling its response to the request after its acknowledgment was timely sent. The Missouri Sunshine Law contains no specific deadline by which time a public governmental body must produce records responsive to a request. Instead, the statute mandates that the public governmental body provide an acknowledgment within three business days, and then make responsive records available within a reasonable time. § 610.023.3. The statute specifically provides that the "period for document production may exceed three days for reasonable cause." Id.

The fact that the RFPD took additional time, beyond three days, to compile responsive documents does not amount to a violation of the Act unless the time used was unreasonable. Id. The City makes no allegation in its Counterclaim that the time taken by the RFPD to respond to the request was not reasonable. As such, Count VII of the Counterclaim based upon the 2018 records request fails to state a claim for a violation of section 610.023.3.

Moreover, the City has very clearly not set forth facts establishing that the RFPD knowingly or purposefully violated the Act, such that the City would be entitled to statutory penalties or attorney's fees. A knowing violation of the Missouri Sunshine Law requires proof that a governmental body had actual knowledge that its conduct violated the statute, not simply knowledge that it failed to, for example, produce copies of requested records. Laut v. City of Arnold, 491 S.W.3d 191, 193 (Mo. 2016) (en banc); Strake v. Robinwood West Community Improvement District, 473 S.W.3d 642, 645 (Mo. 2015) (en banc). The standard of proof for a

purposeful violation is even higher – requiring that a governmental body acted with "a conscious design, intent or plan" to violate the law in a specific case, and did so "with awareness of the probable consequences." Laut, 491 S.W.3d at 193; Spradlin v. City of Fulton, 982 S.W.2d 255, 262 (Mo. 1998) (en banc).

The City admits in the Counterclaim that the RFPD responded to the 2018 records request, and indicated that it "would endeavor to assemble the records." See, Counterclaim at ¶163. These facts, taken as true, fail to suggest the RFPD knew or intended for its conduct to violate the law. Certainly, the allegations do not demonstrate a knowing or purposeful intent to violate the requirements of the law.

MOTION FOR MORE DEFINITE STATEMENT

In the alternative, RFPD requests that, pursuant to Rule 55.27(d), Hazelwood be required to make a more definite statement of Counts III, IV and V of it Counterclaims.

Fact pleading is mandated in Missouri. Specifically, Rule 55.05 requires pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief." This requirement "identifies, narrows and defines the issues so that the trial court and the parties know what issues are to be tried, what discovery is necessary, and what evidence may be admitted at trial." *State Ex. Rel. Harvey v. Wells*, 955 S.W.2d 546, 547 (Mo 1997). "Modern litigation is too expensive in time and money to be allowed to proceed upon mere speculation or guess. Unnecessary expense should be eliminated by requiring parties, as early as possible, to abandon claims or defenses that have no basis in fact." Id. at 548.

To that end, the Missouri Rules demand more than mere conclusions that the pleader alleges without sufficient supporting facts. *Transit Cas. Co. ex rel. Pulitzer Pub. Co. v.*

Transit Cas. Co. ex rel. Intervening Employees, 43 S.W.3d 293, 302-03 (Mo. 2001) (citations omitted). Thus, it is not sufficient to merely allege elements with conclusions, without also alleging the facts which support the cause of action. *Ingle v. Case*, 777 S.W.2d 301, 305 (Mo. App. 1989).

Recognizing the importance of a properly-pled pleading, Rule 55.27(d) permits a defendant to move for a more definite statement:

> A party may move for a more definite statement of any matter contained in a pleading that is not averred with sufficient definiteness or particularity to enable the party properly to prepare responsive pleadings or to prepare generally for trial when a responsive pleading is not required. If the motion is granted and the order of the court is not obeyed within ten days after notice of the order, or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

See also Smith v. Lewis, 669 S.W.2d 558, 562 (Mo. App. 1983) (motion for more definite statement is appropriate when "petition does not set out the particulars or the evidence which will prove ultimate facts").

Here, Hazelwood's allegations in its Counterclaims at paragraphs 104-111, 113, 117 and 124 fall significantly short of this standard. These allegations make only the broadest and most general allegations that RFPD has acted irresponsibly, imprudently or otherwise overcharged for its services without providing any factual basis for these claims.

As a result of Hazelwood's vague and deficient pleadings, RFPD is forced to guess as to what alleged behavior and activity is the basis for each of Counts III, IV and V, leaving RFPD unable to determine whether claims are properly stated against it. Not only is RFPD unable to prepare a Reply, but it also cannot determine what defenses may apply, what discovery is necessary and what evidence may be properly admitted at trial.

CONCLUSION

For the reasons stated above and according to the foregoing authorities, Robertson Fire Protection District respectfully requests that this Court dismiss Counts I through VII of the Counterclaim of City of Hazelwood, or in the alternative, require a more definite statement of Counterclaim Counts III, IV and V, along with such other and further orders as may be just and appropriate.

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