

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KEILEE FANT, et al.,)	
)	
Plaintiffs)	Cause No.: 4:15-CV-00253-AGF
)	
vs.)	
)	
THE CITY OF FERGUSON)	
)	
Defendant)	

**THE CITY OF FERGUSON’S RULE 12(C) MOTION
TO DISMISS COUNTS I THROUGH III AND V THROUGH VII
FOR FAILURE TO JOIN AN INDISPENSABLE PARTY UNDER RULE 19**

Defendant The City of Ferguson (hereafter “the City”) moves pursuant to Rule 12(c) that this Court dismiss Counts I through III and V through VII of the first amended class action complaint (Doc. 53) of Plaintiffs Keilee Fant, et al. (hereafter “Motorists”) for failure, under Rule 19, to join the municipal division of the Circuit Court of St. Louis County (hereafter “the Court Division”) as an indispensable party under Rule 19. The City further states the following:

1. Motorists have named the City as the sole defendant in this lawsuit.
2. Motorists have (wrongly) defined the City to include the Court Division.
3. In Counts I through III and V through VII, Motorists seek injunctive relief that the City has no authority to give, as the City has no authority to compel the Court Division or its officers to take any particular actions with regard to the Court Division’s inherent powers.

4. In addition, Counts I through III and V through VII cannot be resolved without this Court necessarily determining whether the alleged wrongdoings were carried out on behalf of the City or on behalf of the Court Division.

5. Consequently, Motorists cannot obtain complete relief in this lawsuit absent the Court Division being joined to this lawsuit as a defendant, making the Court Division a required party under Rule 19(a)(1)(A).

6. For the same reasons, the Court Division necessarily has an interest in this lawsuit's subject matter and cannot adequately defend that interest without it being joined as a defendant. This constitutes another reason why it is a required party to this lawsuit. Rule 19(a)(1)(B)(1).

7. But the Court Division cannot be joined to this case, as it is a sovereign entity immune from suit pursuant to the Eleventh Amendment.

8. This immunity, combined with the other factors of Rule 19(b), renders the Court Division an indispensable party such that equity and good conscience require the dismissal of Counts I through III and V through VII.

9. The United States Supreme Court has been very clear about what must be done in precisely this situation: "A case *may not proceed* when a required-entity sovereign is not amenable to suit." *Republic of the Philippines v. Pimentel*, 553 U.S. 851, 867 (2008) (emphasis added).

10. The Court in *Pimentel* went on to rule that "dismissal *must* be ordered where there is a *potential* for injury to the interests of the absent sovereign." *See id.* (emphasis added).

11. Indeed, a district court's very consideration of the merits of a lawsuit in the absence of a required sovereign entity "is 'itself an infringement on...sovereign immunity.'" *Florida Wildlife Fed., Inc. v. U.S. Army Corps of Eng.*, 859 F.3d 1306, 1318 (11th Cir. 2017) (quoting *Pimentel*, 553 U.S. 851, 864-865 (2008)).

12. Consequently, it is incumbent upon this Court to resolve this matter now, prior to the filing of any motions for class certification or motions for summary judgment.

13. The City incorporates fully into this paragraph its memorandum in support of this motion filed contemporaneously with it, along with any and all subsequent supporting memoranda that may be filed.

Accordingly, the City moves for this Court to dismiss Counts I through III and V through VII for failure, under Rule 19, to join an indispensable party, and for any other relief that is just and proper.

Respectfully submitted,

/s/ John M. Reeves

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed with the Court's electronic filing system, with notice of case activity to be generated and sent electronically by the Clerk of said Court on the 5th day of March, 2019, to all counsel of record.

/s/ John M. Reeves