

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JANELLE L. BARLASS,

Plaintiff,

OPINION and ORDER

10-cv-454-slc¹

v.

CITY OF JANESVILLE,
Janesville Chief of Police STEVEN KOPP,
JANESVILLE GAZETTE NEWSPAPER,
DENISE CARPENTER, FARROKH SHAHLAPOUR,
AMIR SHARIFI and LAURA BAKER,

Defendants.

This is a proposed civil action for monetary and injunctive relief in which plaintiff Janelle L. Barlass contends that several defendants in Janesville, Wisconsin violated her rights under the constitution and state law. On September 7, 2010, I dismissed plaintiff's complaint against defendants Janesville Police Department, Chief of Police Steve Kopp, the Janesville Gazette and Denise Carpenter because it violated Fed. R. Civ. P. 8. Plaintiff filed a proposed amended complaint on September 15, 2010, dkt. #4. On September 21, 2010, plaintiff filed a second amended complaint, dkt. #6, asking that the second amended complaint be treated as the operative pleading. In the second amended complaint, plaintiff raises constitutional and state

¹ For the purpose of issuing this order, I am assuming jurisdiction over this case.

law claims against defendants City of Janesville, Steve Kopp, the Janesville Gazette, Denise Carpenter, Farrokh Shahlapour, Amir Sharifi and Laura Baker. Also, plaintiff filed a motion for preliminary injunctive relief, dkt. #7.

Because plaintiff is proceeding under the in forma pauperis statute without prepayment of costs, I must screen her second amended complaint and dismiss any claims that are legally frivolous, malicious, fail to state a claim upon which relief may be granted or ask for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2)(B).

After reviewing plaintiff's second amended complaint, I conclude that plaintiff may proceed on her claims that Steve Kopp and the City of Janesville retaliated against her and violated her right to equal protection and that defendant Denise Carpenter defamed her. Plaintiff may not proceed with her claim that the City of Janesville defamed her because the city is immune from intentional tort suits. Thus, I will dismiss that claim. Also, I will dismiss plaintiff's retaliation claim against Carpenter and her claims against defendants Shahlapour, Sharifi and Baker for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted. I will stay a decision whether plaintiff may proceed with her defamation claims against defendant Kopp and the Janesville Gazette because plaintiff has not stated whether she complied with Wisconsin's notice of claim statutes. I will give plaintiff an opportunity to supplement her complaint, explaining whether she complied with Wis. Stat. § 893.80(1) and Wis. Stat. § 895.05(2). Finally, I will deny plaintiff's request for preliminary injunctive relief because she did not comply with this court's procedures and she has not shown

that such relief is necessary.

In plaintiff's second amended complaint, she alleges the following facts.

ALLEGATIONS OF FACT

A. The Parties

Plaintiff Janelle Barlass is a resident of the City of Janesville, a Wisconsin municipality. She owned a bar known as Corvinas that was patronized primarily by African Americans. Defendant Amir Sharifi was plaintiff's business partner and defendant Farrokh Shahlapour was plaintiff's landlord for the property where Corvinas was located. Defendant Denise Carpenter is a bar owner in Janesville. Defendant Steve Kopp is the chief of police for the Janesville Police Department. Defendant Janesville Gazette is a newspaper.

B. July 7, 2009 City Council Meeting

On July 7, 2009, plaintiff and defendant Sharifi attended a city council meeting at the request of defendant City of Janesville and the Alcohol Licensing Advisory Committee. Defendant Steve Kopp had issued false reports to the city concerning police activity at plaintiff's bar. As a result of his reports, the city threatened to revoke plaintiff's liquor license. At the meeting plaintiff told the council that she believed it was discriminating against her and threatening to revoke her liquor license because her bar served African Americans. She also stated that the police had been targeting her bar because of the race of her patrons. Plaintiff complained specifically about two instances in which police officers had made racial comments

while walking through her bar. Defendant Kopp was on the committee panel at the meeting and was visibly upset when plaintiff made the statement regarding discrimination. He responded that he was not targeting color of skin, but activities reported by his officers. He stated that he had “identified [plaintiff’s] establishment as a potential trouble spot and whether [she] like[d] it or not, he [was] going to keep an eye on it.”

