

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re	:	Chapter 11
FREEHAND H.J., INC.,	:	
Debtor.	:	Case No. 07-12172 (JKF)
<hr/>		
FREEHAND H.J., INC.,	:	
Plaintiff,	:	
v.	:	
CHESTER VALLEY ENGINEERS, INC.;	:	
and LOUIS F. SMITH, JR.,	:	
Defendants.	:	Adversary No. 07-0183
<hr/>		

MEMORANDUM OPINION

BY: JEAN K. FITZSIMON
United States Bankruptcy Judge

This matter is before the Court on Defendant Louis F. Smith, Jr's Motion to Dismiss or for a More Definite Statement. For the reasons discussed below, the Motion is granted in part and denied in part.

BACKGROUND

Freehand H.J., Inc., filed for Chapter 11 protection in this Court on April 15, 2007. A month later, the Debtor filed this adversary proceeding against the Defendants, Chester Valley Engineers, Inc. (“Chester Valley”) and Louis F. Smith, Jr. Chester Valley at times acts as engineer for East Goshen Township (the “Township”). Louis Smith is the Township Manager for East Goshen. The Complaint alleges a cause of action under 42 U.S.C. § 1983, asserting that the Defendants improperly used their official positions in order to influence the zoning review process with regard to land in East Goshen Township that Freehand planned to develop (the “Property”). The Township ultimately granted the Debtor’s land use application related to the Property, but imposed conditions on the use of the land that Freehand contends are “onerous,” prevented the development of the Property, and cost the Debtor in excess of \$150,000. (Complaint, ¶32).

The Complaint alleges that both Smith and Chester Valley stood to gain financially by the imposition of unfair restrictions on the Debtor’s land use application and that this fact motivated the Defendants to deny Freehand equal protection and due process pursuant to the Fourteenth Amendment. The Complaint also alleges that the Defendants violated the Defendants First Amendment right to petition the government for a redress of grievances. Specifically, the Complaint contends that Smith is a beneficiary of the estate that

owns the Property and thus will profit from the sale of the land. (¶18). Freehand asserts Smith was aware of another party's willingness to pay more for the Property. (Complaint, ¶25). The central allegation against Smith is that he hindered the Debtor's land use application in an effort sell to a third party in order to secure more profit for himself. (¶¶ 28-30, 34, 36, 37).¹

Chester Valley timely answered the Complaint. Smith filed the Motion to Dismiss and for a More Definite Statement on June 14, 2007. He contends both that the Complaint fails to allege facts sufficient to state claims upon which relief may be granted and, in the alternative, that the Complaint does not outline the allegations in sufficient detail in order for Smith effectively to plead a defense of qualified immunity. The Motion seeks either dismissal of the Complaint pursuant to Fed.R.Civ.P. 12(b)(6) or an order directing the Plaintiff to file a more specific statement of its claims pursuant to Fed.R.Civ.P. 12(e). For reasons discussed below, the Court finds neither of Smith's arguments persuasive with regard to Freehand's Fourteenth Amendment allegations. The Motion is therefore denied with regard to that portion of the Complaint. However, because Freehand's

¹ The allegation of improper dealing with regard to Chester Valley concerns another property, the "Concord Township development." Chester Valley and Freehand are parties to another lawsuit originally filed by Chester Valley in state court on February 5, 2004, but removed to this Court by the Debtor in which Chester Valley asserts that Freehand owed it more than \$25,000 for work performed on the Concord Township development. Freehand alleged various counterclaims in that proceeding, including breach of contract and negligent misrepresentation. (See adversary #07-00188). The Complaint in this adversary asserts that Chester Valley was motivated to stymie the Debtor's development of the Property "by a desire to retaliate for and to prevent Freehand from exercising its rights to petition the government for a redress of grievances in connection with the Concord Township development." (Complaint, ¶47).

pleading fails to state a claim upon which relief may be granted against Smith with regard to the allegations that he violated the Debtor's First Amendment rights, as Freehand conceded at oral argument, that portion of the Complaint will be dismissed.

I. STANDARD ON A MOTION TO DISMISS

_____The purpose of a Rule 12(b)(6) motion is to “test the legal sufficiency of the complaint.” Dee v. Marriott Int’l, Inc., 1999 WL 975125, at *2 (E.D. Pa. Oct. 6, 1999). In considering a motion to dismiss, a court is “required to accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, [viewing] them in the light most favorable to the plaintiff.” Taliaferro v. Darby Township Zoning Board, 458 F.3d 181,188 (3d Cir. 2006) (citation omitted). In deciding a motion to dismiss under Rule 12(b)(6), the court accepts as true the facts pleaded in the complaint and any reasonable inferences derived from those facts. Langford v. City of Atlantic City, 235 F.3d 845, 847 (3d Cir. 2000). A court weighing a motion to dismiss asks “not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.” Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1969 n.8 (2007) (internal quotations and citation omitted).

II. THE COMPLAINT STATES CLAIMS UPON WHICH RELIEF MAY BE GRANTED WITH REGARD TO THE FOURTEENTH AMENDMENT

Freehand's Complaint adequately states causes of action under 42 U.S.C. § 1983² that Smith denied the Debtor due process and equal protection pursuant to the Fourteenth Amendment of the Constitution. The eleven page, forty-seven paragraph Complaint more than satisfies Federal Rule 8(a)'s requirement that a plaintiff set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." The Third Circuit has made clear that the notice pleading standard applies equally to § 1983 civil rights actions such as Freehand's. See Thomas v. Independence Township, 463 F.3d 285, 294 (3d Cir. 2006) ("a federal court may not apply a heightened pleading standard in civil rights cases alleging municipal liability under § 1983") (citing Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163 (1993)). See also Evancho v. Fisher, 423 F.3d 347, 352 (3d Cir. 2005) ("Since Leatherman was decided . . . the Third Circuit has applied the more liberal notice pleading standard set forth in Rule 8(a) in civil rights cases"); Cornell Companies, Inc. v. Borough of New Morgan, 2007 WL 1577736, at *18 (E.D. Pa. May 31, 2007) ("a civil rights complaint is not subject to dismissal due to the absence of

² Section 1983 is derived from the Civil Rights Act of 1871 and provides, in relevant part, "[e]very person who, under color of any statute . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ." This section of the Code was originally enacted to enforce the Fourteenth Amendment. See Brown v. Philip Morris Inc., 250 F.3d 789, 800 (3d Cir. 2001).

factual allegations”) (citing Independence Township); Little Souls Inc., v. State Auto Mutual Ins., Co., 2004 WL 503538, at *1 (E.D. Pa. Mar.15, 2004) (same).

Thus, the Complaint need only meet the liberal notice pleading standard set forth in Rule 8(a) of the Federal Rules.³ As discussed below, it has more than done so with regard to the Fourteenth Amendment allegations.

While Freehand’s pleading is properly characterized as a civil rights complaint in that it alleges a cause of action for deprivation of rights under 42 U.S.C. § 1983, the specific allegations are that Smith and Chester Valley denied Freehand due process and equal protection in violation of the Fourteenth Amendment.⁴ See City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 749 n.9 (1999) (citations and internal quotations omitted) (noting that “of course § 1983 is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes.”). Therefore, in analyzing whether Freehand has properly satisfied the notice pleading standard, the Court

³ At the hearing on Smith’s Motion on July 25, 2007, Smith’s counsel suggested that the recent Supreme Court case of Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007) requires a more detailed pleading under Fed.R.Civ.P. 8(a). Bell Atlantic does hold that a plaintiff must allege at least some facts and recite more than just the bare bones of a the law underlying the complaint in order to survive a motion to dismiss. See 127 S.Ct. at 1969 (“a complaint . . . must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under *some* viable legal theory.”) (emphasis in original) (citation omitted). However, Bell Atlantic does not scrap Rule 8(a)’s notice pleading standard. See, e.g., 127 S.Ct. at 1964 (“a complaint attacked by a Rule 12(b)(6) motion does not need detailed factual allegations”) (citation omitted). In addition, the Debtor’s Complaint does provide “grounds” of its “entitlement to relief” which satisfy the standard described in Bell Atlantic. 127 S.Ct. at 1965.

