

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

FRANCES HINES, TIMOTHY OWENS)
PRISCILLA JOHNSON, ESSIE McCATREY,)
DANNY HINES,)
and)
HOUSING COMES FIRST, Inc.,)
A Missouri non-profit corporation,)
)
Plaintiffs,)

v.)

CHARLESTON HOUSING AUTHORITY,)
A municipal corporation;)
PAUL PAGE, in his official capacity)
As Executive Director of the)
Charleston Housing Authority;)
UNITED STATES DEPARTMENT OF)
HOUSING AND URBAN DEVELOPMENT; and)
MEL MARTINEZ, in his)
official capacity as Secretary of)
the United States Department of)
Housing and Urban Development,)
)
Defendants.)

Case No. 1:01CV00070CDP

MEMORANDUM OF PLAINTIFF HOUSING COMES FIRST
IN OPPOSITION TO THE HOUSING AUTHORITY
DEFENDANTS' MOTION TO DISMISS

Defendants Charleston Housing Authority and Paul Page (Housing Authority Defendants) have moved the Court to dismiss the Complaint of Plaintiff Housing Comes First for lack of a case or controversy and for lack of standing. The Housing Authority Defendants' motion is without merit. In light of the Supreme Court's decision in Havens Realty Corp. v. Coleman, 455 U.S. 363, 378-9 (1982), Plaintiff Housing Comes First has

set forth in its Complaint sufficient allegations to establish standing and a case or controversy with the Housing Authority Defendants.

I. Standard of Review

With a Rule 12(b)(6) motion, the trial court's inquiry must focus on whether the challenged pleading sets forth allegations sufficient to make out the elements of a right to relief. See O'Dell v. McSpadden, 780 F. Supp. 639, 642 (E.D. Mo. 1991), aff'd, 994 F.2d 843 (8th Cir.), cert. denied, 510 U.S. 895 (1993). The court "should not approve dismissal of [a] complaint unless `it appears beyond doubt that [plaintiff] can prove no set of facts in support of his claim which would entitle him to relief.'" Carney v. Houston, 33 F.3d 893, 894 (8th Cir. 1994), quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Because the court must view the complaint in a light most favorable to plaintiff, a motion to dismiss should be granted only in the unusual case where the allegations on the face of the complaint show that there is some insuperable bar to relief. See Travis v. Frank, 804 F. Supp. 1160, 1163 (E.D. Mo. 1992); Logan v. United States, 792 F. Supp. 663, 665 (E.D. Mo.), aff'd, 978 F.2d 1263 (8th Cir. 1992).

Plaintiff Housing Comes First enjoys the same safeguards with respect to the Housing Authority Defendants' challenge under Fed.R.Civ.P. 12 (b)(1).¹ The Court must

¹ The Housing Authority Defendants purport to rely on some principle called the "Well Pledged Facts Rule." See Housing Authority Defendants' Memoranda in Support of Motion to Dismiss at 2-3. It is unclear whether Defendants use that term as a shorthand reference to the established standard of review for motions to dismiss (*i.e.*, Springfield Television, Inc. v. City of Springfield, Mo., 428 F.2d 1375, 1376 (8th Cir. 1970)("for the purpose of the motion to dismiss, we are obliged to regard as admitted all well-pleaded facts contained therein")) or as a synonym for the "well-pleaded complaint" rule set forth in Louisville & N.R. Co. v. Mottley, 211 U.S. 149 (1908). If the Housing Authority Defendants seek to invoke Mottley, it presents no bar to the Court's subject matter jurisdiction over this case. Mottley involved a situation in which a plaintiff sought federal question jurisdiction on the basis of a defense under federal law that it expected

accept Plaintiff's allegations as true, construe those allegations most favorably to Plaintiff, and not look beyond the face of the pleading to determine jurisdiction. See Osborn v. United States, 918 F.2d 724, 729 n.6 (8th Cir. 1990).

II. Plaintiff Housing Comes First Has Alleged Sufficient Injury in the Diversion of Its Resources to Respond to the Defendants' Unlawful Conduct to Establish Standing Under Havens.

