

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

J.H. GROUP, LLC. d/b/a/, OCEAN ROLLING:
CHAIRS, JOHN TAIMANGLO, and
STEPHANIE TAIMANGLO, : Hon. Joseph H. Rodriguez

Plaintiff(s), : Civil Action No. 11-1595

v. :

ROYAL ROLLING CHAIRS, LLC., WILLIAM :
BOLAND, GARY HILL, JOHN SCHULTZ, :
CITY OF ATLANTIC CITY, JOHN DOE(S) :
A-K, AND Jane DOES(S) A-K, being present :
and former councilpersons, courtesy of :
ATLANTIC CITY and other persons known or :
unknown on behalf of ATLANTIC CITY with :
regard to any and all control, supervisor, :
monitoring the rolling chair business on behalf :
of ATLANTIC CITY, THEODORE GARRY, : **OPINION**

Defendant(s). :

This matter comes before the Court on motion to dismiss filed by Defendant City of Atlantic City [10].

I. Background

Plaintiffs filed the complaint in this matter on March 22, 2011, alleging violations of their Fifth and Fourteenth Amendment rights guaranteed under the United States Constitution, pursuant to 42 U.S.C. § 1983. Plaintiffs are J.H. Group, LLC, doing business as Ocean Rolling Chairs, as well as John Taimanglo and Stephanie Taimanglo, the sole stockholders and members of Ocean Rolling Chairs. (Comp., ¶¶ 1, 2.) Defendants include Royal Rolling Chairs, LLC, William Boland, Gary Hill, John Schultz, City of Atlantic City, John Doe(s) and Jane Doe(s) A-K (being present and former

councilpersons, courtesy of Atlantic City and other persons known or unknown on behalf of Atlantic City with regard to any and all control, supervisor, monitoring the rolling chair business on behalf of Atlantic City), and Theodore Gary. (Comp.) Plaintiffs allege that defendant Royal Rolling Chairs (amongst other named defendants) and its owners have used their political connections in the City Council of Atlantic City to conspire against Ocean Rolling Chairs in an effort to destroy their business. (Comp., ¶ 28.)

Plaintiffs John and Stephanie Taimanglo own and operate Ocean Rolling Chairs, a local business in Atlantic City which leases rolling chairs on the boardwalk to independent operators on a daily or weekly basis. (Comp., ¶ 15.) Defendant Royal Rolling Chairs, LLC, is a similar business in Atlantic City and is considered to be a competitor with Ocean Rolling Chairs. (Comp., ¶ 3.) These types of businesses are regulated by local ordinances which allow for inspections and enforcement by supervisors of the Mercantile Division of the City of Atlantic City. (Comp., ¶ 16.) Royal Rolling Chairs is owned in equal one-third parts by manager William Boland, operating manager Theodore Garry, and Gary Hill. (Comp., ¶¶ 4, 5, 6.) Plaintiffs claim that “Gary Hill appears to be 1/3 owner of Royal Rolling Chairs, but is only the alter ego of John Schultz and acts on Schultz’s behalf in accordance with directions from Schultz.” (Comp., ¶ 22.)

Plaintiffs allege that Theodore Garry “is completely familiar with all of the acts, plans, designs, schemes, and coordination of events with the City of Atlantic City and its agents, servants and employees as well as councilpersons.” (Comp., ¶ 23.) Garry is alleged to have participated in the scheme to have John Schultz obtain stock though

Gary Hill, and that Shultz further used his power on the City Council in a way that would harm Ocean Rolling Chairs' business. (Comp., ¶¶ 24, 26, 28). This scheme allegedly included various phone conversations regarding Ocean Rolling Chairs, including instructions to employees of Atlantic City to harass and intimidate all of the Plaintiffs. (Comp., ¶ 24).

In 2004, employees of the city allegedly began singling out Ocean Rolling Chairs by harassing its employees on the boardwalk, conducting unnecessary inspections, and engaging in other activities that created problems for the Plaintiffs and adversely affected their income. (Comp., ¶ 28.) "All of this was designed, perpetrated and conducted by the City and Royal Rolling Chairs to deprive the Plaintiffs of their property rights and their rights to conduct their business and use their equipment." Id. Upon being confronted by the Plaintiffs, the city inspectors would state that they "did not know why they were there. We were just told to come and inspect." (Comp., ¶ 29.) Due to these instructions from the City, "Plaintiffs were subjected to conditions and restrictions that were unlawful and not substantiated by the City Ordinances and were treated completely different than the competition at Royal Rolling Chairs, LLC." (Comp., ¶ 31.) An example of this was when Ocean Rolling Chairs was given two days to take its copied licenses off of the chairs and replace them with the real licenses, contrary to past practice where a copy was permissible. (Comp., ¶ 34.) "Complaints were made and Mr. Taimanglo was told that '[h]e did not know the right people.'" Id.

More specifically, Plaintiffs point to resolutions that were passed by the City Council of Atlantic City in 2004 and 2006 regarding the number of chairs each company is legally allowed to own and operate. (Comp., ¶ 39.) Prior to these resolutions being

passed, each company was limited to 150 chairs. Id. Following the resolution, Royal Rolling Chairs was permitted to obtain 41 more chairs, with no notice being given to Ocean Rolling Chairs. Id. Plaintiffs allege that this rule was passed to favor Royal Rolling Chairs, and it had been made in defiance of prior resolutions that were aimed to keep the two companies at the same number of chairs. (Comp., ¶ 40.) Plaintiffs claim this conduct “has been going on for years and on a weekly, daily and monthly basis.” (Comp., ¶ 44.)

Accordingly, Plaintiffs filed a five-count complaint. Count I alleges a violation of Plaintiffs’ substantive due process rights under 42 U.S.C. § 1983. (Comp., ¶ 44.) Count II alleges a violation of Plaintiffs’ procedural due process rights under 42 U.S.C. § 1983, due to the Defendant’s intent “to remove Plaintiffs and its owners of the property without proper due process of law.” (Comp., ¶ 48.) Count III alleges a violation of Plaintiffs’ equal protection rights under the United States Constitution through 42 U.S.C. § 1983, claiming that “[t]he effect of Defendants’ activities has been to cause the laws and administrative procedures of the City of Atlantic City and the State of New Jersey to be enforced against only one group or organization(s) / individual(s) in that the conduct exercises (sic) by the City and its inspectors against Ocean was not equally exercises (sic) against Royal.” (Comp., ¶ 52.) Count IV consists of a civil conspiracy claim, in that “[t]he Defendants have acted in concert with each other in furtherance of their efforts to deprive Plaintiffs of their rights of the United States Constitution and to interfere with Plaintiffs prospective and future contractual relationship and ability to conduct its business and be profitable.” (Comp., ¶ 56.) Count V alleges an interference with present prospective contractual relationships due to lost business under the

Defendants' actions. (Comp., ¶¶ 62, 63.)

In its motion to dismiss, the City of Atlantic City states that the specific incidents referred to in the complaint occurred in 2004 and 2006, over four years before the Plaintiffs sought legal remedies in court. (Def. Br., p. 1.) Therefore, this complaint must be dismissed because the statute of limitations has run out, according to New Jersey state law. (Def. Br., p. 6.) In defending their complaint, Plaintiffs state that the continuing violations doctrine applies, and that their complaint refers to events that occurred within the two year statute of limitations. (Pl. Br., p. 2.)

II. Standards of Review

A. Motion to Dismiss

Federal Rule of Civil Procedure 12(b)(6) allows a defendant to move for dismissal of a complaint based on "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When evaluating the plaintiff's claim, courts must accept the plaintiff's well-pleaded factual allegations as true and view the complaint in the light most favorable to the plaintiff. Phillips v. County of Allegheny, 515 F.3d 224, 231 (3d Cir. 2008).

While the plaintiff need only plead "a short and plain statement of the claim showing that the pleader is entitled to relief," the plaintiff's complaint must nevertheless plead "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); see also Fed. R. Civ. P. 8(a)(2). Thus, a complaint must allege facts that "raise a right to relief above the speculative level." Id. at 555. The complaint must contain sufficient factual matter to demonstrate that the plaintiff's allegations are not merely possible, but

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