Defendant Denise Carpenter, who owns a bar in Janesville called Quotes Bar and Grill, also attended the July 7, 2009 city council meeting. During the meeting, Carpenter stated that plaintiff was “ruining her business” and that because of plaintiff, “[d]owntown is no longer viewed as a safe place.” Carpenter’s comments were published in the Janesville Gazette. The committee decided not to revoke plaintiff’s liquor license at that time, but requested that plaintiff attend the next meeting. The committee did not ask defendant Sharifi to attend future meetings, however, because he was just a silent business partner and did not participate in the day-to-day operations of Corvinas bar.

C. Defendant Kopp’s and the Janesville Police Department’s Interactions with Plaintiff

After the meeting, defendant Kopp directed Janesville police officers to increase their scrutiny of plaintiff’s bar. Officers parked outside Corvinas regularly and came in to check patrons’ licenses three to four times a night. Officers came into plaintiff’s bar to ask questions about her business license and bartenders’ licenses and to warn her that her music was too loud. They never issued her any citations for these alleged violations. The Janesville police did not park outside any of the other five bars in downtown Janesville, which have predominantly white

patrons, and they did not enter the other bars regularly to question customers.

Defendant Kopp issued statements to defendant Janesville Gazette to the effect that plaintiff's bar was unsafe and had problems. He told the Gazette that Corvinas was "trouble," and reported violent behavior and underage drinking at the bar, even though there were no fights or problems at the bar. Kopp's reports to the Gazette made plaintiff's patrons feel unsafe and uncomfortable at Corvinas.

Plaintiff submitted several complaints to the city council about her treatment by the police and at the next city council meeting, she asked whether the council had considered her complaints. In response, the council asked plaintiff how she was going to "clean up" her bar. Plaintiff believed that there was nothing to "clean up" because Corvinas was a new bar that had no serious problems. The city council asked plaintiff attend alcohol licensing committee meetings for the next four months in order to keep her liquor license.

D. Defendant Janesville Gazette's Reports

Throughout the summer of 2009, the Janesville Gazette published reports regarding plaintiff's bar in its newspaper and on its internet site. For example, on July 6, 2009, the Gazette reported a stabbing at Corvinas. However, the stabbing did not occur at Corvinas and there was no evidence that the parties involved in the stabbing were ever in Corvinas. On July 8, 2009, a story titled "Janesville Police Say Corvinas is Trouble" was published in the Gazette. On August 2, 2009, the Gazette published a story titled "Cops and Corvinas: Caution and Conflict," and on August 3, 2009, it published a story titled "Trouble Plagues Bars That Cater

to Growing Minority Population.” On July 30, 2010, defendant Janesville Gazette printed a story about the closing of a bar that had opened after Corvinas was closed. The article mentioned Corvinas, and stated that “Corvinas bar attracted unfavorable attention” and “Corvinas closed after its owners were evicted.” Plaintiff was not evicted.

E. Plaintiff’s Relationship with Defendant Amir Sharifi

Sometime in 2009, defendant Amir Sharifi, plaintiff’s business partner, expressed his wish to be released from his partnership and his involvement in Corvinas. On July 28, 2009, Sharifi went to the City of Janesville municipal building and requested that Corvinas’ liquor license be revoked. At this time, the bar was open and operational. Sharifi was told that he needed plaintiff’s signature to relinquish the license. On August 20, 2009, Sharifi took documents to the City of Janesville which he represented as “relinquishment” and “resignation” forms. The City of Janesville accepted the documents and revoked Corvinas’ liquor license. On August 26, 2009, plaintiff’s attorney Richard Rice contacted the city attorney Wald Klinczk, to ask about the liquor license and to inform Klinczk that plaintiff had not consented to a relinquishment of the license. Klinczk told Rice that the license had been revoked.

