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KEF/tlp

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

Robbie J. Perry and James Rex Dukeman, on behalf)
of themselves and others similarly situated as)
Mattoon Township (Coles County, Illinois))
commercial and industrial property owners,)
)
Plaintiffs,)
)
v.) Case No. 2:17-cv-02133-CSB-EIL
)
Coles County,)
)
Defendant.)

MOTION TO DISMISS PLAINTIFFS’ FIRST AMENDED COMPLAINT

NOW COMES the Defendant, COLES COUNTY, by KEITH E. FRUEHLING of HEYL, ROYSTER, VOELKER & ALLEN, its attorneys, and for its Motion to Dismiss Plaintiffs’ First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1), states as follows:

1. On August 3, 2017, Plaintiffs Robbie Perry and James Rex Dukeman, on behalf of themselves and others similarly situated as Mattoon Township commercial and industrial property owners (herein “Plaintiffs”), filed their First Amended Complaint in the United States District Court for the Central District of Illinois, alleging constitutional violations against Defendant Coles County (herein “Defendant”) pursuant to § 1983. Plaintiffs’ Complaint seeks redress against Defendant Coles County for alleged disproportional property taxes assessed to Plaintiffs in the year 2016.
2. However, Plaintiffs cannot maintain their cause of action in Federal Court, which does not have subject matter jurisdiction to hear Plaintiffs’ causes of action.

3. The federal court must have subject matter jurisdiction over the matter at issue. The lack of subject matter jurisdiction makes a complaint subject to dismissal. Fed. R. Civ. P. 12(b)(1). A challenge under 12(b)(1) challenges this Court's subject matter jurisdiction and must be addressed first. *See Freiburger v. Emery Air Charter*, 795 F. Supp. 253, 256 (N.D. Ill. 1992) (citing 796 F.2d 924, 928 (7th Cir. 1986)).

4. Taxpayers are barred by the principle of comity from asserting § 1983 actions against the validity of state tax systems in federal courts. Such taxpayers must seek protection of their federal rights by state remedies, provided of course that those remedies are plain, adequate, and complete, and may ultimately seek review of the state decisions in this Court. *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 (1981); *referencing, Huffman v. Pursue, Inc.*, 420 U.S., at 605.

5. Plaintiffs request damages pursuant to Section 1983 in Count I, declaratory judgment in Count II, and Injunction in Count III. These state tax law challenges and requisite remedies are all barred by the principle of comity in federal courts, assuming adequate state court remedies are available.

6. In our federal system of government, state as well as federal courts have jurisdiction over suits brought pursuant to 42 U.S.C. § 1983, the statute that creates a remedy for violations of federal rights committed by persons acting under color of state law. *Haywood v. Drown*, 556 U.S. 729, 731 (2009). Plaintiffs have plain, adequate, and complete remedies available in state court, and as such, this action must be dismissed from the federal court system.

7. This Court lacks subject matter jurisdiction to hear Plaintiffs' claims pursuant to Fed. R. Civ. P. 12(b)(1), and therefore, Plaintiffs' First Amended Complaint must be dismissed.

WHEREFORE, the Defendant, COLES COUNTY, respectfully requests this Honorable Court enter an Order dismissing Plaintiffs' First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1), with prejudice, for costs, and for any other and further relief this Honorable Court deems just and proper.

Respectfully submitted,

COLES COUNTY, Defendant

s/ Keith E. Fruehling

Keith E. Fruehling, IL ARDC #: 6216098

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PROOF OF SERVICE

I hereby certify that on August 17, 2017, I electronically filed the foregoing MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT with the Clerk of the Court using the CM/ECF system, which will send notification to:

Mr. Erick G. Kaardal
Mohrman, Kaardal & Erickson, P.A.
150 S. Fifth St., Suite 3100
Minneapolis, MN 55402

I also hereby certify that on August 17, 2017, I have mailed by United States Postal Service the foregoing to the following non-CM/ECF participant: None

s/Keith E. Fruehling
Heyl, Royster, Voelker & Allen

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