IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ALFRED E. SCHMIDT,

Plaintiff,

v.

LINCOLN COUNTY, State of Wisconsin,
PETER KACHEL, P.E. Highway Commissioner,
and LINCOLN COUNTY HIGHWAY COMMITTEE,

Defendants.

OPINION AND ORDER

02-C-0286-C

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In this civil action plaintiff Alfred E. Schmidt alleges that defendants Lincoln County, Peter Kachel and the Lincoln County Highway Committee violated his First Amendment right to free speech by refusing to sell him road salt for his snow plowing business in retaliation for comments he made at a county meeting. Presently before the court is defendants' motion to dismiss plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6). Defendants contend that plaintiff has failed to state a First Amendment claim against them or, alternatively, that they are entitled to qualified immunity. Construing plaintiff's pro se complaint liberally, as I must, I conclude that plaintiff has stated a First Amendment claim and that at this early stage of the litigation it is unclear whether defendants are entitled to

qualified immunity. Accordingly, defendants' motion to dismiss will be denied. For the sole purpose of deciding defendants' motion to dismiss, the allegations of fact in plaintiff's complaint are accepted as true.

ALLEGATIONS OF FACT

Plaintiff is a resident of Merrill in Lincoln County, Wisconsin and runs a snow plowing business. Plaintiff routinely purchases road salt or sand/salt for his business from the Lincoln County Highway Department. Defendant Kachel is the county highway commissioner. Defendant Lincoln County Highway Committee is a committee "which served from April 1998 through April 2000."

Plaintiff made oral comments at a county board meeting in September 1998. On November 6, 1998, defendant Kachel wrote a letter to plaintiff, explaining that as a result of plaintiff's "threats and allegations" the Lincoln County Highway Department would no longer sell "material" to plaintiff. In the letter, defendant Kachel requested that plaintiff attend a meeting of defendant Highway Committee to further explain his "allegations and threats."

Plaintiff attended a meeting of defendant Highway Committee in December 1998. In a letter dated February 15, 1999, defendant Kachel informed plaintiff that defendant Highway Committee had instructed him (Kachel) to tell plaintiff to "either provide proof

or a basis to his accusations or rescind his statements, offer an apology to the Committee and Highway Department in writing and the apology be read before the County Board." In his letter, defendant Kachel stated that plaintiff must do these things in order for the Highway Committee to consider reviving its business relationship with plaintiff's company.

On February 9, 2000, John Mulder, the administrative coordinator for Lincoln County, wrote a letter thanking plaintiff for meeting with him, defendant Kachel and General Superintendent Leo Leiskau on February 7, 2000. Mulder wrote, "[i]n an attempt to put any past misunderstandings and hard feelings behind us, the County is willing to provide you with any road salt that you may need for the remainder of this winter season."

Defendants' refusal to sell road salt to plaintiff or his business was a direct result of the comments he made at the Lincoln County board meeting in September 1998. Because of defendants' limitations on plaintiff's access to road salt, plaintiff suffered a loss of income and potential income totaling $168,690.53.

OPINION

To survive a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), a complaint must be intelligible and give the defendant notice of the claim for relief. See Bennett v. Schmidt, 153 F.3d 516, 518 (7th Cir. 1998); see also McCormick v. City of Chicago, 230 F.3d 319, 326 (7th Cir. 2000). Plaintiff's pro se complaint satisfies these minimal requirements. To

be sure, the complaint is unorthodox. It is little more than a caption attached to a series of letters. Nevertheless, plaintiff's complaint alleges clearly that defendants retaliated against him for his exercise of his First Amendment right to free speech by refusing to sell him road salt because of comments he made at a county board meeting. The last page of the complaint, a letter sent by plaintiff to the clerk of court, states that "[in] other words, [defendants] punished me for what I said at the Board meeting and would not allow me to purchase products. . . . I was discriminated against and my constitutional right of Freedom of Speech was violated because of their actions." These words alone are enough to form a sufficient complaint. See Bennett, 153 F.3d at 518 (sentence in complaint reading "I was turned down for a job because of my race" was enough by itself for complaint to state a claim for employment discrimination).

