

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
AT OCALA, FLORIDA

GLEND A Q. MAHANEY  
Plaintiff,

v.

Case No. 5:04-CV-9-OC-10GRJ

SUMTER ELECTRIC COOPERATIVE,  
a Florida Rural Electric Cooperative  
Defendant,

FILED  
MAR 11 11:00 AM  
CLERK OF COURT  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA, FLORIDA

PLAINTIFF'S RESPONSE TO "DEFENDANT'S MOTION TO DISMISS..."  
INCORPORATING MEMORANDUM OF LAW WITHIN  
AND MOTION TO AMEND IF COMPLAINT IS DISMISSED ALONG  
WITH EXTENSION OF TIME TO FILE AMENDED COMPLAINT

COMES NOW the Plaintiff, GLEND A Q. MAHANEY, pursuant to applicable Federal Rules of Civil Procedure, and files the aforesyled motion, stating as follows:

1. This case is a civil action for damages suffered by the pro se Plaintiff, both physically, emotionally, and financially, as a direct and proximate result of a number of ongoing illegal, unlawful and/or unconscionable acts, actions, and/or failure to act by the Defendant SUMTER ELECTRIC COOPERATIVE, hereinafter SECO.
2. The Plaintiff argues the that the Plaintiff has no standing for her Complaint against SECO and that the Complaint fails to set forth a claim against SECO for violation of the Plaintiff's civil rights.
3. The Plaintiff, SECO is a quasi public entity who is the only provider of electric service in the Defendant's location, and is performing a "public function" and/or a "government" function by providing electric service normally

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provided by a municipality or other government entity.

4. SECO is sufficiently "involved with" or "encouraged by" the State of Florida as to be held to the state's constitutional obligations, i.e. SECO is acting as a surrogate for the government.

5. Moreover, Defendant SECO has been protected in its actions by a "shield" of state law and/or state authority, not only by indirectly acting under rights alleged to be law, which alleged laws do not exist, but, also, by directly utilizing Lake County Code Enforcement Officials by directing them to cause Plaintiff to act against her will regarding situations which had prior approval by Lake County Building Officials.

6.. Unconscionably, SECO also utilized Lake County Sheriff's Deputies to unlawfully imprison Plaintiff on her own property while committing a trespass into fenced areas of the Plaintiffs property and/or onto other areas of Plaintiff's property where SECO employees were not privileged by law to go,

7. In determining whether SECO was a state actor or quasi state actor, the character of SECO's said actions, in acting as an authority of the law by giving directions and/or encouragement to Lake County officials and deputies, must be carefully considered.

8. Further, after directing said Deputies to confine the Plaintiff against her will, SECO employees removed electric lines, poles and/or other equipment and/or other evidence of a fire which had occurred on the Plaintiff's property on January 9, 2000. One of said poles was a replacement for a pole the Plaintiff paid SECO to have set, which SECO had no right to move or remove.

9. Outrageously, at the time, said poles and lines were also the subject of another law suit, filed against the Plaintiff by SECO, who was seeking a court order to allow it to move said poles, lines, and/or equipment to another location on the Plaintiffs property.

10. Not only did SECO employees move the poles without securing said court order to do so, but, SECO employees went so far as to totally remove said poles and/or lines from the Plaintiff's, and did so, under color of law, with the knowing direct aid, cooperation, agreement, and/or conspiracy of Lake County Deputies who had been also been told by Plaintiff that a suit over moving of the poles was then pending before the circuit court in Lake County, Florida.

11. Such a seizure made with the aid and cooperation of Lake County without a warrant to do so, is a direct violation of the Plaintiff's constitutional right by SECO alleging to have some power or "force" of law to do so.

12. While said unlawful seizure was willful, 42 U.S.C.A § 1983 does not require willful intent, but only that a deprivation of the Plaintiff's constitutional rights occurred.

13. The same definition of the wording "color of law" is to be applied to § 1983 actions that was applied in United States v. Price, 383 U.S. 787, 86 S.Ct. 1152, 16. Ed.2d 267 (1966) which unanimously held that "private persons, jointly engaged in with state officers in the prohibited action, are acting 'under color' of law for the purposes of" 18 U.S.C.A. § 241..

14. While SECO may have owned certain equipment placed on Plaintiff's

property, "Ownership does not mean always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by statutory and constitutional rights of those who use it. Thus the owners of privately held bridges, ferries, turnpikes and railroads may not operate them as freely as a farmer does his farm. Since these facilities are built and operated by primarily to benefit the public and since their operation is a public function, it is subject to state regulation." See Marsh v. Alabama, 326 U.S. 501, 66 S.Ct.276, 90 L.Ed 265 (1946) and Lovell v. Griffin.

15. It important to note that 42 U.S.C.A. § 1983 begins applies to "Every person...", which includes an artificial person and/or it's employees, and does not state that only a government entity is subject thereto.

16. Additionally, Plaintiff has standing to sue for financial loss due to SECO's interference with her businesses, which were involved in interstate commerce, wherefor this court has jurisdiction under the Commerce Clause of the U.S. Constitution.

