

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

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

GLEND A Q. MAHANEY

Plaintiff,

vs.

SUMTER ELECTRIC COOPERATIVE,
A Florida Rural Electric Cooperative

Defendant.

CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA, FLORIDA
MAR-5 PM 2:49
[Handwritten initials]

**DEFENDANT, SUMTER ELECTRIC COOPERATIVE'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT WITH PREJUDICE
AND MEMORANDUM OF LAW IN SUPPORT**

Pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), the Defendant, SUMTER ELECTRIC COOPERATIVE (hereinafter "SUMTER ELECTRIC"), by and through its undersigned attorneys, files and serves its Motion to Dismiss the Plaintiff's Complaint with prejudice and Memorandum of Law in Support. In support thereof, the Defendant states:

1. This case is a civil action for damages in which the *pro se* Plaintiff has filed a Complaint seeking damages from the Defendant under a myriad of legal theories.
2. In her Complaint, the Plaintiff has sought subject matter jurisdiction in this Court by citing 18 U.S.C.A. §241 and §245 (criminal statutes for conspiracy

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against rights and Federally protected activities), and 42 U.S.C.A. §1983 (civil action for deprivation of rights).

3. The Court should dismiss the 18 U.S.C.A. §241 and §245 allegations from the Plaintiff's Complaint in that the Plaintiff has no standing to sue SUMTER ELECTRIC in a civil action by utilizing criminal statutes 18 U.S.C.A. §241 and §245. *See, Weiland v. Byrne*, 392 F.Supp. 21 (N.D. Ill 1975).

4. Additionally, the Plaintiff's Complaint contains only conclusory, vague, or general allegations. Furthermore, the Plaintiff's Complaint has failed to establish any nexus between SUMTER ELECTRIC and the State of Florida that would permit a §1983 cause of action. Therefore, the Plaintiff has failed to state a claim upon which relief can be granted under 42 U.S.C.A. §1983.

WHEREFORE, the Defendant, SUMTER ELECTRIC COOPERATIVE, respectfully requests this Court to enter an Order dismissing the Plaintiff's Complaint with prejudice.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT, SUMTER
ELECTRIC COOPERTATIVE'S MOTION TO DISMISS PLAINTIFF'S
COMPLAINT**

The Defendant, SUMTER ELECTRIC COOPERATIVE, by and through its undersigned attorneys, files and serves its Memorandum of Law in Support of its Motion to Dismiss the Plaintiff's Complaint. In support thereof, the Defendant states:

STATEMENT OF THE CASE AND FACTS

This case is a civil action for damages. This *pro se* action was commenced on January 8, 2004, with the filing of the Plaintiff's 141 paragraph Complaint in The United States District Court for the Middle District of Florida at Ocala, Florida. The Plaintiff is seeking damages in excess of \$500,000.00 and punitive damages in excess of \$10,000,000.00.

The Plaintiff's Complaint purports to set forth causes of action against the Defendant, SUMTER ELECTRIC COOPERATIVE (hereinafter "SUMTER ELECTRIC"), for alleged violations of the Plaintiff's civil rights as per 18 U.S.C.A. §241 (Conspiracy against rights), 18 U.S.C.A. §245 (Federally protected activities), and 42 U.S.C.A. §1983 (Civil action for deprivation of rights). SUMTER ELECTRIC is a rural electric cooperative governed by Florida Statute §425 and is not a state agency.

The Plaintiff alleges in her Complaint that SUMTER ELECTRIC violated her 4th Amendment, 13th Amendment, and 14th Amendment U.S. Constitutional rights during an unknown time frame prior to a fire that occurred on the Plaintiff's property on January 9, 2000. Besides alleging criminal allegations (18 U.S.C.A. §241 and §245) against SUMTER ELECTRIC, the Plaintiff alleges a §1983 action that SUMTER ELECTRIC conducted an illegal seizure of evidence and/or property, forced her to involuntarily serve the will of SUMTER ELECTRIC and/or Lake County, and deprived her of her due process and equal protection

rights when SUMTER ELECTRIC provided electric service to her neighbor, “Belew’s Welding”.

STANDARD OF REVIEW

In reviewing SUMTER ELECTRIC’S motion to dismiss for failure to state a claim under Rule 12(b)(6), the Court “must limit itself to the facts stated in the complaint or in documents attached to the complaint as exhibits or incorporated in the complaint by reference.” *See, Kramer v. Time Warner, Inc.*, 937 F.2d 767, 773 (2d Cir. 1991). Additionally, the Court must “view all allegations raised in the complaint in the light most favorable to the non-moving party.” *See, Scheuer v. Rhodes*, 94 S.Ct. 1683, 1686 (1974). Furthermore, the Court must read the *pro se* Plaintiff’s “supporting papers liberally, and interpret them to raise the strongest arguments that they suggest.” *See, Burgos v. Hopkins*, 14 F.3d 787, 790 (2d Cir. 1994). However, the Court must dismiss a *pro se* complaint that contains only conclusory, vague, or general allegations that lack any facts of overt acts or providing a basis in fact for her claim. *See, Zemsky v. City of New York*, 821 F.2d 148, 151 (2d Cir. 1987); *see also, Hall v. Dworkin*, 829 F.Supp. 1403, 1412 (N.D.N.Y. 1993) (holding that a §1983 action must contain more than broad based, conclusory statements).

LEGAL ARGUMENT

I. THE PLAINTIFF HAS NO STANDING TO BRING FORTH CRIMINAL ACTIONS AGAINST SUMTER ELECTRIC

The Plaintiff cannot bring criminal actions against SUMTER ELECTRIC. The Plaintiff does not have standing to sue SUMTER ELECTRIC under criminal statutes governing conspiracy against rights (18 U.S.C.A. §241) and federally protected activities (18 U.S.C.A. §245). *See, Weiland v. Byrne*, 392 F.Supp. 21 (N.D. Ill. 1975). Only 42 U.S.C. §1983 provides a conduit by which aggrieved parties may recover against those who have violated that party's civil rights. *Skinner v. City of Miami, Fla.*, 62 F.3d 344, 347 (11th Cir. 1995). In fact, 42 U.S.C. §1983 provides the sole and exclusive remedy for violations of federal constitutional and statutory rights. *Butts v. County of Volusia*, 222 F.3d 891, 893 (11th Cir. 2000); *Hicks v. Lewis*, 1996 WL 172994 at *2 (M.D. Fla. 1996).

II. THE PLAINTIFF'S COMPLAINT FAILS TO SET FORTH A CLAIM AGAINST SUMTER ELELCTRIC FOR VIOLATION OF THE PLAINTIFF'S CIVIL RIGHTS.

Although the Plaintiff's Complaint purports to set forth claims against SUMTER ELECTRIC for violation of the Plaintiff's civil rights, the Complaint fails to establish a claim for violation of civil rights upon which relief can be granted. The Plaintiff has alleged violations of the Plaintiff's civil rights under the Fourth, Thirteenth, and Fourteenth Amendments to the Constitution of United States and 42 U.S.C. §1983. These claims are totally devoid of merit.

Even though 42 U.S.C. §1983 provides a conduit by which a party can seek redress for violation of constitutional rights, the Complaint in this case fails to allege any factual or legal basis to impose liability against the defendant, SUMTER ELECTRIC, for violation of the Plaintiff's constitutional rights. The Plaintiff's allegations are conclusory, vague, and state only general allegations so that she has not established a proper §1983 cause of action against SUMTER ELECTRIC.

The Plaintiff's Complaint alleges acts outside the statute of limitations and rambles on issues not relevant to any purported cause of action. The Plaintiff's Complaint commingles all the §241, §245, and §1983 allegations into one count in which it is impossible to determine what if any facts pertain to what allegation against SUMTER ELECTRIC. The deprivation of her Fourth, Thirteenth, and Fourteenth Amendment rights in the Plaintiff's Complaint are alleged without any factual basis and it lacks the essential elements needed for a §1983 cause of action.

Furthermore, the Plaintiff has failed to allege any facts in her Complaint that would identify SUMTER ELECTRIC as a "state actor" for the purposes of a §1983 cause of action. SUMTER ELECTRIC is a rural electric cooperative governed by Florida Statute §425. In order to establish a §1983 cause of action, the Plaintiff must factually allege that she was deprived of her U.S. Constitutional right or privilege and that the deprivation was caused by a person acting under the color of state law. *See, Flagg Brothers, Inc. v. Brooks*, 436 U.S. 149, 155-156 (1978). The Supreme Court has stated that, "The mere fact that a business is

subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment.” *See, Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974). In *Jackson* (supra) the Court cited its *Moose Lodge No. 107 v. Iris*, 407 U.S. 163, 176 (1972), holding that in order to find if a regulated entity acts were ‘State’ acts, only those facts showing a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself. The Plaintiff’s Complaint lacks any factual nexus between SUMTER ELECTRIC and the State of Florida that would identify SUMTER ELECTRIC as a “state actor” for the purpose of a §1983 cause of action. Even if the Plaintiff’s allegations against SUMTER ELECTRIC (as a private entity) were true (which they are not), the Fourteenth Amendment does not shield against private conduct “however discriminatory and wrongful”. *See, Shelley v. Kraemer*, 335 U.S. 1 (1948). Therefore, the Plaintiff’s Complaint fails to state a cause of action that relief can be granted under §1983.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Glenda Q. Mahaney, Pro Se Plaintiff, PO Box 123, Mt. Dora, FL 34756 this 3RD day of March, 2004.



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