F. Defendant Farrokh Shahlapour’s Termination of Plaintiff’s Lease

Beginning in 2009, plaintiff and defendant Shahlapour had several disagreements regarding the lease governing the property where Corvinas was located. The lease required plaintiff and Shahlapour to arbitrate disputes and plaintiff, as well as her lawyer, requested

arbitration on several occasions. Shahlapour refused to arbitrate and their disputes about the property and rent continued. Shahlapour decided that he wanted plaintiff to vacate the property. On August 12, 2009, he told the Janesville Gazette that plaintiff was behind on rent, even though her rent payments were current. He possessed a \$5000 post-dated check that plaintiff had written to him as a security deposit, with a mutual agreement that Shahlapour would not attempt to cash the check. Shahlapour took the check to the bank and attempted to cash it. The check was worthless and the bank returned it to Shahlapour. He then filed a complaint with the district attorney's office and the Janesville Police Department. On August 20, 2009, plaintiff was arrested and charged with issuing a worthless check, a felony. The arrest was reported in the Janesville Gazette.

After plaintiff was arrested, defendant Shahlapour's attorney contacted plaintiff's attorney and offered to drop the charges if plaintiff agreed to turn over the keys to the leased property. On September 4, 2009, plaintiff gave the keys to Shahlapour and the charges against her were dropped. On September 17, Shahlapour told plaintiff that he was keeping her \$5000 security deposit to cover excessive damages to the property. He also informed plaintiff that items were missing from the property, including a flat screen television and a stereo system. Plaintiff had purchased these items jointly with Shahlapour. Shahlapour reported the missing items to the police and plaintiff was arrested and charged with theft. In March 2010, plaintiff entered a plea of no contest to the theft charge.

G. Defendant Laura Baker

On August 20, 2009, defendant Laura Baker commented on a story on the Janesville GazetteXtra Newspaper internet blog, stating that plaintiff had a “past history of owing people money and getting evicted.”

DISCUSSION

A. Defendants City of Janesville and Steve Kopp

Plaintiff asserts three claims against defendants City of Janesville and Steve Kopp: (1) retaliation in violation of plaintiff’s First Amendment rights; (2) discrimination in violation of her right to equal protection under the law; and (3) defamation under state law.

I. Retaliation

To state a retaliation claim under § 1983, plaintiff must plead sufficient facts to support an inference that (1) she was engaged in constitutionally protected speech; (2) public officials took adverse actions against her that would likely deter First Amendment activity in the future; and (3) the adverse actions were motivated at least in part as a response to plaintiff’s protected speech. Bridges v. Gilbert, 557 F.3d 541, 546 (7th Cir. 2009); Mosely v. Board of Education of Chicago, 434 F.3d 527, 533 (7th Cir. 2006).

With respect to the first element, plaintiff states that she complained at a city council meeting that the City and police department were discriminating against her because of the race of her patrons. Such complaints are constitutionally protected speech.

As for the adverse actions taken by defendants, plaintiff alleges that after the city council meeting, defendant Kopp directed Janesville police officers to increase their scrutiny of plaintiff's bar. Although there were no serious problems at her bar, police officers parked outside Corvinas regularly, questioned bar patrons and generally harassed plaintiff, her employees and customers. Defendant Kopp issued statements to defendant Janesville Gazette, stating that plaintiff's bar was unsafe and had problems, even though the bar did not have safety problems. Finally, the city threatened to revoke plaintiff's liquor license for four months and required that she attend city council meetings. It can be inferred that a reasonable person who owned a bar would be deterred from speaking out against the city and police department if the police harassed the person and her customers, reported false information about crimes to the public and threatened to revoke her liquor license. Thus, plaintiff's complaint satisfies the second element of a retaliation claim.

Also, plaintiff has sufficiently pleaded the third element of her retaliation claim. She alleges that defendant Kopp and the police department increased their harassment of plaintiff and Corvinas after she accused them of racism and discrimination. At this stage, I can infer that the city, defendant Kopp and the police department were upset by the accusation and were motivated to retaliate against plaintiff at least in part as a response to her protected speech.

To determine whether plaintiff has pleaded a retaliation claim against the defendant City of Janesville requires one final inquiry. A municipality may not be held liable under § 1983 simply because it employs individuals who may have violated the law; rather, a city is liable only if it had a policy or custom that caused the constitutional violation. Monell v. Department of

Social Services of the City of New York, 436 U.S. 658, 694 (1978). The city’s responsibility can be shown if, for example, it has an express policy that caused the constitutional violation, it has a widespread practice constituting a “custom or usage” that caused the violation or a person with final policymaking authority issued a decision or took an action that caused the violation. Pembaur v. City of Cincinnati, 475 U.S. 469, 480-83 (1986); Walker v. Sheahan, 526 F.3d 973, 977 (7th Cir. 2008) (citations omitted). Plaintiff alleges that the city, through the alcohol licensing committee, threatened repeatedly to revoke her liquor license and close her bar. Moreover, several of the retaliatory actions are alleged to have emanated from defendant Kopp, the chief of police. At this stage, I can infer that the alcohol licensing committee had final authority regarding liquor licensing and made decisions to retaliate against plaintiff and that Kopp had final policymaking authority relating to the behavior of the officers and directed the officers to mistreat plaintiff. Therefore, plaintiff has pleaded a claim for retaliation against the City of Janesville.

2. Discrimination

Plaintiff contends that defendants Kopp and the City of Janesville violated her right to equal protection under the Fourteenth Amendment. The equal protection clause “commands that no state shall deny to any person within its jurisdiction the equal protection of the laws . . . which essentially is a direction that all persons similarly situated should be treated alike.” Vision Church v. Village of Long Grove, 468 F.3d 975, 1000 (7th Cir. 2006) (internal citations and quotations omitted).

In a previous order, dkt. #3, I discussed whether plaintiff, who is white, may bring a discrimination claim based on her allegation that defendants Kopp and the City of Janesville discriminated against her because of the race of her clientele. I explained that although a white plaintiff generally does not have standing under § 1983 solely for the purpose of vindicating the rights of minorities who have suffered from racial discrimination, Maynard v. City of San Jose, 37 F.3d 1396, 1402 (9th Cir. 1994), some courts have recognized that a plaintiff may state a discrimination claim under the equal protection clause of the Fourteenth Amendment or Title VII of the Civil Rights Act that is based on aiding and associating with people of a protected class. E.g., Maynard, 37 F.3d at 1403; Holcomb v. Iona College, 521 F.3d 130, 138-39 (2d Cir. 2008); Tetro v. Elliott Popham Pontiac, Oldsmobile, Buick, and GMC Trucks, Inc., 173 F.3d 988, 994-95 (6th Cir. 1999); Parr v. Woodmen of the World Life Ins. Co., 791 F.2d 888, 890 (11th Cir. 1986). The Court of Appeals for the Seventh Circuit has not ruled on the question whether discriminating against a person for association with a person of a protected class constitutes race discrimination in violation of Title VII or the Fourteenth Amendment. Cf., Ineichen v. Ameritech, 410 F.3d 956, 961 (7th Cir. 2005) (“This court has not yet definitely ruled on whether discriminating against a person because they are involved in an interracial relationship constitutes race discrimination in violation of Title VII”). At this stage, I will assume that plaintiff may bring an equal protection claim that is based on her association with members of a protected class, so long as she alleges that government defendants treated her differently from similarly situated individuals because of her association with members of a protected class.

Plaintiff alleges that defendants Kopp and the City of Janesville treated her unfairly by overpolicing her bar, harassing her employees and customers, reporting false stories to the newspaper and threatening to revoke her liquor license. According to plaintiff, other bars in the city with similar or worse patron and safety problems were not subjected to the same negative treatment by the city and police department. Further, plaintiff alleges that defendants Kopp and the city targeted plaintiff specifically because her bar was patronized primarily by African Americans. Plaintiff alleges that the police department's treatment of her is the result of a de facto governmental custom and alleges that the police has a history of targeting "black bars" and that the police does not subject "white bars" and bar owners to similar adverse treatment.

