

1. Defendant's Motion to Dismiss is **GRANTED**.
2. This matter shall be **DISMISSED WITHOUT PREJUDICE**.
3. The attached Memorandum is incorporated herein by reference.

Dated: June 5, 2021

BY THE COURT:



Wahi, Richelle

2021.06.05

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Richelle M. Wahi

JUDGE OF DISTRICT COURT

MEMORANDUM

1. Procedural Posture

On August 3, 2020, Plaintiff filed an Eviction Action Complaint (“Original Complaint”). Following review of the Complaint, the Honorable David N. Lutz determined that the facts alleged in the Complaint did not meet the requirements to proceed with eviction under Minnesota Executive Order 20-79 (“EO 20-79”) during the COVID-19 Pandemic State of Emergency. As such, no eviction summons issued. The matter was not dismissed. No written order was filed.

On August 18, 2020, Plaintiff filed a Petition for Writ of Mandamus with the Minnesota Court of Appeals, seeking an order compelling the district court to issue a summons and proceed with the eviction action. Since Plaintiff asked for an order compelling the district court to issue a summons, the Court of Appeals reached the merits of the Original Complaint.

On September 1, 2020, the Court of Appeals issued an order (“September 1, 2020 Order”) dismissing the Writ of Mandamus. The Court of Appeals stated that the exception to the moratorium on eviction actions provided by Minnesota Executive Orders for cases where the Defendant “seriously endangers the safety of other residents or others on the premises” contemplates circumstances in which physical safety is currently at risk. The Court of Appeals found that the facts alleged in the Original Complaint failed to reach the threshold required for an exception to the eviction moratorium, and denied mandamus. The Court of Appeals did not direct the district court to issue a written order, nor did the Court of Appeals enter a dismissal order. Accordingly, the matter was never formally dismissed.

Plaintiff then petitioned for further review with the Minnesota Supreme Court. On November 25, 2020, the Minnesota Supreme Court denied such petition.

In March of 2021, as part of Dakota County Housing Court pandemic case processing, the Honorable Tracy Perzel reviewed any case file where a summons did not issue yet where there was no order dismissing the case without prejudice. On March 5, 2021, the Honorable Tracy Perzel issued an Order in this case Seeking Timely Response and for Conditional Dismissal, If No Response (“March 5, 2021 Order”). At the time the March 5, 2021 Order was issued, the Court of Appeals September 1, 2020 Order had not been filed into this district court file. The March 5, 2021 Order, directed Plaintiff to file an Affidavit explaining why it qualifies for an exception to the residential eviction moratorium or the case would be dismissed without prejudice.

On March 25, 2021, Plaintiff filed an Amended Complaint (“Amended Complaint”).

On March 26, 2021, the Undersigned issued an Order requiring district court administration to issue a Summons, finding that the Amended Complaint alleged facts to support an exception to EO 20-79. An eviction Summons issued.

On April 7, 2021, Defendants filed an Answer denying the allegations and setting forth as a defense that Plaintiff failed to state a claim for relief.

On April 12, 2021, the matter came before this Court for initial hearing. At the time of the hearing, Defendants indicated their intention to file a motion to dismiss for failure to state a claim. The parties stipulated to a briefing schedule, and the Court set the matter on for motion hearing on May 7, 2021.

At the May 7, 2021 hearing, the parties argued the respective motions and then agreed to continue the hearing to address settlement of not only this case, a federal law suit and the pending criminal charges relating to the alleged violation of a harassment restraining order. The parties returned for Review Hearings on May 25th and May 28th, 2021, to try to reach settlement. The parties failed to reach final agreement.

2. Legal Standard

A party may move to dismiss a complaint for “failure to state a claim upon which relief can be granted.” Minn. R. Civ. P. 12.02(e). “A pleading must ‘contain a short plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought.’” *Bahr v. Cappella University*, 788 N.W.2d 76, 80 (Minn. 2010) (citing Minn. R. Civ. P. 8.01).

On a motion pursuant to Minn. R. Civ. P. 12.02(e), “[t]he reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party.” *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003) (citing *Marquette Nat’l Bank v. Norris*, 270 N.W.2d 290, 292 (Minn. 1978)). The Court will grant a motion to dismiss only when “it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded.” *Elzie v. Comm’r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980). However, the Court is “not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim.” *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008).

In this case, the Minnesota Court of Appeals stated, “[a]ssuming without deciding that a rule 12.02(e) standard applies to the determination whether to allow an eviction action to proceed during the peacetime emergency... petitioner has not shown that the factual allegations against respondents in the amended complaint reach *that* threshold.” *In re Olson Property Investments*,

A20-1073 (Minn. App. Sept. 1, 2020) (emphasis added).² In the absence of legal authority to the contrary, this Court applies the standard of review provided by Minn. R. Civ. P. 12.02(e).

Here, the procedural irregularities in this proceeding substantially impact the legal standard of review of the existing motion. As a preliminary matter, although the Original Complaint was reviewed by the Honorable David Lutz, and Judge Lutz found that a summons should not issue, a written order was never filed and there is no indication on the existing record that this matter was dismissed. Second, the Court of Appeals denied the Writ of Mandamus and decided the merits of this case on the facts alleged at that time. However, the Court of Appeals never directed the district court to enter a written dismissal order, and, no such dismissal order was ever entered. Third, the Court of Appeals September 1, 2020 Order was not filed in the district court file until May 5, 2021 after Dakota County District Court Administration contacted the Court of Appeals to request that it file its order. As a result, there is no indication on the existing record that the Honorable Tracy Perzel had the benefit of such order at the time she issued the March 5, 2021 Order, which permitted Plaintiff an opportunity to submit an affidavit to supplement the existing Original Complaint.

Pursuant to Minn. R. Civ. P. 15.01, a party may amend their pleadings within 21 days, or after that time by leave of the court or written consent of the adverse party. When the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. Minn. R. Civ. P. 15.03.

When examining the current procedural posture on this motion to dismiss, it is of great consequence that no order to dismiss was entered. The March 5, 2021 Order constitutes leave of

² The Court of Appeals, applying the standard of review provided by Minn. R. Civ. P. 12.02(e), found that the allegations in the Original Complaint failed to state a claim upon which relief can be granted as a matter of law.

the court to amend the original pleadings pursuant to Minn. R. Civ. P. 15.01. The fact that such amendment came by way of Amended Complaint instead of Affidavit as prescribed in the March 5, 2021 Order is of no legal consequence at this juncture. Plaintiff's Amended Complaint contains additional information regarding claims arising out of the conduct, transaction, or occurrence set forth in the Original Complaint. As such, from a legal standard of review, the Amended Complaint relates back to the date of the original pleading, and the entirety of the Amended Complaint is properly before this Court.

3. Plaintiff Has Not Alleged Sufficient Facts to Survive a Motion to Dismiss

Defendants seek dismissal of this action, stating that the Amended Complaint does not allege sufficient facts to show endangerment within the meaning of EO 20-79.

In their Amended Complaint, Plaintiff seeks eviction in accordance with EO 20-79 asserting that Defendant's conduct seriously endangering other residents and Plaintiff's agents/owners. Plaintiff makes the following allegations of endangerment:

a. Paragraph 5 (a) through (f)

Plaintiff alleges that Defendants have made harassing phone calls and text messages to Tarryl Olson and Stephanie Reis, and that harassment restraining orders were obtained by both Mr. Olson and Ms. Reis as a result of such communication.

b. Paragraph 5 (g) and (h)

At paragraph 5(g), Plaintiff alleges that Defendants falsely accused them or their agents of entering their unit and causing Defendant [REDACTED] to have adverse health reactions. At paragraph 5(h)(i-viii), Plaintiff includes specific contents of threatening text messages sent by Defendants to Ms. Reis.

c. Paragraph 6

Plaintiff alleges that Defendant [REDACTED] violated a harassment restraining order by contacting Plaintiff's agent Stephanie Reis on October 21, 2020. This violation of the restraining order occurred after the Court of Appeals issued their decision, and during the pendency of Plaintiff's request for further review at the Minnesota Supreme Court. Defendant [REDACTED] was arrested and charged following this incident, and is currently awaiting trial in court file number 19WS-CR-20-11377. Defendants acknowledge that charges are pending in the matter.

d. Paragraphs 7-10

Plaintiff alleges that Defendants are harassing the occupants of the apartment unit below theirs, unit number 2. Plaintiff states that Defendants stomp on the floor and scream at the occupants, causing the occupants of unit 2 to spend as much time away from the residence as possible. Plaintiff further states that this conduct by Defendants is ongoing. Plaintiff also alleges that Defendants have access to the hot water shut off valve for unit 2, and have shut off the hot water for the unit, necessitating that Plaintiff engage a plumber to determine the source of the issue. The residents of unit 2 were without hot water for 3 days as a result.

At this stage, the Court must consider only the facts alleged in the Amended Complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). A motion to dismiss should only be granted if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded. *Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980).

