UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-cv-20863 (LENARD/O'SULLIVAN)

JONATHAN CORBETT, *Pro se*

Plaintiff,

v.

TRANSPORTATION SECURITY ADMINISTRATION, UNITED STATES OF AMERICA, ALEJANDRO CHAMIZO, BROWARD COUNTY,

Defendants.
_____/

DEFENDANT BROWARD COUNTY'S MOTION TO DISMISS FIRST AMENDED COMPLAINT WITH INCORPORATED MEMORANDUM OF LAW

Defendant, Broward County ("County"), through undersigned counsel and pursuant to Rules 12(b)(6) and 15(a) of the Federal Rules of Civil Procedure and Rule 7.1 of the Local Rules of the United States District Court for the Southern District of Florida, moves to dismiss Counts 18 and 20 of the First Amended Complaint with prejudice for failure to state a claim upon which relief can be granted and, in support thereof, states:

INTRODUCTION

The *pro se* Plaintiff's First Amended Complaint contains twenty-one (21) counts against the several Defendants [Transportation Security Administration ("TSA")[1], United States of America, Alejandro Chamizo, Broward County and the Broward Sheriff's Office ("BSO")] relating to an incident that occurred at a TSA checkpoint at Fort Lauderdale-Hollywood

[1] The Transportation Security Administration is part of the United States Department of Homeland Security.

International Airport on August 27, 2011. Plaintiff alleges various causes of action against the Defendants based on a search and screening that was conducted on Plaintiff by the TSA.[2]

Counts 18 and 20 against the County relate specifically to a public records request made under state law for the disclosure of closed circuit television ("CCTV") tape recordings made at the subject TSA checkpoint. These allegations are conclusory and fail to state a claim against the County because, in accordance with Florida Statutes and federal regulations, the County was mandated to follow the direction of the TSA as to the public release of Airport security information. As shown below, these claims, as they pertain to Broward County, should all be dismissed pursuant to Fed. R. Civ. P., 8 and 12(b)(6).

PLAINTIFF'S ALLEGATIONS AGAINST BROWARD COUNTY

1. As factually alleged, Plaintiff made a public records request on the County (through its Aviation Department) pursuant to Florida Statutes Chapter 119, seeking CCTV video from the subject TSA security checkpoint. (Am. Compl. at para. 74-75). Broward County responded to this request by stating that the subject recording did not exist, and that, in any event and in accordance with the controlling federal regulations and TSA directives, the subject recordings would have constituted Sensitive Security Information as defined under federal law and would have been exempt from disclosure under Florida Statutes Chapter 119. (Am. Compl. at para. 78-84).

2. Plaintiff alleges, at Count 18, that the County failed to comply with Plaintiff's public records request that was made pursuant to Florida Statutes Chapter 119, by falsely stating

[2] Similar allegations by this Plaintiff directed towards the United States and/or the TSA relating to enhanced pat down searches were dismissed by this Court based on the lack of subject matter jurisdiction. *Corbett v. United States*, 2011 WL 2003529 (S. D. Fla., 2011). The Eleventh Circuit Court of Appeals has affirmed the dismissal, finding that the TSA's SOP relating to enhanced pat downs was an obligation imposed on air passengers. *Corbett v. United States*, Case No. 11-12426 (11th Cir. Feb. 27, 2012).

that the records did not exist and by asserting that the sought records were exempt from disclosure. (Am. Compl. at para. 78-84, 138-142).

3. Plaintiff alleges, at Count 20, Civil Conspiracy on the part of the County for conferring with the TSA in responding to the public records request and lying to Plaintiff as to the existence of responsive records. (Am. Compl. at para. 78-84, 143-145).

4. As shown below, each of these counts should be dismissed under Fed. R. Civ. P. 8 and 12(b)(6).

STANDARD OF REVIEW

To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain factual allegations which are "enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555 (citations omitted).

The facts set forth in a complaint must be sufficient to "nudge the[ ] claims across the line from conceivable to plausible." *Id.* at 570. "Unwarranted deductions of fact in a complaint are not admitted as true for the purpose of testing the sufficiency of plaintiff's allegations." *Sinaltrainal v. Coca-Cola*, 578 F.3d 1252, 1260 (11th Cir. 2009). The Eleventh Circuit has also stated:

> More recently, in *Iqbal*, the Supreme Court reiterated that although Rule 8 of the Federal Rules of Civil Procedure does not require detailed factual allegations, it does demand 'more than an unadorned, the-defendant-unlawfully-harmed-me accusation.' *Iqbal*, 129 S. Ct. at 1949. A complaint must state a plausible claim for relief, and '[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.' *Id.* The

> mere possibility the defendant acted unlawfully is insufficient to survive a motion to dismiss. *Sinaltrainal v. Coca-Cola*, 578 at 1261.

A court may dismiss a complaint under Rule 12(b)(6) when, on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action. *Marshall City Bd. of Educ. v. Marshall City Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993).

MEMORANDUM OF LAW

Pro se pleadings are liberally construed and are typically held to a less rigid standard than pleadings filed by an attorney. *See Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998). Despite the liberal reading of a *pro se* pleading, it generally will not excuse mistakes regarding procedural rules. *See McNeil v. United States*, 508 U.S. 106, 113, 113 S.Ct. 1980 (1993). Further, the liberal reading of *pro se* pleadings does not give a court "license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." *GJR Investments, Inc., v. County of Escambia*, 132 F.3d 1359, 1369 (11th Cir. 1998) (internal citation omitted).

A. PLAINTIFF'S CLAIMS AGAINST BROWARD COUNTY SHOULD BE DISMISSED BECAUSE THEY FAIL TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

1) Count 18: Florida Public Records Act

Plaintiff's allegation under Count 18 fails to state a claim under which relief may be granted.

As is alleged, Plaintiff made a public records request to Broward County under the provisions of Florida Statutes Ch. 119, seeking video from a TSA security checkpoint. Upon receipt, the County conferred with the TSA and, as alleged, the TSA informed Broward County that the subject CCTV recordings at TSA checkpoints, including any information relating to the existence of those recordings, constituted Sensitive Security Information and could not be

disclosed to the general public. (Am.Compl. at 8; para. 80, 84). Sensitive Security Information ("SSI") is information obtained or developed in the conduct of security activities, the disclosure of which the TSA has determined would be detrimental to the security of transportation. 49 CFR 1520.5

The Code of Federal Regulations ("CFR"), at 49 CFR §1520.5 and §1520.15, provides that the TSA has the exclusive authority to determine what is deemed to be SSI and to control the release of SSI. See e.g. *MacLean v. Department of Homeland Security*, 543 F.3d 1145 (9th Cir. 2008) (The TSA has authority to designate information as "sensitive security information" pursuant to 49 U.S.C. §114(s) and 49 C.F.R. §1520); *Chowdhury v. Northwest Airlines Corp.*, 226 F.R.D. 608 (N.D. Cal. 2004). The TSA, in this instance and as alleged, determined that CCTV recordings originating at TSA checkpoints at Fort Lauderdale-Hollywood International Airport, including any information relating to the existence of those recordings, was SSI[3] and could not be released. Courts must accord deference to an agency's interpretation of its own regulations. See *MacLean, supra.*

Section 119.07(1), Florida Statutes [Florida Public Records Act], provides for the disclosure of public records under Florida law. Section 119.071(3) provides exemptions to that disclosure, specifying that security information held by an agency (such as a public airport) is confidential and exempt from such disclosure. This is reinforced by Florida Statutes §281.301

[3] This Court has recognized that the TSA's Security Checkpoint SOP has been deemed by the federal Government to be SSI. *Corbett, supra* (S.D. Fla.) at fn. 3. Similarly, CCTV video of that screening procedure would likewise comprise SSI.

and §331.22, which provide for a public records exemption for information pertaining to security systems, including airport security information.[4]

As such, under TSA mandates, the CFR, and the Florida Public Records Act, the subject CCTV recordings, including the existence of those recordings, were simply not disclosable to Plaintiff. Furthermore, and contrary to Plaintiff's allegations, Broward County did not "lie" to Plaintiff by denying the existence of the sought videotape; the County was required by the TSA to withhold that information because it (the existence of video from any particular CCTV camera) constituted SSI. Any disclosure of the existence of the videotape would have violated both TSA directives and federal regulations pertaining to the disclosure of SSI.