The connection between defendants' adverse actions toward plaintiff and the race of plaintiff's clientele is tenuous. In addition, plaintiff's allegations concerning a policy or custom of the city causing the constitutional violation are somewhat conclusory and not supported by specific allegations. On the other hand, plaintiff alleges that police officers made racial comments to some of her patrons and that the city and police do not patrol or threaten bars catering to white clientele. Moreover, many of the acts are alleged to have emanated from defendant Kopp, who as the chief of police may have had final policymaking authority relating to the behavior of officers and who allegedly directed the officers to mistreat plaintiff. At this stage, plaintiff's allegations are sufficient to proceed on an equal protection claim against defendants Kopp and the City of Janesville. However, plaintiff should be aware that as the case progresses, she will be required to submit evidence showing that defendants treated her differently from similarly situated bar owners and that the disparate treatment was motivated

by plaintiff's association with people of a protected class. In addition, she will be required to submit evidence showing that the city had a custom that caused the constitutional violation or that defendant Kopp possesses authority to establish final government policy with respect to the actions of the police officers and the bars they patrol. Valentino v. Village of South Chicago Heights, 575 F.3d 664, 675 (7th Cir. 2009). It will not be sufficient for plaintiff to show that Kopp is the *decision maker* or has *discretion* regarding police conduct; rather, plaintiff will have to show that he is the *policy-maker* on such decisions. Id.

3. Defamation

Plaintiff's third claim against defendants Kopp and the City of Janesville is that they defamed her by reporting false stories about violence and other problems at her bar to the newspaper. Defamation is a tort that arises under state law. Paul v. Davis, 424 U.S. 693, 712 (1976) (United States Constitution provides no protection against damage to reputation). Because the tort occurred in Wisconsin, Wisconsin law applies to this claim. Schindler v. Seiler, 474 F.3d 1008, 1010 (7th Cir. 2007). Federal courts may exercise supplemental jurisdiction over a state law claim that is "so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). Plaintiff's defamation claims against defendants Kopp and the City of Janesville are part of the same case or controversy as her federal claims for discrimination and retaliation because plaintiff alleges that Kopp defamed plaintiff in retaliation for complaining about his discriminatory treatment of her.

However, plaintiff may not sue the City of Janesville for defamation because she is asserting an intentional tort against the city. Under Wis. Stat. § 893.80(4), “[n]o suit may be brought against any . . . political corporation, governmental subdivision or any agency thereof for the intentional torts of its officers, officials, agents or employees. . . .” This statute immunizes a governmental entity from suit when the act complained of is an intentional tort. Plaintiff alleges that defendant Kopp and other police officers intentionally reported false information about her bar to the public. Because plaintiff has alleged intentional tort conduct as the basis for her defamation claim, the City of Janesville is immune from suit. Envirologix Corp. v. City of Waukesha, 192 Wis. 2d 277, 289, 531 N.W.2d 357, 363 (Ct. App. 1995) (holding that City of Waukesha is immune from plaintiff’s defamation claim). This claim will be dismissed for failure to state a claim upon which relief may be granted.

Turning to plaintiff’s defamation claim against defendant Kopp, I cannot determine whether plaintiff may proceed at this time. When an individual intends to sue a “governmental subdivision or agency” or an “officer, official, agent or employee” of the subdivision, “for acts done in their official capacity or in the course of their agency or employment,” Wisconsin law imposes notice requirements on the individual. Wis. Stat. § 893.80(1). First, the claimant must give the defendant notice of claim within 120 days of the injury. Wis. Stat. § 893.80(1)(a). Second, the claimant must present defendants an itemized statement of the relief sought and allow them an opportunity to disallow the claim. Wis. Stat. § 893.80(1)(b). The individual cannot bring suit until he or she complies with these requirements. Orthmann v. Apple River Campground, Inc., 757 F.2d 909, 911 (7th Cir. 1985). Plaintiff has not said whether she has

complied with the requirements of Wis. Stat. § 893.80(1). Because this is a threshold requirement for filing a state law claim against defendant Kopp, I will stay a decision on whether to grant plaintiff leave to proceed on her defamation claim against Kopp and give her an opportunity to supplement her complaint with information about the notice of claim and statement of relief and whether the claim has been disallowed. If plaintiff fails to supplement her complaint, I will deny her leave to proceed on her defamation claim and that claim will be dismissed.

B. Defendant Janesville Gazette Newspaper

Plaintiff contends that defendant Janesville Gazette defamed her by printing false information about her and Corvinas bar. As explained above, defamation is a tort that arises under state law. This court may exercise jurisdiction over state law claims only if they are “so related to claims in the action within [the court’s] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). Thus, in order to exercise supplemental jurisdiction over plaintiff’s defamation claim against Janesville Gazette, plaintiff’s allegations must suggest that her defamation claim is so related to the retaliation or discrimination claims against defendants Kopp and the City of Janesville as to form part of the same case or controversy. Id. To be “so related” as to “form part of the same case,” means that the defamation law claim and the federal action are “derived from a common nucleus of operative fact” such that a plaintiff “would ordinarily be expected to try them all in one judicial proceeding.” Zabkowicz v. West Bend Co., Div. of Dart Industries,

Inc., 789 F.2d 540, 546 (7th Cir. 1986) (citing United Mine Workers of America v. Gibbs, 383 U.S. 715, 725 (1966)).

Plaintiff alleges that the Gazette published several articles that portrayed her in a false light, in reliance on reports by defendant Kopp and defendant Shahlapour. To the extent that the allegedly defamatory statements in the Gazette are sufficiently related to the facts giving rise to plaintiff's discrimination and retaliation claims against defendants Kopp and the City of Janesville, this court could exercise supplemental jurisdiction over plaintiff's claim. However, even if I chose to exercise such supplemental jurisdiction, I cannot determine whether plaintiff may proceed on her defamation claim at this time because she has not stated whether she complied with Wisconsin's notice of claim requirement.

Before a plaintiff may commence a civil action for libel against a newspaper, magazine or periodical, the libeled person must first give those responsible for the publication a reasonable opportunity to correct the libel by giving written notice. Wis. Stat. § 895.05(2). The notice must be in writing and specify both the article and the statements containing the false and defamatory matter, along with a statement of the actual facts. Id. The notice may refer to sources, if any, from which the facts may be ascertained. Id. This notice of claim requirement is "a condition precedent to the existence of a cause of action for libel . . . , and a circuit court is not competent to hear the claim until the condition is met." Schultz v. Sykes, 2001 WI App 255, ¶ 57, 248 Wis. 2d 746, 789, 638 N.W.2d 604, 624.

Plaintiff does not state whether she has complied with the requirements of Wis. Stat. § 895.05(2). Because this is a threshold requirement for filing a defamation claim against the

Gazette, I will stay a decision whether to grant plaintiff leave to proceed on her defamation claim. Plaintiff may have an opportunity to supplement her complaint with information regarding whether she filed a notice of claim with the Gazette and gave the Gazette a reasonable opportunity to respond. If plaintiff fails to supplement her complaint, I will deny her leave to proceed on her defamation claim and that claim will be dismissed.

C. Defendant Denise Carpenter

Plaintiff raises two claims against defendant Denise Carpenter. First, she contends that Carpenter retaliated against her in violation of the United States Constitution. Carpenter is not a governmental actor to whom constitutional prohibitions apply in this context. Therefore, plaintiff may not assert a First Amendment retaliation claim against Carpenter. San Francisco Arts & Athletics, Inc. v. United States Olympic Committee, 483 U.S. 522, 542 (1987) (plaintiff may bring constitutional claims against government actors only).

Plaintiff's second claim is that defendant Carpenter defamed her by making negative statements about her to the public in violation of state law. As with plaintiff's defamation claim against defendant Janesville Gazette, this court may exercise jurisdiction over the claim only if it is so related to the retaliation or discrimination claims against defendants Kopp and the City of Janesville as to form part of the same case or controversy. 28 U.S.C. § 1367(a).

Although it is a close question, I conclude that plaintiff's defamation claim against defendant Carpenter is part of the same case or controversy as her federal claims. Plaintiff alleges that Carpenter defamed her by stating at a city council meeting that plaintiff and her

customers were damaging Carpenter's business and causing safety problems downtown. This was the same city council meeting in which the City of Janesville and defendant Kopp questioned plaintiff regarding problems at her bar and plaintiff responded by accusing the city and police of discrimination. Plaintiff suggests that Carpenter's comments encouraged the city and police to discriminate against her. Although the suggestion is conclusory, at this stage I can infer that these claims are sufficiently related for the court to exercise supplemental jurisdiction over the defamation claim.

The next question is whether plaintiff has pleaded a claim for defamation under Wisconsin law. To prove such a claim, a plaintiff must adduce evidence showing that an allegedly defamatory statement (1) was spoken to someone other than the person defamed, (2) is false, (3) is unprivileged and (4) tends to harm the defamed person's reputation so as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. Tongerson v. Journal/Sentinel, Inc., 210 Wis. 2d 524, 534, 563 N.W.2d 472, 477 (1997); Hart v. Bennet, 2003 WI App 231, ¶ 21, 267 Wis. 2d 919, 941, 672 N.W.2d 306, 317.

At this stage, I can infer that defendant Carpenter's statements that plaintiff was ruining Carpenter's business and causing downtown to be unsafe would lower plaintiff's reputation in the community. In addition, plaintiff alleges that the statement was false and was spoken at a public meeting. Although Carpenter may prove ultimately that her statement was privileged because it was spoken before a legislative body, Vultaggio v. Yasko, 215 Wis. 2d 326, 347, 572 N.W.2d 450, 459 (1998), it is too early to make that determination. Thus, plaintiff may proceed on her defamation claim against defendant Carpenter.

D. Defendants Farrokh Shahlapour and Amir Sharifi

Plaintiff asserts several claims against defendants Shahlapour and Sharifi, including (1) Shahlapour and Sharifi retaliated against her in violation of the First Amendment; (2) Shahlapour and Sharifi conspired to overthrow her business; and (3) Shahlapour defamed her. I will dismiss plaintiff's retaliation claim for failure to state a claim upon which relief may be granted because Shahlapour and Sharifi are not government actors.

With respect to plaintiff's state law claims for conspiracy and defamation against defendants Shahlapour and Sharifi, I conclude that this court does not have jurisdiction over these claims. Plaintiff asserts that because these claims are worth more than \$75,000, this court has jurisdiction. However, the amount a claim is worth would be relevant only if jurisdiction was based on the diversity of citizenship between a plaintiff and defendants under 28 U.S.C. § 1332, and plaintiff has not alleged that her citizenship is diverse from defendants'. Thus, jurisdiction over these state law claims can exist only under the supplemental jurisdiction statute, 28 U.S.C. § 1367, upon a finding that the claims are "so related" as to "form part of the same case or controversy."

Plaintiff alleges that actions taken by defendants Kopp and the City of Janesville, as well as defendants Shahlapour and Sharifi, damaged her business and reputation. Although the claims appear related, plaintiff's state law claims against Shahlapour and Sharifi do not share "a common nucleus of operative fact" with the federal claims. Zebkowicz, 789 F.2d at 546. The facts supporting plaintiff's federal claims concern actions taken by the city council, police department and chief of police, including harassment of plaintiff's customers, overpolicing of her

bar, repeated requests that plaintiff appear before the alcohol licensing board and the city's and Kopp's motivations for their actions. In contrast, the facts and events that are relevant to plaintiff's claims against defendants Shahlapour and Sharifi include the business contracts and leases between plaintiff and these defendants, the "worthless" check that Shahlapour attempted to cash, plaintiff's subsequent relinquishment of her leased property and Sharif's attempts to end his business relationship with plaintiff and have Corvinas' liquor license revoked. These facts are not part of the "common nucleus of operative fact" that supports the federal claims. In sum, it is not enough that plaintiff's claims against Shahlapour and Sharifi are tangentially related to her federal claims. Hernandez v. Dart, 635 F. Supp. 2d 798, 814 (N.D. Ill. 2009); Zimmerman v. City of Eau Claire, 2006 WL 2546727, *2-3 (W.D. Wis. Aug. 29, 2006). Therefore, plaintiff's claims against defendants Shahlapour and Sharifi will be dismissed for lack of jurisdiction. Plaintiff may file these claims in state court if she wishes to pursue them.

E. Defendant Laura Baker

Plaintiff's final claim is that defendant Laura Baker defamed her by posting on a Janesville Gazette internet blog that plaintiff has a "past history of owing people money and getting evicted." This is not a claim that may be heard in this court. Plaintiff does not allege that diversity of citizenship exists, 28 U.S.C. § 1332, and this claim is not part of the same case or controversy as the federal claim within the meaning of 28 U.S.C. § 1367(a). No allegations in plaintiff's second amended complaint connect the claim against Baker to plaintiff's federal claims. Therefore, this claim will be dismissed for lack of subject matter jurisdiction. Plaintiff

may file this claim in state court if she wishes to pursue it.

F. Preliminary Injunction

Plaintiff has filed a motion for preliminary injunctive relief, dkt. #7, in which she asks the court to protect David Toles from retaliation by the defendants in this case. Plaintiff alleges that Toles has assisted her in filing this case and will be a witness in this case. This motion will be denied. As an initial matter, plaintiff's motion for injunctive relief does not comply with this court's procedures for obtaining preliminary injunctive relief. Under these procedures, which I am providing to plaintiff with a copy of this order, plaintiff must file with the court and serve on defendants proposed findings of fact supporting her claim, and submit with his proposed findings of fact any evidence she has to support her request for relief.

Even if I were to consider the merits of plaintiff's motion at this time, I would deny the motion. Granting preliminary injunctive relief is "is an exercise of a very far-reaching power, never to be indulged in except in a case clearly demanding it." Roland Machinery Co. v. Dresser Industries, 749 F.2d 380, 389 (7th Cir. 1984). Plaintiff has provided no reason to believe that Toles's safety or her own is at risk because of this lawsuit, other than saying she "fears [for] his safety." Plaintiff's unsubstantiated fear is not an adequate reason to grant injunctive relief. Accordingly, plaintiff's motion for injunctive relief will be denied.

ORDER

IT IS ORDERED that

1. Plaintiff Janelle Barlass's motion to file a second amended complaint, dkt. #5, is GRANTED.

2. Plaintiff is GRANTED leave to proceed on the following claims:

(a) Defendants City of Janesville and Steve Kopp retaliated against her in violation of the First Amendment and violated her right to equal protection under the law by discriminating against her because of her association with a protected class;

(b) Defendant Denise Carpenter defamed plaintiff by stating that plaintiff was ruining Carpenter's business and causing downtown Janesville to be unsafe.

3. Plaintiff is DENIED leave to proceed on the following claims for failure to state a claim upon which relief may be granted:

(a) Defendant City of Janesville defamed plaintiff;

(b) Defendant Carpenter retaliated against plaintiff in violation of the First Amendment;

(c) Defendants Farrokh Shahlapour and Amir Sharifi retaliated against plaintiff in violation of the First Amendment.

4. Plaintiff is DENIED leave to proceed on the following claims for lack of subject matter jurisdiction:

(a) Defendants Shahlapour and Sharifi conspired to ruin plaintiff's business;

(b) Defendants Farrokh Shahlapour defamed plaintiff;

(d) Defendant Laura Baker defamed plaintiff.

5. Defendants Farrokh Shahlapour, Amir Sharifi and Laura Baker are DISMISSED from the case.

6. A decision on plaintiff's request for leave to proceed on her defamation claims against defendant Kopp and defendant Janesville Gazette is STAYED. Plaintiff may have until October 15, 2010, in which to supplement her complaint with information about her compliance with notice requirements under Wis. Stat. § 893.80(1) and Wis. Stat. § 895.02(2). If plaintiff does not submit a supplement to her complaint on or before that date, her defamation claims against Kopp and the Janesville Gazette will be dismissed.

7. Plaintiff's motion for a preliminary injunction, dkt. #7, is DENIED.

8. Service of the complaint on defendants is STAYED pending receipt and screening of plaintiff's supplement to the complaint.

Entered this 8th day of October, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge