UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
Case No. 13-24312-CIV-GRAHAM/GOODMAN

EARL SAMPSON, et al.,

Plaintiffs,

vs.

CITY OF MIAMI GARDENS, et al.,

Defendants.
_____/

AMENDED ORDER

THIS CAUSE comes before the Court upon Defendant, City of Miami Gardens', Motion to Dismiss Claims for Common Law Battery, Conversion, and Tortious Interference with a Business Relationship [D.E. 58].

THE COURT has considered the Motion, the pertinent portions of the record, and is otherwise fully advised in the premises. For the reasons stated below, the motion is **GRANTED IN PART** and **DENIED IN PART.**

I. FACTUAL & PROCEDURAL BACKGROUND

On November 27, 2013, Earl Sampson, Torre M. Daniels, Anthony Lowery, Floyd Hall, Jr., Ross Picart, Roderick D. Smith, Kenneth Crane, Yvensonne Montale, Omar Dean, Brandon Spivey, and Ali A. Saleh (collectively referred to as "Plaintiffs") brought suit against the City of Miami Gardens (hereinafter "the City"), its current and former mayor, its former city manager, and various

members of its police personnel. [D.E. 1]. Plaintiffs allege, *inter alia*, violations of 42 U.S.C. § 1983 pursuant to the Fourth Amendment and Fourteenth Amendment Equal Protection Clause. Id. The basis of Plaintiffs' suit against the City lies with the City's alleged zero tolerance zone, quota, and racial targeting policies, which Plaintiffs allege were the cause of numerous unconstitutional stop-and-frisks and arrests from 2008 to the present. [D.E. 1 at 20-24; D.E. 56 at 20-25]. In addition to asserting claims directly against the City, Plaintiffs also assert violations of 42 U.S.C. § 1983 (supervisory liability) against Chief Matthew Boyd, Deputy Chief Paul Miller, and Major Anthony Chapman. [D.E. 1; 56]. Moreover, Plaintiffs assert violations of 42 U.S.C. § 1983 against eighty-two (82) individual police officers as well as state law tort claims including: battery, false arrest, intentional infliction of emotional distress, malicious prosecution, and conversion, against the City and individual police officers. Id. Plaintiffs seek damages for the unconstitutional arrests and stop-and-frisks, as well as injunctive relief halting enforcement of the City's policies. Id.

After all named Defendants challenged the sufficiency of Plaintiffs initial Complaint by moving to dismiss, Plaintiffs filed their First Amended Complaint on February 6, 2014. [D.E. 56]. In addition, Plaintiffs voluntarily dismissed their claims against the current and former mayor, former city manager, and the individual

police officers leaving only, the City, Chief Matthew Boyd, Deputy Chief Paul Miller, and Major Anthony Chapman to defend against their remaining claims. [D.E. 75 and 77]. The remaining Defendants deny Plaintiffs' allegations and maintain that Plaintiffs' arrests were constitutional, based upon probable cause, and that lawful force was utilized each time. [D.E. 61]. Furthermore, the City maintains that it has no unconstitutional customs, policies, or practices as alleged by Plaintiffs and now moves to dismiss Plaintiffs' claims of battery, Plaintiffs Hall, Jr. and Dean's claims of conversion, and Plaintiff Saleh's claim of tortious interference with a business relationship. [D.E. 58].

II. STANDARD OF REVIEW

"For the purposes of a motion to dismiss, the Court must view the allegations of the complaint in the light most favorable to Plaintiff, consider allegations of the complaint as true, and accept all reasonable inferences." Omar ex rel. Cannon v. Lindsey, 334 F.3d 1246, 1247 (11th Cir. 2003) (citations omitted). However, the Court does not have to "accept as true a legal conclusion couched as a factual allegation." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009) (quotations and citations omitted). For a claim to have facial plausibility, a plaintiff must plead

"factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." Id. Therefore, "[a] pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do." Id. In addition, the Court may grant a motion to dismiss when, "on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action." Marshall Cnty. Bd. of Educ. v. Marshall Cnty. Gas Dist., 992 F.2d 1171, 1174 (11th Cir. 1993).

III. DISCUSSION

A. Conversion

The City first argues that it is immune from Plaintiffs Hall, Jr. and Dean's suit for conversion pursuant to Fla. Stat. §768.28(9)(a). Plaintiffs Hall, Jr. and Dean concede that the inclusion of the terms "knowingly" and "wantonly" preclude their respective claims against the City and, in the alternative, argue that further amendment of the Complaint to remove said language will allow their respective claims for conversion to proceed. In reply, the City maintains that no manner of construction allows Plaintiffs Hall, Jr. and Dean to state a claim of conversion against it because "the claim itself connotes malice even without the use of the words (knowing, malice, bad faith, etc...)" and that

dismissal is warranted. [D.E. 65 at 2]. The Court is unpersuaded by the arguments presented on either side of this issue. Nonetheless, the Court finds that dismissal is appropriate and that Fla. Stat. §768.28(9)(a) immunizes the City from Plaintiffs Hall, Jr. and Dean's conversion claims.

In order to resolve the issue presented, the Court must reconcile the plain language of Fla. Stat. 768.28(9)(a) with the current state of the law in Florida regarding conversion claims. To that end, Fla. Stat. §768.28(9)(a) states, in relevant part:

> The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Fla. Stat. §768.28(9)(a). Florida law historically defined conversion as "an unauthorized act which deprives another of his property permanently or for an indefinite time." Small Business Admin. v. Echevarria, 864 F.Supp. 1254, 1262 (S.D. Fla. 1994)(citing Nat'l Union Fire Ins. Co. v. Carib Aviation, Inc., 759 F.2d 873 (11th Cir. 1985)). In addition, Florida courts have held that "the essence of the tort of conversion is a party's refusal to surrender the property after demand has been made." Id. (citing Star Fruit Co. v. Eagle Lake Growers, Inc., 160 Fla. 130 (Fla. 1948)(en banc)). However, Florida courts are split on the question of "whether a party must *intend* to deprive another of its property

to find conversion." Id. (emphasis added).

Like the case at bar, Erie R. Co. v. Tompkins, 307 U.S. 64 (1938) and its progeny requires federal courts "to apply state substantive law to cases brought under . . . ancillary jurisdiction." Vacation Break U.S.A., Inc. v. Marketing Response Grp. & Laser Co., Inc., 189 F.R.D. 474, 478 (M.D. Fla. 1999)(citing Cohen v. Office Depot., Inc., 184 F.3d 1292, 1295-1296 (11th Cir. 1999)). As such, "[w]here the highest court in the state has rendered no decisions on point . . . this Court must follow the opinions of Florida's intermediate courts, unless it is 'convinced that the highest court would decide otherwise.'" Lahtinen v. Liberty Int'l Financial Servs., Inc., 2014 WL 351999, *5 (S.D. Fla. 2014). When intermediate court decisions vary, a "federal court should apply the rule representing the overwhelming weight of authority." Liberty Mut. Ins. Co. v. Electronic Systems, Inc., 813 F.Supp.802, 805 (S.D. Fla. 1993). However, "when the weight of authority is evenly balanced, the court must make an 'educated guess' as to how the Florida Supreme Court would resolve the conflict." Echevarria, 864 F.Supp. at 1262 (citing Trial Builder Supply Co. v. Reagan, 409 F.2d 1059, 1061 (5th Cir. 1969))[1].

Confronted with the same issue, other courts in the Southern District have concluded that intent is a necessary element of

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[1] The newly formed Eleventh Circuit in Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981)(en banc), held that the decisions of the Fifth Circuit delivered prior to October 1, 1981 are binding precedent.

conversion. See Echevarria, 864 F.Supp. at 1262 ("The Court has examined the cases addressing this issue and concludes that if the Supreme Court chose to revisit the issue, it would not disturb its prior rulings holding that intent is a necessary element of conversion."); see also Lahtinen, 2014 WL at *5 ("After careful consideration, this Court concludes that Florida's Supreme Court would - and has - determined that a plaintiff must prove intent in order to succeed on conversion. Accordingly, intent is a necessary element of conversion."). The rationale underpinning this jurisprudential evolution is that Florida courts now view the essence of conversion, not simply as "the possession of property by the wrongdoer, but rather such possession in conjunction with a present *intent* on the part of the wrongdoer to deprive the person entitled to possession of the property." Brand v. Old Republic Nat'l Title Ins. Co., 797 So.2d 643, 646 (Fla. 3d DCA 2001)(citing Senfeld v. Bank of Nova Scotia Trust Co. (Cayman) Ltd., 450 So.2d 1157, 1160-61 (Fla. 3d DCA 1984)(emphasis added); see also Wilson Cypress Co. v. Logan, 120 Fla. 124 (Fla. 1935). This rationale belies the City's unsupported contention that a claim of conversion "itself connotes malice even without the use of the words (knowing, malice, bad faith, etc...)." [D.E. 65 at 2]. In light of the aforementioned case law and the extensive analyses contained therein, the Court finds no reason to depart from their holdings and, in a similar fashion, concludes that intent is a necessary

element of conversion.

Having found intent as a necessary element of conversion, the Court returns to the plain language of Fla. Stat. §768.28(9)(a) insofar as the City is immune from the tortious behavior of its employees "committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of . . . property." Fla. Stat. §768.28(9)(a). When a term is undefined in a statute, as in the present case, courts apply its ordinary meaning. See Taniguchi v. Kan Pacific Saipan, Ltd., 132 S.Ct. 1997 (2012). As defined, "willful" describes an act done voluntarily or intentionally, but not necessarily maliciously. Black's Law Dictionary (9th ed. 2009). Hence, "intent" is synonymous with "willful" and, as a result, Plaintiffs Hall, Jr. and Dean's claims for conversion necessarily invoke the sovereign immunity protection set forth in Fla. Stat. §768.28(9)(a). Cf. Zabriskie v. City of Kissimmee, 2010 WL 3927658, *4 (M.D. Fla. 2010)(holding that because the 'intent or recklessness conduct' requirement of an intentional infliction of emotional distress claim 'is the equivalent of willful and wanton conduct' described in Fla. Stat. §768.28(9)(a), the claim was barred).

Moreover, Plaintiffs Hall, Jr. and Dean's reliance on Springer v. Fla. Dept. Of Natural Resources, 485 So.2d 15 (Fla. 3d DCA 1986) for the proposition that a claim of conversion can lie against a municipality is of no moment given the current state of the law in

Florida regarding intent being a necessary element of conversion. Therefore, the Court finds that further amendment of the Complaint would be futile and dismissal is warranted. See Marshall Cnty. Bd. of Educ., 992 F.2d at 1174; Coresello v. Lincare, Inc., 428 F.3d 1008, 1014 (11th Cir. 2005). Accordingly, the City's motion is **GRANTED** as to Counts 56 and 74 of Plaintiffs' First Amended Complaint.

B. Battery

Next, the City argues that all of the battery claims asserted against it should be dismissed. Plaintiffs concede that the City is entitled to dismissal of the battery claims asserted against it by Plaintiffs Sampson, Daniels, Spivey, Lowery, Hall, Crane, and Montale, as set forth in Counts 38, 42, 46, 50, 54, 67, and 71. [D.E. 63 at ¶4]. However, Plaintiffs Picart and Smith argue that their battery claims should stand because they also assert Fourth Amendment excessive force claims (Counts 25 and 29) against the City. In reply, the City argues that Plaintiffs Picart and Smith's respective claims for battery (Counts 59 and 63) fail as matter of law and should be dismissed as well.

Under Florida law, "if excessive force is used in an arrest, the ordinarily protected use of force by a police officer is transformed into a battery." City of Miami v. Sanders, 672 So.2d 46, 46 (Fla. 3d DCA 1996)(citing Mazzilli v. Doud, 485 So.2d 477, 481 (Fla. 3d DCA 1986)). Additionally, "[a] battery claim for

excessive force is analyzed by focusing upon whether the amount of force used was reasonable under the circumstances." Id. (citing Dixon v. State, 101 Fla. 840 (Fla. 1931); City of Miami v. Albro, 120 So.2d 23 (Fla. 3d DCA 1960)).

Here, the record is not sufficiently developed for the Court to determine if Plaintiffs Picart and Smith's battery claims for excessive force fail as a matter of law. The City relies on City of Miami, *supra*, to support its contention that "courts given [sic] substantial discretion to an officers's use of force in the field, and only deem force actionable if "**clearly excessive**," arguably a higher threshold than the federal objective reasonableness standard applied in *Fourth Amendment* cases." [D.E. 65 at 3] (emphasis in original). However, the central holding in City of Miami was "that the sole basis and limit of an arresting officer's liability in making a lawful arrest is founded on a claim of battery, in that excessive force was involved in making the arrest." City of Miami, 672 So.2d at 48. The case makes no mention of the "clearly excessive" standard asserted by the City.

Likewise, the City relies on Nolin v. Isbell, 207 F.3d 1253, 1257 (11th Cir. 2000) for its assertion that battery claims are disallowed where *de minimis* force is applied. [D.E. 65]. In Nolin, the Eleventh Circuit held that "the application of *de minimis* force, without more, will not support a claim for excessive force in violation of the Fourth Amendment." Nolin, 207 F.3d at 1257.

However, the City has not moved to dismiss Plaintiffs Picart and Smith's §1983 claims for excessive force. Instead, the City only moves to dismiss the battery claims that are, in this instance, supported by Plaintiffs Picart and Smith's excessive force allegations.

Viewing the First Amended Complaint in a light most favorable to the Plaintiffs and accepting the factual allegations as truth, the Court finds Plaintiffs Picart and Smith have sufficiently stated claims for battery against the City. Igbal, 129 S.Ct. 1937. Whether Plaintiffs Picart and Smith will prevail on their respective claims of battery requires further development of the record and a determination of "whether the amount of force used was reasonable under the circumstances." City of Miami, 672 So.2d at 46. Therefore, the Court finds that the City's arguments against Plaintiffs Picart and Dean's battery claims, while meritorious, are more appropriate at the summary judgment stage of litigation. Consequently, the City's motion is **DENIED** as to Counts 59 and 63 of Plaintiffs' First Amended Complaint.

C. Tortious Interference with a Business Relationship

Lastly, the City moves to dismiss Plaintiff Ali A. Saleh's claim for tortious interference with a business relationship. The Court notes that Plaintiff Saleh does not oppose the City's motion and agrees to the dismissal of his claim. [D.E. 63 at ¶5]. Accordingly, the City's motion is **GRANTED** as to Count 77 of

Plaintiffs' First Amended Complaint.

IV. CONCLUSION

Based on the foregoing, it is hereby

ORDERED AND ADJUDGED that Defendant, City of Miami Gardens' Motion to Dismiss Claims for Common Law Battery, Conversion, and Tortious Interference with a Business Relationship [D.E. 58] is **GRANTED IN PART** and **DENIED IN PART**. It is further

ORDERED AND ADJUDGED that, per the Plaintiffs' concessions, **COUNTS 38, 42, 46, 50, 54, 67, and 71** of the First Amended Complaint are **DISMISSED**. It is further

ORDERED AND ADJUDGED that Defendant, City of Miami Gardens' Motion to Dismiss Claims for Common Law Battery, Conversion, and Tortious Interference with a Business Relationship [D.E. 58] is **GRANTED** as to **COUNTS 56 and 74.** It is further

ORDERED AND ADJUDGED that **COUNTS 56 and 74** are **DISMISSED WITH PREJUDICE**. It is further

ORDERED AND ADJUDGED that Defendant, City of Miami Gardens' Motion to Dismiss Claims for Common Law Battery, Conversion, and Tortious Interference with a Business Relationship [D.E. 58] is **DENIED** as to **COUNTS 59 and 63.** It is further

ORDERED AND ADJUDGED that Defendant, City of Miami Gardens' Motion to Dismiss Claims for Common Law Battery, Conversion, and Tortious Interference with a Business Relationship [D.E. 58] is

GRANTED as to **COUNT 77.** It is further

ORDERED AND ADJUDGED that **COUNT 77** of the First Amended Complaint [D.E. 56] is **DISMISSED WITH PREJUDICE.** Plaintiff, Ali A. Saleh, shall be **TERMINATED** from this action.

DONE AND ORDERED in Chambers at Miami, Florida, this 20th day of March, 2014.

Donald L. Graham
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record