In response to the COVID-19 pandemic, on March 13, 2020 Minnesota Governor Tim Walz (hereinafter referred to as the “Governor”) issued Executive Order 20-01 and declared a peacetime emergency. On March 23, 2020, the Governor issued Executive Order 20-14, which provided that, “the ability to file an eviction action under Minnesota Statutes 2019, section 504B.285 or 504B.291 is suspended.”

Later, the Governor rescinded EOs 20-01 and 20-14 as to eviction actions, and replaced those with the eviction moratorium memorialized in Executive Order 20-79, which remains in effect. EO 20-79, Modifying the Suspension of Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency (July 14, 2020). In EO 20-79, the Governor stated the earlier prior Executive Orders had been “crucial to protect public health by promoting Minnesotans’ housing stability and preventing displacement during the COVID-19 pandemic.” *Id.* He further stated, “I recognize that COVID-19’s economic impact continues to influence the ability of tenants and homeowners to pay their rent and mortgages.” *Id.* EO 20-79 reiterates that the ability to file an eviction action on various grounds remains suspended, except for eviction actions where the tenant:

(a)[S]eriously endangers the safety of other residents; (b) engages in criminal activity that violates Minn. Stat. § 504B.171, subd. 1; (c) remains in the property after a vacate date where the landlord or landlord’s family is going to move back into the residence; or (d) materially breaches the lease by seriously endangering the safety of others or significantly damages property.

EO 20-79, Para. 2(a-d).

At the hearing, Plaintiff conceded that Stephanie Reis and Tarryl Olson are not residents of the property. The facts alleged in Plaintiff’s Amended Complaint seek an exception to the moratorium on residential evictions based upon EO 20-79 paragraph 2(a), which states that an eviction may proceed where a tenant “seriously endangers the safety of other *residents*.” (Emphasis added).

Accepting all facts as true, and construing all reasonable inferences in favor of the nonmoving party, there are no facts, which could be introduced consistent with the pleading, which would support granting the relief demanded under this prong, as neither Stephanie Reis nor Tarryl Olsen are residents of the property.

At the hearing, Plaintiff argued that the Amended Complaint alleges that the Defendant materially breached the lease. EO 20-79 specifically creates an exception to the eviction moratorium where a resident:

Materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises:

- i. Seriously endangers the safety of others; or
- ii. Significantly damages property.

EO 20-79, ¶ 2(d)(i).

Executive Order 20-73 (“EO 20-73”), which was in effect at the time of the filing of the Original Complaint, contains substantially the same language regarding endangerment of others:

This suspension will allow households to remain sheltered during the peacetime emergency. Nothing in this Executive Order relieves a tenant’s obligation to pay rent. This suspension does not include eviction actions based on cases where the tenant seriously endangers the safety of other residents, or where the tenant seriously endangers the safety of others on the premises, including the common area and the curtilage of the premises, if the serious endangerment of others who are not residents is a material violation of the lease, or for violations of Minnesota Statutes 2019, section 504B.171, subdivision 1.

EO 20-73, ¶ 1.

Here, regardless of whether EO 20-73 or EO 20-79 applies, the language of both orders clearly contemplates that, for an eviction to proceed where a tenant seriously endangers persons who are not residents, such endangerment must also constitute a material violation of the lease. Plaintiff’s Amended Complaint does not reference any lease or material breach thereof. As such, accepting

all facts as alleged as true with respect to Defendant's conduct as it relates to Stephanie Reis or Tarryl Olson, there are no facts which could be introduced consistent with the pleadings that would support relief under this prong of EO 20-73 or EO 20-79.

Plaintiff alleges that Defendants stomps on the floor and scream at the residents of the unit below Defendant's residence. Plaintiff further alleges that Defendants have shut off hot water access for the downstairs residents. Here, the facts alleged in Plaintiff's Amended Complaint seek an exception to the moratorium on residential evictions based upon EO 20-79 paragraph 2(a), which states that an eviction may proceed where a tenant "seriously endangers the safety of other residents." Defendant's alleged conduct specifically relates to other residents of the property.

Next, this Court must turn to whether Defendant's conduct, as alleged in the Amended Complaint, seriously endangers other residents. In doing so, the Court must construe all reasonable inferences in favor of the nonmoving party. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

Again, the procedural posture of this case is unique and of great consequence because the Court of Appeals has ruled in *this* case, that conduct that "seriously endangers the safety of other residents" within the meaning of EO 20-79 "contemplate[s] circumstances in which *physical* safety is at *current* risk." *In re Olson Property Investments*, A20-1073 (Minn. App. Sept. 1, 2020) (emphasis added). Construing all reasonable inferences in favor of Plaintiff, this Court does not find that the allegations rise to the level of placing those residents' current physical safety at risk. As such, Defendants motion to dismiss shall be granted.

R.M.W.