17. The Plaintiff's actions in removing power poles and other equipment from Plaintiff's property made it impossible for Plaintiff to have power restored to her businesses, including but not limited to retail and/or service businesses, and/or to commercial and residential rental units, which fall within the purvue of interstate commerce. See Russell v. UnitedStates, 471 U.S. 858 ,862, indicating that the rental of property qualifies as an "activity affecting commerce".

18, SECO argues that the Plaintiff has failed to set forth necessary

elements of her Complaint. The Plaintiff must only set forth information from which each element of her claim may be inferred. See Kost v. Kozakiewicz, 1 F. 3rd 176, 183 (3rd Cir.1993)

19. SECO acknowledges in it's motion that Plaintiff's pro se Complaint should be held to a less stringent standard than one drafted by an attorney. Also, see Weaver v. Wilcox, 650 F.2d 22,26 (3rd Cir. 1981; Henderson v. Fisher, 631 F.2d 1115, 1117 (3rd Cir. 1980); and, Haines v. Kerner, 404 U.S. 519, 520-521, 92 S.Ct. 594, 30 L.Ed. 2d 652 (1972) (*per curium*).

20. A *pro se* Plaintiff's Complaint can be dismissed under Rule 12(b)(6) only "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief" McDowell v. Del. State Police, 88 F.3rd 188, 189 (3rd Cir. 1996)

21. The Plaintiff has included sufficient allegations to state the elements of her claim as it is not necessary to allege proof or evidence, although Plaintiff has evidence to prove her claims, including but, not limited to pictures, witness and other records, and the burnt equipment belonging to Plaintiff which after the fire, including but not limited to four different "risers' from Plaintiff's property with heat marks at the same point, one of which has a hole completely burned through indicating that SECO's equipment either directly caused said fire or was on for a considerable amount of time preventing fire fighters from starting to control the blaze.

22. Plaintiff has clearly alleged a complaint for intentional infliction of emotional distress, a recognized cause of action in the State of Florida and the

Federal Court, by clearly alleging the elements thereof, which are: 1.) conduct by SECO and/or it's employees which was extreme and outrageous; 2.) the conduct was intentional and reckless; 3.) the conduct caused emotional distress; 4.) the distress was severe. Plaintiff has further alleged physical injury resulting therefrom.

23. SECO argues that the statute of limitations barr Plaintiffs claims, which is incorrect, as 42 § 1983 does not contain as specific statute of limitations period, wherefore the courts apply the statute of limitations period applicable to personal injury actions of the state in which they sit. See Wilson v. Garcia, 471 U.S. 261, 276-78, 105 S.Ct 1938, 1947-48, 85 L.Ed.2d 254 (1985); 287 Corporate Ctr. Assocs v. Township of Bridgewater, 101 F.3rd 320,323 (3rd Cir. (1996)

24. The same statute of limitations applies to other federal statutes sounding in tort. The damage to Plaintiff and/or Plaintiff's property that occurred as a result of SECO's negligence, faulty equipment and/or it's negligent failure to shut down power to it's equipment occurred on January 9, 2000, while SECO'S trespass and unlawful seizures occurred thereafter, well within the 4 year statute of limitations on such actions.

25. SECO's prior forced move of Plaintiff's meter services amounting to involuntary servitude of the Plaintiff, was still an ongoing act as said meter ervices were still not returned to their original location where they had been when the building had received it's certificate of occupancy from Lake County,

26. SECO's failure to pay rent to the Plaintiff for crossing her property is also still an ongoing violation for which the statute of limitations has not occurred.

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27. Plaintiff moves this court to deny SECO's Motion to Dismiss, especially it's request for dismissal with prejudice, as there are no grounds for dismissal with prejudice.

28. Should this court dismiss the Plaintiffs pro se Complaint, Plaintiff seeks leave to Amend, and for an extension of time to file such an amended complaint. For grounds for such extension of time, Plaintiff states that after filing her initial Complaint against SECO, her step-father of over 30 years was admitted to the hospital on an emergency basis, and, though now released, is scheduled for surgery for a different problem tomorrow.

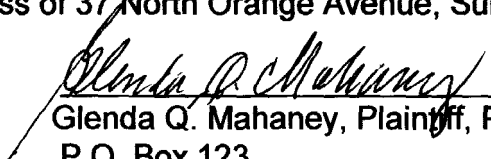
29. Plaintiff's mother (her step-father's wife) is now deceased (having died during the prior SECO suit only two months before Plaintiff's home and business (in which her mother was a joint venturer) was destroyed by the fire herein mentioned..

30. Plaintiff is the only caregiver for her step-father and seeks an extension of time to file an Amended Complaint if her Complaint is dismissed.

DATED at Tavares, Florida on this 9th day of March, 2004.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing had been delivered by U.S. Mail on this 9th day of March, 2004 to Alexander Muszynski, III, attorney for Defendant, at the address of 37 North Orange Avenue, Suite 1100, Orlando, Florida 32801-2463

  
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