UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

VILLAGE OF CAMDEN, OHIO,	)	
	)	
Plaintiff,	)	Case No. 3:20-cv-273-DRC
	)	
v.	)	JUDGE DOUGLAS R. COLE
	)	
CARGILL, INCORPORATED, et al.,	)	MAGISTRATE JUDGE
	)	SHARON L. OVINGTON
Defendants.	)	

MOTION TO DISMISS OF DEFENDANTS CARGILL, INCORPORATED AND CENTRAL SALT L.L.C.

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendants Cargill, Incorporated ("Cargill") and Central Salt L.L.C. ("Central Salt") (collectively "Defendants" or "Salt Companies") move this Court to dismiss the Complaint of Plaintiff Village of Camden, Ohio ("Camden" or "Village") for failure to state a claim for which relief can be granted. Camden waited to file its claims for trespass and public nuisance under Ohio common law for almost 10 years after the claims arose – almost six years after the expiration of the applicable four-year statutes of limitation in R.C. 2305.09(A) and (D).

In the event this case is not dismissed on the foregoing grounds, Defendants move under the authority of *Colorado River Water Conservation Dist. v. United States* for a stay and eventual dismissal of Camden's request for a remediation injunction. 424 U.S. 800, 817 (1976). This request for relief is an attempt to re-litigate a central issue already pending in a lawsuit filed by the State of Ohio in the Court of Common Pleas for Preble County, Ohio (hereinafter, the "State Court").

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

MEMORANDUM IN SUPPORT

I. STANDARD OF REVIEW

To survive a motion to dismiss, a complaint must contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint offering "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 556 U.S. at 678, quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Nor will a complaint survive dismissal if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id*., quoting *Twombly*.

A complaint must allege facts that, if accepted as true, are sufficient to raise a right to relief above the speculative level and state a claim to relief that is plausible on its face. *Hensley Mfg. v. ProPride, Inc.,* 579 F.3d 603, 609 (6th Cir. 2009), citing *Twombly,* 550 U.S. at 555 & 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Hensley Mfg.,* 579 F.3d at 609, quoting *Iqbal,* 556 U.S. at 678. Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id*., at 679. Where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint fails to allege "a short and plain statement of the claim showing that the pleader is entitled to relief" as required by Fed. R. Civ. P. 8(a)(2). *Id.*

Ordinarily, a court cannot consider facts outside of the pleadings in ruling on a 12(b)(6) motion to dismiss. *Weiner v. Klais & Co.*, 108 F.3d 86, 88 (6th Cir. 1997), citing *Hammond v.*

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

Baldwin, 866 F.2d 172, 175 (6th Cir.1989). However, a document attached as an exhibit to the complaint is part of the complaint under Fed. R. Civ. P. 10. *Weiner*, 108 F.3d at 89. In addition, a defendant may attach and a court may consider documents to a motion to dismiss that are not formally incorporated by reference in a complaint, if the complaint refers to the documents and the documents are central to the claims. *Id.*; *Briggs v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 774 F. App'x 942, 948 (6th Cir. 2019). Otherwise, a plaintiff with a legally deficient claim could survive a motion to dismiss simply by failing to attach a dispositive document upon which it relied. *Weiner*, 108 F.3d at 89.

Notice pleading under Civil Rule 8 does not "unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 556 U.S. at 678-79. A plaintiff whose complaint fails to allege facts supporting its conclusions is not entitled to discovery to search for those facts. *New Albany Tractor, Inc. v. Louisville Tractor, Inc.*, 650 F.3d 1046, 1051 (6th Cir. 2011). Otherwise, a plaintiff with "a largely groundless claim" would be able to leverage a settlement through the *in terrorem* effect of expensive prospective discovery. *Twombly*, 550 U.S. at 557-58.

All factual allegations in a complaint that are well-pleaded in accordance with the above-described criteria must be accepted as true. *Twombly,* 550 U.S. at 555. However, a court need not accept legal conclusions as true, and legal conclusions couched as factual allegations are insufficient to survive a motion to dismiss. *Iqbal,* 556 U.S. at 678.

