City of Phoenix

OFFICE OF THE CITY ATTORNEY

CRIS MEYER
City Attorney

January 21, 2021

Via U.S. Mail and Electronic Mail

Lasse Norgaard-Larsen
122 E. Garfield St.
Tempe, AZ 85251
Email: friendsofpapago@gmail.com

J. Arthur Deal
5936 E. Cambridge Ave.
Scottsdale, AZ 85257
Email: jdeal@hotmail.com

Re: *Lasse Norgaard-Larsen, et al., v. City of Phoenix, et al.*, U.S. Dist. Court Case No. 20-cv-02467-PHX-GMS (D. Ariz.)

Messrs. Norgaard-Larsen and Deal:

I am writing pursuant to the conference requirement described in LRCiv 12.1(c) of the Local Rules of Civil Procedure for the District of Arizona. As set forth in this letter, the City of Phoenix intends to move to dismiss your complaint pursuant to LRCiv 7.1, and Rules 8, 10, 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

I have conferred with Eric C. Anderson, counsel for the City of Scottsdale. Mr. Anderson agrees with the legal issues raised herein, and you can expect the City of Scottsdale to seek to dismiss your complaint as well.

Format of the Complaint

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Your 27-page, single-spaced complaint is not the short and plain statement envisioned by Rule 8. Dismissal is proper where, as here, "the very prolixity of the complaint ma[kes] it difficult to determine just what circumstances were supposed to have given rise to the various causes of action." *McHenry v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1996).

Rule 10(b) of the Federal Rules of Civil Procedure requires that a complaint be set out in numbered paragraphs "each limited as far as practicable to a single set of circumstances." Your complaint does not contain such numbered paragraphs.

LRCiv 7.1 requires that a complaint be double-spaced, in a font not smaller than 13 point, with no more than 28 lines per page. Your complaint is single-spaced, the font appears to be smaller than 13 point, and there are as many as 50 lines on a given page.

Standing and Subject Matter Jurisdiction

Your complaint appears to raise four legal bases for relief: (1) the Property Clause of the U.S. Constitution; (2) the Land and Water Conservation Fund Act of 1965, 16 U.S.C. § 460*l*-4, et seq.; (3) the Federal Property Act, 40 U.S.C. § 550(e); and (4) the Contracts Clause of the U.S. Constitution. However, you do not have standing to assert these claims in this lawsuit.

"Standing includes two components: Article III constitutional standing and prudential standing." *Yakima Valley Mem'l Hosp. v. Wash. State Dep't of Health*, 654 F.3d 919, 932 (9th Cir. 2011). Prudential standing examines whether "a particular plaintiff has been granted a right to sue by the statute under which he or she brings suit." *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1199 (9th Cir. 2004).

However, the "core component of standing" is the case-or-controversy requirement found in Article III of the United States Constitution. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Article III standing (also called constitutional standing) requires a plaintiff to "demonstrate that he has suffered 'injury in fact,' that the injury is 'fairly traceable' to the actions of the defendant, and that the injury will likely be redressed by a favorable decision." *Bennett v. Spear*, 520 U.S. 154, 162 (1997). "[A] suit brought by a plaintiff without Article III standing is not a 'case or controversy,' and an Article III federal court therefore lacks subject matter jurisdiction over the suit." *Cetacean Community v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004).

There is no private cause of action for alleged violations of the Land and Water Conservation Fund Act or the Federal Property Act. *See, e.g., Friends of Roeding Park v. City of Fresno*, 848 F.Supp.2d 1152, 1160 (E.D. Cal. 2012) (stating that it is "well-accepted" that there is no private right of action under the LWCFA); *Conservation Law Found. of New England, Inc. v. Harper*, 587 F.Supp. 357, 366-67 (D. Mass. 1984) ("[Plaintiffs] do not have a private right of action under the [Federal Property Act]"). Without a right of action, your alleged injuries cannot be redressed by the court and you lack Article III standing for these claims. The court lacks subject matter jurisdiction.

You lack prudential standing for your other two claims.

The Property Clause "precludes states and private individuals from divesting the federal government—through state laws or otherwise—of title to property without congressional consent." *Freedom Mortg. Corp. v. Las Vegas Dev. Group, LLC*, 106 F.Supp.3d 1174, 1179 (D. Nev. 2015). Claims under the Property Clause are properly brought by the federal government because "the federal government is the best advocate of its *own* interests." *The Wilderness Soc. v. Kane County, Utah*, 632 F.3d 1162, 1172 (10th Cir. 2011) (italics in original). You do not have standing to assert the federal government's rights under the Property Clause merely because you are citizens or taxpayers. *See Schnapper v. Foley*, 667 F.2d 102, 116 (D.C. Cir. 1981).

Although the Contracts Clause can, in certain circumstances, provide a private cause of action through 42 U.S.C. § 1983, such a claim is properly brought by an individual whose own vested contract rights are impaired by the government. Here, you have no vested contract rights in these transactions and, thus, you lack prudential standing. *See Dodge v. Bd. of Educ. of City of Chicago*, 302 U.S. 74, 80 (1937) (holding that Contracts Clause challenge failed in the absence of vested contractual rights); *Lazar v. Kroncke*, 862 F.3d 1186, 1200 (9th Cir. 2017) ("Because Lazar never possessed a vested contractual right, she suffered no contractual impairment" under the Contracts Clause).

Statute of Limitations

Assuming you have standing to assert any federal claims here, the statute of limitations for those claims would be two years. *See TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999). As alleged in your complaint, the cities entered into the lease at issue on November 28, 2018, and the City of Scottsdale entered into its sublease with the San Francisco Giants on December 1, 2018. However, you filed your lawsuit challenging the propriety of those agreements on December 23, 2020, more than two years later. Thus, your federal claims would be time-barred if you had standing to assert them.

State Law Claims

Although your complaint discusses several Arizona cases, it is unclear whether you are making any claims under Arizona law or instead included these cases in your complaint for context. To the extent you are alleging that the City of Phoenix or the City of Scottsdale violated state law, those claims fail for two reasons.

First, you did not serve either city with a timely notice of claim. A.R.S. § 12-821.01(A) requires a person with a claim against a public entity or public employee to first serve a

notice of claim within 180 days after the cause of action accrues, or the cause of action will be barred. The statute is "clear and unequivocal," and the failure to comply with any aspect of the statute prevents a plaintiff's claim from going forward. *Deer Valley Unified School Dist. v. Houser*, 214 Ariz. 293, 296, ¶ 9 (2007). *See also State Comp. Fund v. Super. Ct.*, 190 Ariz. 371, 376 (App. 1997) ("Under the claims statute, no action may be maintained when a plaintiff has failed to file a timely, sufficient notice of claim, including all elements required by law, with a person authorized by the Arizona Rules of Civil Procedure to accept service. . . .").

Second, the statute of limitations for state-law claims against the City of Phoenix and the City of Scottsdale is one year. *See* A.R.S. § 12-821 ("All actions against any public entity or public employee shall be brought within one year after the cause of action accrues and not afterward."). Any state-law claims in your complaint are time-barred for the same reasons set forth above regarding your federal claims.

Conclusion

Aside from the format of the complaint, I do not believe that any of the issues raised above can be cured by amendment. Therefore, I believe that amending your complaint to remedy the formatting issues identified here would be futile. *See Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991) ("A district court does not err in denying leave to amend where the amendment would be futile . . . or would be subject to dismissal."). If you disagree, I am happy to review any authority you wish to provide.

Should you wish to discuss any of these issues further, please feel free to email me a written response. Please copy Mr. Anderson on any correspondence. If you would prefer to speak by phone, I can coordinate a conference call.

If I do not hear from you by January 27, 2021 (the deadline for the City's responsive pleading to your complaint), I will move forward with my motion to dismiss.

Sincerely,

/s/ Robert A. Hyde

Robert A. Hyde
Assistant City Attorney

cc: Eric C. Anderson, Esq.

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