

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

PATTY HECTOR

PLAINTIFF

v.

CASE NO. 4:25-cv-91-JM

**MATTHEW BRUMLEY, SALINE COUNTY JUDGE,
IN HIS OFFICIAL CAPACITY, AND SALINE COUNTY,
ARKANSAS**

DEFENDANTS

**BRIEF IN SUPPORT OF
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

Comes Now, Defendants, Matthew Brumley, Saline County Judge, in his official capacity, and Saline County, Arkansas, by and through Undersigned Counsel, and for their Brief in Support of Motion for Partial Judgment on the pleadings herein state and allege:

INTRODUCTION AND FACTUAL ALLEGATIONS

Plaintiff brought suit claiming, *inter alia*, the enactment of an Ordinance by the Saline County Quorum Court which gave the County Judge oversight over the Saline County Library Board, regarding the Board's management, operation, maintenance all buildings, equipment, or installations of any kind used and devoted to the purpose of the Public Library. Doc. No. 1, ¶ 45. Additionally, Plaintiff alleges the Ordinance gave the Board power to enter into contracts, except for those relating to employment. *Id.* Plaintiffs make the legal conclusion that the Ordinance "reverted authority to hire and fire library personnel from the Library Board to the County Judge." *Id.* at ¶ 43. The Plaintiff cites Ark. Code Ann. § 14-14-1102. *Id.* Citation to that statute is unhelpful to the Plaintiff because it is clear the statute grants the County Judge the right to hire and fire county personnel. Nevertheless, as to Plaintiff's bill-of-attainder claim, that allegation is not relevant.

Defendants (the County) move for judgment on the pleadings regarding Plaintiff's bill of attainder claim contained at paragraphs 68-72 of the Complaint at Doc. No. 1. The facts pled are insufficient to overcome dismissal of that claim and it should, thus, be dismissed.

STANDARD OF REVIEW

As the Court is aware, a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) is assessed under the same standard as a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). It is simply the proper vehicle for challenging the pleading failures of a complaint once an answer has already been filed, such as in this case.

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for a motion to dismiss on the basis of "failure to state a claim upon which relief can be granted." In its decision in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), the Supreme Court revisited the standards for determining whether factual allegations are sufficient to survive a Rule 12(b)(6) motion to dismiss:

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests," *Conley v. Gibson*, 355 U.S. 41, 47, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957). While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, *ibid.*; *Sanjuan v. American Bd. of Psychiatry and Neurology, Inc.*, 40 F.3d 247, 251 (C.A.7 1994), a plaintiff's obligation to provide the "grounds" of his "entitle[merit] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do, see *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986) (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). Factual allegations must be enough to raise a right to relief above the speculative level, see 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp. 235-236 (3d ed.2004) (hereinafter Wright & Miller) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action"), on the ASSUMPTION THAT ALL THE allegations in the complaint are true (even if doubtful in fact), see, e.g., *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508, n. 1,

122 S. Ct. 992, 152 L. Ed. 2d 1 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989) ("Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's factual allegations"); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974) (a well-pleaded complaint may proceed even if it appears "that a recovery is very remote and unlikely").

Bell Atlantic, 550 U.S. at 555-56 (footnote omitted); see *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (instructing that "short and plain statement" requirement "demands more than an unadorned, the-defendant-unlawfully-harmed me accusation."). Thus, the Eighth Circuit Court of Appeals has recognized that, under *Bell Atlantic*, "To survive a motion to dismiss, a complaint must contain factual allegations sufficient 'to raise a right to relief above the speculative level. . . .'" *Parkhurst v. Tabor*, 569 F.3d 861, 865 (8th Cir. 2009) (quoting *Bell Atlantic*, 550 U.S. at 555). To put it another way, "the complaint must allege 'only enough facts to state a claim to relief that is plausible on its face.'" *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 569 F.3d 383, 387 (8th Cir. 2009) (quoting *Bell Atlantic*, 550 U.S. at 570); accord *Iqbal*, 129 S. Ct. at 1949 ("Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'") (quoting *Bell Atlantic*, 550 U.S. at 557).

Additionally, the Court can consider matters of public record that do not contradict the Complaint in assessing the instant motion. *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999).

DISCUSSION

The facts pled in the Complaint require dismissal of Plaintiff's claim of a bill of attainder. United States Constitution, Article I 10. Cl. 1 states: "No State shall . . . pass any Bill of Attainder, or Law impairing the Obligation of Contracts" As His Honor Judge Rudofsky recently ruled in *NewRays One LLC v. Faulkner County, Arkansas*:

Third, to the extent NewRays is suggesting that it is the enforcement of the Ordinance—as opposed to the Ordinance itself—that is impairing or could impair its contracts, precedent suggested that such an argument will not prevail. **Historically, the Contract Clause has been interpreted to apply to legislative action alone. And upon reading the text of the Clause, any laymen can immediately understand why this is so.**

...

The text is plain as can be: the Contract Clause applies to the passage of laws, a quintessentially legislative act. **The Clause does not reach executive enforcement**, which is what NewRays is really challenging here as the thing purportedly impairing its contracts.

4:24-CV-00824-LPR, 2024 WL 4468784, *5 (E.D. Ark. Oct. 8, 2024) (slip copy) (emphasis added) (citing *Ross v. Oregon*, 227 U.S. 150, 160-62 (1913)). “A bill of attainder is a *legislative determination of guilt* which metes out punishment *to named individuals ...*” *U.S v. Van Horn*, 798 F.2d 1166, 1168 (8th Cir. 1986) (emphasis added).

Arkansas law is similar. “A bill of attainder is a law that legislative determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial.” *Howton v. State*, 2021 Ark. App. 86, *4 619 S.W.3d 29, 34. “The prohibition against a bill of attainder reaches only *statutes* that inflict punishment on the specified individual or group.” *Id.*

Here, even as pled, the Ordinance (the legislative act) does not mention the Plaintiff and in no way speaks to punishment of the Plaintiff or any detriment to the Plaintiff. If, via the legal authority given him, the County Judge terminated the Plaintiff from her position¹ that was an executive action—which is patently not covered by the prohibitions on bills of attainder. Plaintiff’s bill-of-attainder claim fails to plead sufficient facts to support such a claim; rather, the facts pled

¹ And, though it is beyond the necessities of this motion, the County Judge’s act was legitimate, non-retaliatory, and Plaintiff’s purported speech was not on a matter of public concern considering *Garcetti* and its progeny. But those matters refer to the First Amendment claim which is not subject of this motion.

themselves defeat such a claim. Thus, the County Defendants (the County) is entitled to dismissal of the Plaintiff's bill-of-attainder claim.

CONCLUSION

For the foregoing reasons, the Defendants are entitled to partial dismissal.

Respectfully submitted,

Defendants

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