⁴ The Fourteenth Amendment to the U.S. Constitution states, in relevant portion, “[n]o State shall make or enforce any law which shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

must look to the Complaint's allegations concerning due process and equal protection. A party does not plead a § 1983 violation as such.

With regard to the allegation that Smith violated Freehand's substantive due process rights, the Debtor must demonstrate that "an arbitrary and capricious act deprived [it] of a protected property interest." Cornell Companies, Inc. v. Borough of New Morgan, 2007 WL 1577736, at *6 (E.D. Pa. May 31, 2007) (citation omitted). Further, Freehand will ultimately need to show that Smith's actions "shocks the conscience." United Artists Theatre Circuit, Inc. v. Township of Warrington, PA, 316 F.3d 392, 399 (3d Cir. 2003) ("the substantive component of the Due Process Clause can only be violated by governmental employees when their conduct amounts to an abuse of official power that 'shocks the conscience.'") (citing County of Sacramento v. Lewis, 523 U.S. 833, 846 (1988)). The Complaint does in fact allege that Smith was involved in the arbitrary and capricious deprivation of the Debtor's interest in developing the land and also that Smith's actions "shock . . . the conscience." (See Complaint, ¶¶ 27-30, 34, 36, 37, 43.) Therefore, the Complaint sufficiently states a claim for substantive due process.

Similarly, with regard to Freehand's allegation that Smith has violated its right to equal protection secured by the Fourteenth Amendment, the Complaint more than satisfies the notice pleading standard of Federal Rule 8(a). To state a claim under § 1983 for denial of equal protection, a plaintiff must allege that it "received different treatment from that received by other individuals similarly

situated.” Phillips v. County of Allegheny, 2006 WL 1330206, at * 4 (W.D. Pa. May 15, 2006) (citing Kennan v. City of Philadelphia, 983 F.2d 459, 465 (3d Cir. 1992). See also Independence Township, 463 F.3d 285 at 297 (“a successful equal protection claim may be brought by a ‘class of one,’ where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.”) (citations omitted). Here, the Complaint alleges both that Smith acted in his capacity as Township Manager to influence the approval process of Freehand’s land development application and that other potential development applicants, such as Goshen Meadows, were given preferential treatment by Smith. (Complaint, ¶¶ 25, 34, 37). Based on these allegations, the Court concludes that the Debtor has adequately alleged an equal protection claim against Smith and that the Complaint states a claim on which relief may be granted.

III. THE COMPLAINT FAILS TO STATE A CLAIM WITH REGARD TO THE FIRST AMENDMENT

Smith is correct, however, that Freehand’s allegation that he violated the Debtor’s First Amendment right may be dismissed at the pleading stage.⁵ Paragraph 47 of the Complaint asserts that “the defendants were motivated . . . by a desire to retaliate for and to prevent Freehand from exercising its right to

⁵ The First Amendment states, in relevant portion: “Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances.”

petition the government for a redress of grievances in connection with the Concord Township development.” In order to plead such a retaliation claim under the First Amendment, a plaintiff must allege: “(1) constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action.” Thomas v. Independence Township, 463 F.3d 285, 296 (3d Cir. 2006) (citation omitted). See also McKee v. Hart, 436 F.3d 165, 170 (3d Cir. 2006) (“the key question in determining whether a cognizable First Amendment claim has been stated is whether the alleged retaliatory conduct was sufficient to deter a person of ordinary firmness from exercising his First Amendment rights.”) (internal quotations and citations omitted). The Complaint fails to set forth any facts which would implicate Smith in a violation of Freehand’s First Amendment rights or ability to petition the government for redress. Freehand represented to the Court at the hearing on the Motion that it does not object to dismissal of this portion of the Complaint with regard to Smith. The First Amendment allegation against Smith will be dismissed.