Article III of the U.S. Constitution limits the jurisdiction of the federal courts to the resolution of cases or controversies. U.S. Const. art. III, § 2, cl. 1. Among the doctrines assuring that a case or controversy is before the court is the requirement that the plaintiffs have standing to litigate the claims asserted. The minimum constitutional standard for standing is well settled. A plaintiff must show injury in fact, causation, and redressability. Friends of the Earth, Inc. v. Laidlaw Environmental Services, 528 U.S. 167, 180-81 (2000); Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

Organizations may assert standing to sue on their own behalf or on behalf of their members. Different tests for "injury in fact" may be applicable depending on the basis for standing asserted by the organization. Plaintiff Housing Comes First has alleged that it is a nonprofit corporation whose mission is "to prevent homelessness and to preserve, expand, and ensure the availability of affordable housing for low-income families in Missouri."² Complaint at ¶¶ 2, 55. Since it is not a membership organization, Housing

the defendant would raise. The Court held that the mere anticipation of a federal question was insufficient for a case to be determined to arise under federal law—the federal question must appear on the face of the plaintiff's well pleaded complaint. Id. at 152. Here, the claims of Housing Comes First and the other Plaintiffs are based directly on a number of federal constitutional and statutory provisions. See Complaint at ¶ 8. If the Housing Authority Defendants simply refer to the standard of review for motions to dismiss, the application of that standard requires the Court to deny the motion to dismiss.

² As Housing Comes First alleged, its mission is to prevent homelessness and preserve affordable housing in Missouri, not simply in the St. Louis area, as the Housing Authority

Comes First seeks standing only on its own behalf. When an organization asserts standing in its own right, it must show injury to the organization itself, most commonly a diversion of resources to counteract the defendant's challenged conduct. Havens Realty Corp. v. Coleman, 455 U.S. 363, 378-79 (1982). According to the Housing Authority Defendants, Plaintiff's allegation that it has had to divert significant time and resources to respond to the Housing Authority's unlawful action is not "adequate" to establish injury. This argument is at odds with established federal law.

In Havens Realty, the Court defined what an organization seeking standing in its own right must allege and ultimately prove to establish injury in fact. A diversion of organizational resources to identify and counteract a defendant's unlawful practices, resulting in impairment of the organization's ability to provide other services, will constitute actionable injury in fact. 455 U.S. at 379. The "deflection of an organization's monetary and human resources from counseling or educational programs to legal efforts aimed at combating discrimination, such as monitoring and investigation, is itself sufficient to constitute an actual injury." Arkansas ACORN Fair Housing v. Greystone Development, 160 F.3d 433, 434 (8th Cir. 1998). The drain on the organization's resources is an injury sufficient for purposes of Article III. "That the alleged injury results from [an] organization's noneconomic interest in encouraging open housing does not effect the nature of the injury suffered." Havens Realty, 455 U.S. at 379 n.20.

Defendants contend in their Memorandum. Complaint at ¶¶ 2, 55. See Housing Authority Defendants' Memorandum at 3. The Housing Authority Defendants also apparently misunderstood Plaintiff's counsel Dan Claggett when he stated that Legal Services -- and not Housing Comes First -- had been involved as counsel for Housing Comes First in this matter for slightly more than a week.

In Havens Realty, the Court was considering a motion to dismiss. It concluded that the organization's allegation of deflected resources to address defendants' unlawful actions was sufficient to require denial of the motion to dismiss for lack of standing. Id. at 369, 379. Here, Plaintiff Housing Comes First similarly alleged that it “has had to divert significant time and resources” to investigate and counteract the Defendants' challenged conduct. See Complaint at ¶ 55. This allegation is legally sufficient for standing purposes and must be taken as true for the purposes of deciding the Defendants' motion.

Because Plaintiff Housing Comes First has alleged an actionable injury to the organization resulting from the Housing Authority Defendants' conduct, there is a case and controversy sufficient for subject matter jurisdiction.

III. Conclusion

For the reasons stated above, the Housing Authority Defendants' Motion to Dismiss must be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing was duly served via U.S. Mail, first class postage prepaid, this _____ day of _____, 2001 upon the following:

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