A complaint showing on its face that relief is barred by an affirmative defense, such as a statute of limitations, is subject to dismissal under Rule 12(b)(6). *Rauch v. Day & Night Mfg. Corp.,* 576 F.2d 697, 702 (6th Cir. 1978). *Also see Peck*, 894 F.2d at 846, 849 (time-barred

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

claims fail to state a claim for which relief can be granted and must be dismissed pursuant to Rule 12(b)(6)). Because Camden's Complaint is untimely, this case must be dismissed.

II. THE COMPLAINT'S ALLEGATIONS PERTINENT TO THE STATUTES OF LIMITATIONS

Camden has filed an eight-page Complaint in this case that incorporates by reference a 19-page decision on summary judgment by the State Court in *State of Ohio v. Rodney Good, et al*., Case No. 13 CV 029926. Doc. # 2, Complaint ("Compl."), ¶ 7 (PageID # 74). The Complaint refers to this state case as the "Related Action" and to the summary judgment decision as the "July 29, 2019, Judgment Entry" (hereinafter, "Entry"). *Id*. Thus, under Fed. R. Civ. P. 10 and the Sixth Circuit precedent described above, the Entry is part of the Complaint and the Entry's statements can be considered in this Motion to Dismiss. Camden did not attach a copy of the Entry to its Complaint, so a copy is attached hereto as Exhibit A (Doc. # 4-1).

Additional pertinent information is contained in the contracts between the Salt Companies and the companies owned and operated by Rodney and Tami Good (the "Good Companies"), which are central to Camden's claims as demonstrated by the reference to the contracts in Paragraph 31 of the Complaint (PageID # 77) and by 17 references to them in the Entry incorporated into the Complaint. Entry, pp. 3, 5, 6, 9, 10, 11, 12, 13, 16, 17 (PageID ## 89, 91, 92, 95-99, 102, 103). Thus, the Court may consider the contents of these contracts under Sixth Circuit precedent as explained in Section I above, and these contracts are attached hereto as Exhibits B (Doc. # 4-2) and C (Doc. # 4-3).

The Related Case is a lawsuit by the Ohio Attorney General's Office on behalf of the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to R.C. 6111.04(A) to address the alleged contamination of the groundwater and Camden's wellfield with chlorides from salt stored at a site "less than a mile" from the wellfield. Entry, pp. 1, 3, 4 (PageID ## 87, 89, 90).

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

According to the Entry, the Good Companies constructed and operated a salt transloading terminal (the "Goods' Terminal") for storing the Salt Companies' road deicing salt. *Id*., pp. 2-3 (PageID ## 88, 89). The Good Companies included R. Good Rentals, LLC ("Good Rentals"), R. Good Rail & Transfer, Inc. ("Good Rail"), and R. Good Enterprises, LLC ("Good Enterprises"). *Id*. The Goods' Terminal was located on land owned by Good Rentals, a company owned by Tami Good. *Id*. Good Rentals leased that land to Good Rail, which is owned and operated by Rodney Good. *Id*.

The Salt Companies' contracts with the Good Companies required the Good Companies to keep the salt on an impermeable storage pad, to operate the Good Terminal in compliance with all laws, and to obtain all necessary permits. *Id*., p. 5 (PageID # 91). The Salt Companies' expert witness on groundwater and environmental engineering found that compliance with these contracts would have prevented groundwater pollution. *Id*., pp. 5-6 (PageID ## 91-92).

Notwithstanding the contracts' requirements, the Good Companies allowed salt to spill off the storage pad, dug dry wells to facilitate the seepage of salt-contaminated storm water into the aquifer, and installed a drainage pipe conveying salt-contaminated storm water from the Good Terminal to "right on top of Camden's drinking water supply," all of which were done without the required environmental permits. *Id*., pp. 4, 11 (PageID ## 90, 97). Nevertheless, the State Court decided that the Salt Companies were strictly liable under R.C. 6111.04(A), contending that they chose a salt storage location over an aquifer, did not keep the salt piles covered for some of the time (although the Salt Companies' expert found that the Good Companies' compliance with the contracts would have prevented the pollution whether or not the piles were covered), and did not train and supervise the Good Companies in their operations. *Id*., pp. 8, 10, 13 (PageID ## 94, 96, 99). However, that court also observed:

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.