Defendants contend that plaintiff's complaint is insufficiently detailed. A complaint does not fail to state a claim merely because it does not set forth a complete and convincing picture of the alleged wrongdoing. Id.; McCormick, 230 F.3d at 325. This is especially true when the plaintiff appears pro se and has drafted his own complaint. McCormick, 230 F.3d at 325. Specifically, defendants argue that plaintiff's complaint does not reveal the content of the comments he made at the county board meeting in September 1998. Plaintiff need not describe the content of his remarks in his complaint. Defendants can seek that information during the course of discovery. Defendants are on notice that plaintiff is suing

them for allegedly treating him unfairly because of his comments at the board meeting. A pro se civil rights complaint may be dismissed only if it is beyond doubt that there is no set of facts under which the plaintiff could obtain relief. Id. That is not the case here.

Defendants argue further that plaintiff fails to cite any law that confers jurisdiction on this court. A complaint need not identify any legal theories. Bennett, 153 F.3d at 518. This is the difference between notice pleading and code pleading. Id. Granted, it takes some investigative work to extract the essentials of plaintiff's claim from the last page of his nine-page complaint, in a letter addressed to the clerk of court. Yet it is easy enough to deduce from these materials that plaintiff is claiming that defendants interfered with his First Amendment right to free speech and that he is seeking monetary damages for the injury he suffered because of defendants' actions. Although plaintiff never cites 42 U.S.C. § 1983 or 28 U.S.C. § 1331 in his complaint, those statutes are the traditional basis for suits in federal court against state or local government actors for alleged violations of constitutional rights. Plaintiff alleges that defendants violated his First Amendment right to free speech. Thus, it is clear that this is a civil rights suit brought pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1331 alleging a violation of plaintiff's rights under federal law. Accordingly, plaintiff gave defendants adequate notice of his claim and properly invoked this court's federal question jurisdiction.

Last, defendants argue that plaintiff has not adequately described his "discrimination

claim." It is unclear what type of discrimination claim defendants are alluding to, but the court reads plaintiff's complaint to state only a single claim of retaliation for the exercise of his First Amendment right to free speech.

Defendants assert that plaintiff's claim should be dismissed because they are entitled to qualified immunity. "The threshold inquiry a court must undertake in a qualified immunity analysis is whether plaintiff's allegations, if true, establish a constitutional violation." Hope v. Pelzer, 122 S. Ct. 2508, 2513 (2002) (citing Saucier v. Katz, 533 U.S. 194, 201 (2001)). Plaintiff contends that defendants refused to sell him materials for his business solely because he made statements with which defendants did not agree. If these allegations are true, they establish that defendants interfered with plaintiff's constitutional right to free speech by retaliating against him.

To assess defendants' entitlement to qualified immunity, "the next, sequential step is to ask whether the [constitutional] right was clearly established," an inquiry that "must be undertaken in light of the specific context of the case, not as a broad general proposition." Saucier, 533 U.S. at 201. "To show this, a plaintiff may . . . demonstrate that the violation is so obvious that a reasonable state actor would know that what he is doing violates the Constitution." Morrell v. Mock, 270 F.3d 1090, 1100 (7th Cir. 2001). This is because qualified immunity shields "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986). It is too early for the court to make

this kind of determination because there has been no factual development regarding "the specific context of [this] case." Saucier, 533 U.S. at 201. Accordingly, at this point, the court must reject defendants' qualified immunity defense. However, defendants are free to revisit this argument in light of further facts developed as the case proceeds.

ORDER

IT IS ORDERED that the motion of defendants Lincoln County, Peter Kachel and the Lincoln County Highway Committee to dismiss the complaint for plaintiff Alfred E. Schmidt's failure to state a claim upon which relief can be granted is DENIED.

Entered this 28th day of August, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge