

UNITED STATES DISTRICT COURT
OF THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO. 19-CV-62591-BB

EGLISE BAPTISTE BETHANIE DE
FT. LAUDERDALE, INC., etc., et al.,

Plaintiffs,

v.

THE SEMINOLE TRIBE OF FLORIDA and
AIDA AUGUSTE,

Defendants.

**DEFENDANT AUGUSTE’S REPLY TO PLAINTIFFS’ RESPONSE TO DEFENDANT
AUGUSTE’S MOTION TO DISMISS PLAINTIFFS’ FIRST AMENDED COMPLAINT**

Defendant Aida Auguste (hereinafter “Defendant Auguste”), by and through her undersigned counsel, hereby files this Reply to Plaintiffs’ response (DE 30) in opposition to Defendant Auguste’s motion (DE 26) to dismiss Plaintiffs’ first amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), *with prejudice*, and states as follows in support thereof.

FACTUAL BACKGROUND

The heart of this case is an ownership dispute over real and personal property located in Fort Lauderdale, Florida (hereinafter, “the Property”). Plaintiffs Eglise Baptiste Bethanie De Ft. Lauderdale, Inc., a Haitian Baptist Church (“Church”), and Plaintiff Church’s purported member, Andy Saint-Remy (“Plaintiff Saint-Remy”), have already filed a civil action against Defendant Auguste which is currently pending in the Circuit Civil Division of the Seventeenth Circuit Court of Broward County, Florida, Case No. CACE-19019270 (hereinafter, “the ‘270 case”).¹ Similar

1. Defendant Auguste respectfully requests this Court take judicial notice of the original complaint and the verified first amended complaint filed in the ‘270 case, a true and correct copy of which were attached to Defendant Auguste’s motion to dismiss the initial complaint (DE 10), and which constitute public records that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” *See* Fed. R. Evid. 201(b)(2); ECF No. 10-1 and 10-2. A court may take judicial notice “at any stage of the proceeding” and must take judicial notice “if a party requests it and the court is supplied with the necessary information.” Fed.

to the '270 case, the instant federal action is based on the purported action(s) of Defendant Auguste in purportedly denying access to the Property (centered around the ownership dispute of the Church). Said another way, Defendant Auguste vehemently disputes any assertion or suggestion in this complaint or any other complaint that Plaintiff Saint-Remy or any other putative member of the Church as the right to bring this action or is otherwise authorized to act on behalf of the Church.

Plaintiffs' original complaint alleged claims pursuant to 42 U.S.C. § 1985(3), as well as state law claims for interference with business relationships and trespass. In response to Defendant Auguste's motion to dismiss the initial complaint (DE 10), Plaintiffs amended their complaint to assert only claims under 18 U.S.C. § 248(a)(2) against Defendant Auguste, on behalf of various purported church members who were dispersed from the Property on September 29, 2019. Defendant Auguste hereinafter filed a Motion to Dismiss the First Amended Complaint ("Motion to Dismiss") on the following three grounds: (1) The First Amended Complaint fails to satisfy the pleading standard under Rule 12(b)(6); (2) Plaintiffs' claims involve non-justiciable questions of church governance; and (3) Plaintiffs have taken part in improper claim splitting between state and federal courts. ECF No. 26, at 3. Plaintiffs' Response in Opposition (DE 30) to the Motion to Dismiss argues that (1) the First Amended Complaint states a claim upon which relief can be granted; (2) Defendant Auguste's claim of authority cannot be addressed on a motion to dismiss; and (3) the First Amended Complaint does not require this Court to unconstitutionally intervene in the doctrinal affairs of the Plaintiff Church. Plaintiffs' Response (DE 30) does not address whether Plaintiffs have taken part in improper claim splitting between state and federal courts.

R. Evid. 201(c)–(d). When deciding a motion to dismiss for failure to state a claim, a court may consider judicially noticed matters without converting the motion to one for summary judgment. *See Lozman v. City of Riviera Beach, Fla.*, 713 F.3d 1066, 1075 n.9 (11th Cir. 2013); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (“[C]ourts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.”); *see also Madura v. BAC Home Loans Servicing L.P.*, 2013 LEXIS 103639, at *13 (M.D. Fla. July 17, 2013) (“the Court accordingly takes judicial notice of the state and federal court documents pursuant to Fed. R. Evid. 201”). Because Plaintiffs incorporated the '270 case in their complaint by reference, this Court must consider it in ruling on this Rule 12(b)(6) motion to dismiss. ECF No. 1, at 4, ¶ 11.

ARGUMENT

I. PLAINTIFFS' FEDERAL CLAIM UNDER 18 U.S.C. § 248(A)(2) SHOULD BE DISMISSED BECAUSE PLAINTIFFS HAVE PUT FORTH NO SET OF FACTS WHICH WOULD ENTITLE THEM TO RELIEF.

Other than a perfunctory recitation of the elements of a section 248(a)(2) claim, Plaintiffs' Response (DE 30) cites no other legal authority in support of the position that the federal claim withstands a Rule 12(b)(6) dismissal. Rather, Plaintiffs' Response (DE 30) asserts, in conclusory fashion, that Defendant Auguste's actions on September 29, 2019 "fit the criteria of [section 248(a)(2)] like the proverbial glove." ECF No. 30, at 11. In the interest of clarity, the only element that Defendant Auguste asserts has not been, and cannot be, satisfied is the "lawful exercise" element. In other words, this Court's determination that Plaintiffs were *lawfully* exercising their religious freedom rights on the Property is contingent on the determination that Plaintiff Church's governance rights or other putative plaintiffs' rights were/are superior to Defendant Auguste's rights, who purportedly dispersed them from the Property. Because that determination would necessarily require this Court to intrude upon, interfere with, and decide non-justiciable matters of church governance, Plaintiffs cannot put forth any set of facts that would entitle them to relief under the statute and, at the very least, have not alleged the existence of such facts. Accordingly, Plaintiffs have failed to meet their burden of pleading with respect to the federal statutory claim and the First Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

II. DEFENDANT AUGUSTE'S CLAIM OF AUTHORITY CAN BE ADDRESSED IN HER MOTION TO DISMISS.

Plaintiffs' Response (DE 30) further asserts that Defendant Auguste's claim of authority constitutes an affirmative defense rather than a ground for dismissal to be heard on a motion to dismiss. ECF No. 30, at 11. The claim of authority, however, is part and parcel with the 12(b)(6) and non-justiciability grounds for dismissal arguments. Specifically, the First Amended Complaint suggests both Defendant Auguste and Plaintiff Church (namely those putative plaintiffs who think they should control Plaintiff Church) are disputing church leadership rights. *Id.* at 21, ¶¶ 7-8. Said another way, Defendant Auguste believes she has superior rights and was, therefore, acting within her authority when she dispersed the individual plaintiffs from the Property, nullifying any section 248(a)(2) claim since a church has the right to exclude others from its property. *See Towns v. Cornerstone Baptist Church*, 2016 U.S. Dist. LEXIS 77575, at *10

(S.D.N.Y. June 13, 2016). Plaintiff Church believes it has superior church governance rights and, therefore, was the only one that could have lawfully excluded the individual plaintiffs from the Property. For this Court to determine who is correct, it would be required to resolve a non-justiciable religious controversy, which it cannot do. *See id.* As such, this matter is properly before the Court on a 12(b)(6) motion to dismiss as it is not a controversy that can properly be heard and decided by this Court.

III. PLAINTIFFS' FIRST AMENDED COMPLAINT (DE 21) REQUIRES THIS COURT TO UNCONSTITUTIONALLY INTERVENE IN NON-JUSTICIABLE MATTERS OF CHURCH GOVERNANCE.

Plaintiffs' Response (DE 30) fails to adequately address the non-justiciability ground for dismissal of the First Amended Complaint (DE 21). Plaintiffs merely assert that “[n]othing could be further from the truth” with respect to this Court’s inevitable involvement in the doctrinal affairs of the church and cite to a New York case which upholds the constitutionality of 18 U.S.C. §§ 248(a)(2) and 248(c)(1). ECF No. 30, at 12. To be clear, no part of the Motion to Dismiss attacks the constitutionality of the aforementioned statute. *See* ECF No. 26. Rather, the Motion to Dismiss posits that the circumstances of this case are not of the kind the statute is designed to remedy. Plaintiffs “seek only to vindicate their rights under [section 248(a)(2)]” but Plaintiffs *have* no such rights because they failed to sufficiently plead that they were lawfully exercising their freedom of religion rights, as required to make out a section 248(a)(2) claim and withstand a 12(b)(6) dismissal. ECF No. 30, at 12. As such, the First Amended Complaint should be dismissed.


CONCLUSION

In taking all of the allegations in the First Amended Complaint (DE 21) as true and in the light most favorable to the Plaintiffs, it is apparent that the First Amended Complaint (DE 21) is devoid of sufficient facts which, even if taken as true, would entitle Plaintiffs to relief under 18 U.S.C. § 248. Further, Plaintiffs’ practice of improper claim splitting, which Plaintiffs failed to address in their Response altogether, and the non-justiciability of this church governance dispute mandate that the instant action be dismissed. For all of the foregoing reasons, Defendant Auguste respectfully requests this Court **GRANT** her Motion to Dismiss pursuant to Federal Rule of Civil

Procedure 12(b)(6), award her attorneys' fees as a prevailing party with respect to the section 248(a)(2) claim², and any other relief this Court deems just and proper.

Dated: December 20, 2019

Respectfully submitted,

By: 
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CERTIFICATE OF SERVICE

It is hereby certified that on December 20, 2019, a copy of the foregoing was electronically filed with the Court's CM/ECF system, which will send notification of such filing to counsel of record for Plaintiffs and counsel of Co-Defendant, The Seminole Tribe of Florida.

Respectfully submitted,

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2. In discussing FACE, the U.S. General Accounting Office has stated: "Courts have the discretion to award appropriate relief, including injunctions, damages, attorneys' fees, and costs of suit." U.S. GEN. ACCOUNTING OFFICE, GAO/GGD-99-2, ABORTION CLINICS: INFORMATION ON THE EFFECTIVENESS OF THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT (1998).