As evident from the four-corners of the First Amended Complaint, Broward County was directed by the TSA (the federal authority with respect to SSI) not to disclose the sought CCTV tape recording from the TSA checkpoint, or the existence thereof, as comprising airport security information. Based on that alleged fact, together with the specific exclusion to public records disclosure set forth under §119.071(3), the Complaint fails to facially state a cause of action against Broward County under Florida Statutes Chapter 119. This Count should, therefore, be dismissed with prejudice.

2) Count 20: Civil Conspiracy

Plaintiff alleges civil conspiracy by the County, as interpreted under the laws of the State of Florida. (Am. Compl. at para. 20). To state a claim for civil conspiracy under Florida law, plaintiff must allege: (1) an agreement between two or more parties, (2) to do an unlawful act or to do a lawful act by unlawful means, (3) the doing of some overt act in pursuance of the

[4] Similarly, SSI is exempt from disclosure under the Freedom of Information Act (FOIA). See 49 C.F.R. sec. 15.15. The TSA specifically withholds SSI under FOIA exemptions (b)(3) and 7(c). 5 U.S.C. sec. 552(b).

conspiracy, and (4) damage to plaintiff as a result of the acts done under the conspiracy. *United Technologies Corp. v. Mazer*, 556 F. 3d 1260 (11th Cir. 2009) citing to *Charles v. Fla. Foreclosure Placement Ctr., LLC,* 988 So. 2d 1157 (Fla. 3d DCA 2008).

The Plaintiff alleges that Broward County and the TSA "conferred" with each other regarding County's response to Plaintiff's public records request and that, as the result of that "collusion," "lied" to Plaintiff as the existence of the responsive records. (Am. Compl. at para.143-145). The Plaintiff's claim is vague and conclusory. In conspiracy cases, a "complaint may justifiably be dismissed because of the conclusory, vague, and general nature of the allegations of the conspiracy." *See Fullman v. Graddick*, 739 F.2d 553, 557 (11th Cir. 1984). The Plaintiff simply alleges a conspiracy, however, he provides no specific allegations sufficient to support the claim as delineated under the law.

Moreover, there can be no action, as a matter of law, based on the County "conferring" with the TSA with respect to the subject public records request. The Code of Federal Regulations, §1520.5 and §1520.15, *mandates* such an interaction in the determination of what constitutes SSI. Based on that required interaction, County was able to determine whether the requested public records constituted security information that was specifically exempt from disclosure under Florida Statutes. There was clearly no "unlawful" act on the part of the County by conferring with the TSA and abiding by the TSA's directives with respect to disclosing the subject information. To the contrary, it was the County's legal obligation to do so.

This cause of action cannot be further amended to state a claim and should be dismissed, with prejudice.

CONCLUSION

The Complaint as it pertains to Broward County should be dismissed because the claims against the County fail to state a claim. The Florida Public Records Act, Chapter 119, Florida Statutes, specifically exempts security information, particularly that pertaining to a public airport, from disclosure. The TSA informed the County that the requested CCTV video tapes of the Airport security checkpoint was Sensitive Security Information and not disclosable and, in accordance with federal regulations (CFR), the County correctly relied on that determination and withheld disclosure. Furthermore, the County's consultation with the TSA in making that determination was mandated by the CFR, and was not, in any sense, a civil conspiracy.

Wherefore, the County requests that Plaintiff's First Amended Complaint, as it pertains to Broward County, be dismissed with prejudice.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was electronically filed with the Court on May 22, 2012, using the CM/ECF system, and sent via certified U.S. mail to Jonathan Corbett, 100 Lincoln Road, #726, Miami Beach, FL 33139; Laura G. Lothman, United States Department of Justice, Torts Branch, Civil Division, P.O. Box 7146, Ben Franklin Station, Washington, D.C. 20044.

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