IV. THE MOTION FOR A MORE DEFINITE STATEMENT

Smith also asks the Court to order clarification of the Complaint, alleging that the pleading is too vague and conclusory for Smith properly to assert a defense of qualified immunity. Because Freehand’s § 1983 Complaint satisfies

not only a notice pleading standard with regard to the remaining Fourteenth Amendment portion of the Complaint, but also provides the Defendant with sufficient details on which to base a defense of qualified immunity, Smith's Motion for a more definite statement pursuant to Federal Rule of Civil Procedure 12(e) will be denied. Rule 12(e) allows a party to move for a more definite statement of a pleading "which is so vague or ambiguous that the party cannot reasonably prepare a response The motion must point out the defect complained of and the details desired." The defense of qualified immunity protects government employees from liability unless the employee's conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." Morse v. Frederick, ___ S.Ct. ___, 2007 WL 1804317, at *22 (U.S. June 25, 2007) (Breyer, J., concurring) (citation omitted). Smith asserts that "the complaint makes no effort to allege what Smith supposedly said or did" with regard to influencing the land development approval process and therefore that "the qualified immunity analysis cannot be made as to such vague and non-specific claims." Memorandum in Support of Motion, p.14. Smith's argument that Freehand's Complaint should be supplemented with detail so that he may prepare his qualified immunity defense is flawed for at least three reasons.

First, contrary to Smith's assertion, the Complaint states more than mere conclusory allegations regarding the alleged violations of due process and equal protection and thus provides the Defendant with sufficient details on which to base a qualified immunity defense. For example, the Complaint specifies that

Smith stands to gain from the sale of the property at issue (§18), that he communicated with another party who may have been willing to pay more for the land (§§ 23, 25), and that Smith failed to recuse himself from Township proceedings (§28). Paragraph 29 provides further alleged details of Smith's involvement in Freehand's land development approval process, which allegedly included "managing the schedule of meetings and hearing on Freehand's proposals, communications with various township officials, and attendance at executive sessions of East Goshen's governing board of supervisors during their deliberations regarding Smith Parcel proposals." Paragraph 37 of the Complaint also cites specific allegations regarding Smith's involvement in the Debtor's land development approval process, including his making conflicting statements regarding what is now considered the historic resource on the property. While the Complaint does not set forth the entire precise picture of what happened and when, the claims against Smith are not vague, non-specific allegations in need of a more definite statement. In fact, the Complaint surpasses what is necessary in order to support a §1983 pleading and certainly provides Smith with sufficient details upon which adequately to frame a defense. See Alston v. Parker, 363 F.3d 229 (3d Cir. 2004).

The second reason that the Motion for a More Definite Statement will be denied is that the Third Circuit case on which Smith relies, Thomas v. Independence Township, 463 F.3d 285, 294 (3d Cir. 2006), is readily distinguishable. In Independence Township, the Third Circuit rejected the

Defendants' argument that the Court should apply a "heightened pleading standard in [§ 1983] cases in which a defendant pleads qualified immunity," yet acknowledged the "inherent tension between federal qualified immunity jurisprudence and the concept of notice pleading." 463 F.3d at 294, 299. On the one hand, the resolution of the qualified immunity defense entails a "fact-specific inquiry . . . which should be made at the earliest possible stage of litigation." *Id.* at 299 (citation omitted). On the other hand, "the simplified notice pleading standard requires a complaint to plead only a 'short and plain statement.'" *Id.* The Third Circuit resolved this tension in Independence Township by instructing the Plaintiff to file a more definite statement pursuant to Federal Rule 12(e) so that the Defendants could adequately frame their qualified immunity defense.

However, in Independence Township, unlike here, the complaint provided neither a coherent story nor sufficient details on which the Defendants could base their qualified immunity defense. The complaint in that case professed to state ten causes of actions against five different defendants without clarifying which allegation pertained to whom. 463 F.3d at 289-290. In addition, the pleading lacked any "detailed factual allegations" and was a "close call" in terms of being dismissed on a mere notice pleading standard. 463 F.3d at 299. In ordering the Plaintiff to file a more definite statement pursuant to Rule 12(e), the Third Circuit agreed with the Defendants' assertion that "'it is impossible to evaluate whether a particular action of a particular individual Defendant violated clearly established law, since it is impossible to know, on the basis of the Complaint, what the action

is.” 463 F.3d at 302. As previously discussed, Freehand’s Complaint with regard to the Fourteenth Amendment is not without such coherence and specificity. The Debtor’s Complaint provides more than sufficient details regarding Smith’s alleged violations of Freehand’s due process and equal protection rights. Therefore, Freehand need not file a more definite statement of the Complaint in this case.

The third reason that the Court will deny Smith’s Motion for a More Definite Statement pursuant to Fed.R. 12(e) is that such motions are generally disfavored in this Circuit. See, e.g., Travelers Casualty and Surety Co. v. Smith, 2007 WL 927964, at *1 (W.D. Pa. Mar. 26, 2007) (internal quotations and citations omitted) (“[m]otions for a more definite statement are disfavored, and are generally limited to remedying unintelligible, rather than insufficiently detailed, pleadings.”); A.M. Skier Agency, Inc. v. Creative Risk Services, Inc., 2006 WL 167762, at *2 (M.D. Pa. Jan. 20, 2006) (internal quotations and citations omitted) (“Rule 12(e) motions . . . are highly disfavored since the overall scheme of the federal rules calls for relatively skeletal pleadings and places the burden of unearthing factual details on the discovery process”); Schaedler v. Reading Eagle Publications, Inc., 370 F.2d 795, 798 (3d Cir.1967) (“[a]lthough the motion for a more definite statement continues to exist in Rule 12(e), it is directed to the rare case where because of the vagueness or ambiguity of the pleading the answering party will not be able to frame a responsive pleading.”). Smith does not articulate deficiencies or desired details in Freehand’s Complaint which convince the Court

that he should be the rare plaintiff to be granted a Rule 12(e) Motion for a more definite statement. As discussed, the Complaint adequately states and details the Fourteenth Amendment allegations and thus allows Smith to defend himself. Smith's Motion for a more definite statement is therefore denied.

CONCLUSION

For the reasons discussed, the Court concludes that the Debtor has stated Fourteenth Amendment claims against the Defendants upon which relief may be granted and that no more definite statement is warranted with regard to those claims. However, Freehand has not stated a claim upon which relief may be granted with regard to a violation by Smith of the Debtor's First Amendment rights. Therefore, Smith's Motion to Dismiss or for a More Definite Statement will be granted in part and denied in part.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re	:	Chapter 11
FREEHAND H.J., INC.,	:	
Debtor.	:	Case No. 07-12172 (JKF)
<hr/>		
FREEHAND H.J., INC.,	:	
Plaintiff,	:	
v.	:	
CHESTER VALLEY ENGINEERS, INC.;	:	
and LOUIS F. SMITH, JR.,	:	
Defendants.	:	Adversary No. 07-0183

ORDER

This 30th day of July, 2007, Defendant Louis F. Smith, Jr's Motion to Dismiss or for a More Definite Statement is granted in part and denied in part. The portion of the Complaint alleging violations of the Fourteenth Amendment against Louis F. Smith, Jr. is not dismissed. The portion of the Complaint alleging a violation of the First Amendment against Louis F. Smith, Jr. is dismissed. The Motion for a More Definite Statement is denied.



JEAN K. FITZSIMON
United States Bankruptcy Judge

Copies to:

John A. Wetzel, Esquire
J. Keath Fetter, Esquire
One South Church Street, Suite 400
West Chester, PA 19382

Albert A. Ciardi, III, Esquire
Ciardi & Ciardi
Once Commerce Square
2005 Market Street, Suite 1930
Philadelphia, PA 19103

Gary A. Hurwitz, Esquire
March, Hurwitz & DeMarco, P.C.
17 West Third Street
P.O. Box 108
Media, PA 19063

David Alexander Barnes, Esquire
Obermayer Rebmann Maxwell & Hippel, LLP
1617 John F. Kennedy Boulevard
1900 One Penn Center, Suite 1900
Philadelphia, PA 19103