APPENDIX

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APPENDIX A

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
File Name: 18a0316n.06

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 17-1941

[Filed June 26, 2018]

WEST CONGRESS STREET PARTNERS, LLC,

Plaintiff-Appellant,

v.

RIVERTOWN DEVELOPMENT, LLC; RIVERTOWN HOLDINGS, LLC; RIVERTOWN DEVELOPMENT GROUP, LLC; MARK RIETH; CITY OF DETROIT; IVAN LUCKEY; JUSTIN TAITE; AUSTIN HUNTER; DENNIS SMITH; RANDY MCGHEE; AUSTON CARR; WILLIE ROBINSON; WAYNE COUNTY; JOHN DOE of the Wayne County Sheriff's Department,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

Before: GIBBONS, THAPAR, and LARSEN, Circuit Judges.

LARSEN, Circuit Judge. This is a landlord-tenant dispute concerning a Detroit property that West Congress Street Partners, LLC ("West Congress"), leased from Rivertown Development, LLC ("Rivertown"). Following a bitterly contested eviction action in state court, West Congress sued its former landlord in federal court. West Congress alleged that Rivertown's pursuit of the eviction breached the parties' settlement agreement in the state-court proceedings, constituted racial discrimination, and was the product of a conspiracy between Rivertown and various local officials. The district court dismissed the case for failure to state a claim. We AFFIRM.

I.

West Congress operated a bar on a property it leased from Rivertown. Without the latter's permission, West Congress made alterations to the property and began using it as a cabaret in violation of the lease, Detroit zoning ordinances, and Michigan liquor laws. Rivertown eventually sued for possession in Wayne County Circuit Court, and West Congress brought counterclaims for, inter alia, retaliatory eviction.

After a bench trial, the state court awarded possession to Rivertown, expressly granting it the right to seek a writ of eviction. The court subsequently ordered "that any and all proceedings to enforce the Corrected Judgment of Possession in this matter be

stayed subject to [West Congress] perfecting its appeal to the Michigan Court of Appeals." In March 2015, that court concluded it lacked jurisdiction because none of the trial court's orders finally disposed of West Congress's counterclaims, and accordingly dismissed West Congress's motion for appeal as of right. The court of appeals instructed West Congress to file a delayed application for leave to appeal if it desired review of those orders. West Congress did so on March 31, 2015.

Meanwhile, because West Congress was still in possession of the property and "continue[d] to operate as a cabaret in violation of the Lease, City of Detroit Zoning ordinances, and State Liquor Control Laws," the state trial court appointed a receiver to operate West Congress's business while the parties continued to litigate their respective claims for money damages. The receiver doubled as the court's appointed facilitator and, failing facilitation, as the "case evaluator" tasked with suggesting a settlement amount.[1] *See* Mich. Ct. Rule 2.403.

On April 13, 2015, the receiver proposed the following case-evaluation award: "West Congress . . . shall receive the sum of One [Hundred] Twenty-Five Thousand ($125,000.00) Dollars from . . . Rivertown." In the award's "comments" section, the receiver added: "West Congress . . . shall vacate the premises within 90

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[1] Case evaluation is a Michigan method of alternative dispute resolution pursuant to which the appointed case evaluator proposes an award to resolve the case. The court enters judgment "in accordance with the evaluation" if all parties accept the proposed award. Mich. Ct. Rule 2.403 (M)(1).

days of acceptance of the award by both parties." In early May 2015, the parties agreed to the case-evaluation award.

But, as the district court put it, "[s]omething went awry." On April 24, 2015, after the receiver had filed his case evaluation but before the parties had agreed to it, Rivertown sought an immediate eviction order. Rivertown alleged that West Congress had secretly operated the property as a cabaret on three occasions *after* the receiver filed the case-evaluation award, in violation of the court's and the receiver's outstanding operating conditions. Rivertown indicated that the Michigan Court of Appeals had dismissed or found defective all of West Congress's attempts at appeal, and as such the trial court's stay of the judgment of possession was no longer effective, permitting enforcement. On May 15, 2015, the trial court issued an eviction order, and a court officer executed it the same day.

A number of Detroit police officers were present when the court officer served the eviction order at the bar. According to the Detroit police, they dispatched officers to the property after a 9-1-1 call reported a large crowd at the scene of an eviction. West Congress acknowledges that there was a large crowd outside, due to a race in downtown Detroit. West Congress alleges that several unnamed Wayne County sheriff's deputies assisted the officers, which Wayne County denies.

After the eviction, West Congress brought an emergency motion in state court to enforce the parties' case-evaluation settlement and to hold Rivertown in contempt of court. West Congress claimed that Rivertown had obtained the eviction order under false

pretenses, as West Congress's delayed application for leave to appeal, filed about six weeks before, remained pending in the Michigan Court of Appeals. West Congress contended further that the eviction directly conflicted with the parties' settlement agreement, which, on West Congress's reading, allowed it to remain on the property for ninety days.

After a hearing, the state court enforced the settlement agreement. Specifically, it ordered Rivertown to return the property's keys to the receiver and provided that West Congress did not have to vacate the property until August 2, 2015, ninety days after the parties had accepted the case-evaluation award. The receiver did not allow West Congress's owner on the property by himself for the remainder of the ninety-day period and, on the court's order, made the owner's wife responsible for the keys. The court further ordered Rivertown to pay West Congress $125,000 when West Congress moved out and ordered West Congress to dismiss its pending application for leave to appeal the judgment of possession in the state court of appeals. West Congress eventually moved out, the court discharged the receiver, and Rivertown paid its former tenant $125,000.[2]

II.

Later that year, West Congress initiated the instant action in the Eastern District of Michigan, naming as

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[2] The Michigan Court of Appeals denied West Congress's delayed application for leave to appeal on October 2, 2015, "since, per [West Congress's] representation to the Court, the matter has been settled." *Rivertown Dev. Grp. LLC v. W. Cong. St. Partners LLC*, No. 326686 (Mich. Ct. App. Oct. 2, 2015) (order).

defendants Rivertown, the Detroit Police Department, and an unnamed individual police officer. As relevant to this appeal, West Congress alleged that Rivertown had breached the parties' settlement agreement by evicting West Congress and had conspired with the other defendants to do so, in violation of 42 U.S.C. §§ 1985 and 1986. West Congress also claimed that Rivertown had violated Michigan's Elliott-Larsen Civil Rights Act (ELCRA), Mich. Comp. Laws § 37.2502. The district court dismissed the complaint against Rivertown for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

West Congress then amended its complaint to name seven Detroit police officers, who West Congress claimed were present for the eviction, and added as defendants Wayne County and an unnamed sheriff's deputy, who West Congress alleged had also attended the eviction. West Congress alleged that the City of Detroit, Wayne County, and the individual officers and deputy (hereinafter "the public defendants") had engaged in a conspiracy to effect a fraudulent eviction, in violation of 42 U.S.C. §§ 1985 and 1986, resulting in property damage and loss of earnings before West Congress was allowed to return to the premises. The district court dismissed the complaint against the public defendants for failure to state a claim under Rule 12(b)(6). West Congress timely appealed, arguing that the district court had erred in dismissing its breach-of-contract and ELCRA claims against Rivertown, as well as its conspiracy claims against the public defendants.

III.

Take the breach claim first. The case-evaluation award provided that West Congress "shall receive . . . $125,000.00" and "shall vacate the premises within 90 days of acceptance of the award by both parties." By May 5, 2015, the parties had agreed to this award, and the state court deemed the case settled on May 6. On May 15, the court ordered the eviction, which Rivertown had been seeking for several weeks preceding the parties' acceptance of the settlement.

In its emergency motion to undo the eviction, West Congress contended that the eviction contradicted the terms of the case-evaluation award. West Congress asked the court to enforce the settlement, return possession of the bar to West Congress, hold Rivertown in contempt, and award West Congress "sanctions . . . for all costs and lost profits from the wrongful eviction."[3] West Congress specifically alleged that the eviction resulted in loss of earnings, as the bar was forcibly closed at what likely would have been a profitable time, and West Congress was forced to cancel and refund several private events.

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[3] West Congress also contended that Rivertown had misled the court in seeking the eviction, because Rivertown had represented that West Congress's pending appeal of the judgment of possession had been resolved. West Congress argued that, because the appeal was in fact still pending, the eviction violated not only the terms of the parties' settlement agreement but also the trial court's outstanding stay of enforcement of the judgment of possession. In federal court, West Congress claims only breach of the settlement agreement.

West Congress secured some, but not all, of the relief it sought. The state court reversed the eviction. It ordered that West Congress have the benefit of the rest of the ninety-day period provided for in the settlement and that Rivertown pay the previously agreed-upon sum when West Congress moved out. The court did not hold Rivertown in contempt, however, nor award any kind of damages for the eviction's effects on West Congress.

In this federal case, West Congress asserts the same claim: that the eviction before expiration of the ninety-day period violated the parties' agreement and that West Congress is entitled to resulting damages, as well as interest, costs, and fees. But having made the same argument and the same request before the state trial court, West Congress cannot now relitigate its entitlement to damages for the same conduct. We give state-court judgments the same preclusive effect that the state's courts would. 28 U.S.C. § 1738; *Ohio ex rel. Boggs v. City of Cleveland*, 655 F.3d 516, 519 (6th Cir. 2011). In Michigan, a party is estopped from relitigating a question of fact essential to the judgment if that question was already litigated and determined in an earlier proceeding, provided that the same parties had a full and fair opportunity to litigate the issue and there is mutuality of estoppel; that is, the party taking advantage of the earlier judgment would be bound by it if the parties' fortunes were reversed. *Monat v. State Farm Ins. Co.*, 677 N.W.2d 843, 845–47 (Mich. 2004).

Here, West Congress argued in state court that Rivertown's conduct violated the settlement agreement. The state court apparently agreed because it enforced the settlement. West Congress also sought damages for

the violation, but the state court refused them. Michigan law precludes West Congress from recycling its earlier claim for violation of the settlement, as well as trying again to win damages for that violation.[4] The

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[4] In the district court and in this court, Rivertown has argued that the *Rooker–Feldman* doctrine precludes federal jurisdiction over this case. We disagree. The *Rooker–Feldman* doctrine concerns situations where plaintiffs "complain[] of an injury caused by the state-court judgment and seek[] review and rejection of that judgment." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291 (2005). On the other hand, where a plaintiff complains of "some other source of injury, such as a third party's actions, then the plaintiff asserts an independent claim" that does not implicate *Rooker–Feldman*. *McCormick v. Braverman*, 451 F.3d 382, 392–93 (6th Cir. 2006). Here, like the plaintiff in *McCormick*, West Congress alleges injury from Rivertown's actions in evicting West Congress just a week after it had contracted to settle the case. For claims like this, which assert a source of injury independent of the state court's judgment itself, "the Supreme Court has instructed that preclusion law is the appropriate solution." *Id.* at 392.

West Congress does not ask us to "overturn" the state court's eviction order or any aspect of the court's later reversal of that order and enforcement of the settlement agreement. *Exxon Mobil*, 544 U.S. at 292. Certainly, the state court did not choose to award West Congress damages when the court enforced the agreement, but the fact that a plaintiff did not win everything it wanted in state court does not reassign the source of the injury from the defendant to the state-court judgment itself. *See McCormick*, 451 F.3d at 394 ("The fact that the state court chose not to remedy the injury does not transform the subsequent federal suit on the same matter into an appeal, forbidden by *Rooker-Feldman*, of the state-court judgment." (quoting *Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 88 (2d Cir. 2005))). It is accordingly preclusion law, not an absence of federal jurisdiction, that dispatches West Congress's claim.

district court accordingly did not err in dismissing West Congress's breach claim.[5]

IV.

West Congress next contends that the district court erred in dismissing its state-law discrimination claim against Rivertown, as well as its federal conspiracy claims against the City of Detroit, Wayne County, and the individual police officers and sheriff's deputy. We review de novo a district court's ruling on a 12(b)(6) motion to dismiss. *Kaminski v. Coulter*, 865 F.3d 339, 344 (6th Cir. 2017). While we accept the complaint's allegations as true, *id.*, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter . . . to 'state a claim to relief that is *plausible* on its face,'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (emphasis added) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). And while we draw all reasonable inferences in the plaintiff's favor, *Kaminski*, 865 F.3d at 344, the plaintiff must plead "factual content that allows [us] to draw the reasonable inference that the defendant is liable for the misconduct alleged," *Iqbal*, 556 U.S. at 678.

Here, no plausible claim to relief emerges from West Congress's complaint. It contains no factual content permitting a reasonable inference that Rivertown

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[5] Rivertown properly raised collateral estoppel as a defense, both before the district court and on appeal. *See Smith v. Sushka*, 117 F.3d 965, 969 (6th Cir. 1997). Although the district court did not dismiss the breach claim on preclusion grounds, "we 'may affirm for any reason presented in the record.'" *Clark v. United States*, 764 F.3d 653, 660–61 (6th Cir. 2014) (quoting *Loftis v. United Parcel Serv., Inc.*, 342 F.3d 509, 514 (6th Cir. 2003)).

discriminated against West Congress on account of race, in violation of state law; or that local officials conspired to deprive West Congress of its rights, in violation of federal law.

A.

Michigan's Elliott-Larsen Civil Rights Act prohibits race discrimination in real estate transactions. Mich. Comp. Laws § 37.2502(1). But West Congress alleges no facts that give rise to an inference of discrimination on the part of Rivertown. Indeed, all the complaint offers in the way of facts is that West Congress's owner is black, his wife is white, and the court put the bar keys in the charge of the owner's wife during the ninety-day period preceding moveout. To this West Congress adds a conclusory statement to the effect that Rivertown schemed to end the lease on account of the owner's race.

The state court and the receiver found, however, that even during the litigation of this case West Congress was altering the property and operating it as a cabaret without permission and in defiance of the court's orders—claims West Congress does not dispute. And the receiver explained in his report to the court that West Congress's owner's wife had been made responsible for the keys "because of the difficult relationship between the parties." There is no plausible claim of discrimination here, and the district court did not err in dismissing it.

B.

So too with West Congress's federal conspiracy claims against the City of Detroit, Wayne County, and the individual police officers and sheriff's deputy. To

state a claim under 42 U.S.C. § 1985, a plaintiff must allege (1) that a conspiracy existed; (2) for the purpose of depriving any person of the equal protection of or equal privileges and immunities under the laws; (3) that there was an act in furtherance of the conspiracy; and (4) that the act injured a person or deprived him of his rights. *United Bhd. of Carpenters & Joiners of Am. v. Scott*, 463 U.S. 825, 828–29 (1983). Where the wrongful act occurs, 42 U.S.C. § 1986 creates liability for those who, "having knowledge that any of [these] wrongs conspired to be done . . . are about to be committed," and "having power to prevent or aid in preventing" them, do nothing.

"[W]e are not bound to accept as true a legal conclusion couched as a factual allegation," but that is all West Congress has given us. *Papasan v. Allain*, 478 U.S. 265, 286 (1986). West Congress alleges that the public defendants participated in a "concerted effort" to deprive West Congress of its property through a fraudulent eviction. West Congress asserts that this "effort" was "part of a long and voluminous history of abuses and civil rights violations"—a "complex conspiracy to evict an African-American Tenant and replace Plaintiff with a Caucasian-owned and operated bar/restaurant/brewery," in which the defendants "played a substantial role." According to West Congress, the public defendants had direct knowledge of the settlement agreement, but nonetheless "prepar[ed] and plann[ed] to enlist approximately thirty (30) officers of the court" to aid in the eviction on the same day the order was fraudulently obtained, "reveal[ing] that a concerted effort aided in the conspiracy to wrongfully evict and lock out Plaintiff."

There is no factual content here sufficient to state with any plausibility the elements of 42 U.S.C. §§ 1985 and 1986. West Congress offers "nothing more than the conclusory allegation that the defendants acted in concert and, without more, fail[s] to allege a sufficient factual basis to establish any sort of 'meeting of the minds' or to link any of the alleged conspirators in a conspiracy to deprive [it] of [its] civil rights." *Amadasu v. Christ Hosp.*, 514 F.3d 504, 507 (6th Cir. 2008). As the district court rightly observed, West Congress does not connect the individual officers and deputy to any particular conduct. Nor does West Congress link the asserted injury to any action or policy of Wayne County or the City of Detroit. *See Smith v. City of Troy*, 874 F.3d 938, 946–47 (6th Cir. 2017). The district court did not err in dismissing the claims against the public defendants.

* * *

Because Michigan preclusion law bars West Congress's first claim, and its second and third claims fail the Rule 12(b)(6) standard, we AFFIRM the district court's judgment.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 16-10482
HON. AVERN COHN

[Filed July 24, 2017]

WEST CONGRESS STREET PARTNERS, LLC,	)
Plaintiff,	)
v.	)
WAYNE COUNTY, JOHN DOE of THE WAYNE COUNTY SHERIFF'S DEPARTMENT, THE CITY OF DETROIT, IVAN LUCKEY, JUSTIN TAITE, AUSTIN HUNTER, DENNIS SMITH, ANDY McGHEE, AUSTON CARR and WILLIE ROBINSON,	)
Defendants.	)

MEMORANDUM AND ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS THE

SECOND AMENDED COMPLAINT, (Docs. 44, 46), and DISMISSING STATE-LAW CLAIMS[*]

I. INTRODUCTION

A. Case and Parties

This is a civil rights case.[1] Plaintiff West Congress Street Partners, LLC was a commercial tenant of a rental premises in Detroit. Plaintiff operated a restaurant on the premises.

Plaintiff was evicted from the premises for a default of its lease pursuant to an eviction order by the Wayne County Circuit Court. Plaintiff is suing various law enforcement agencies and personnel for allegedly violating its constitutional rights in the execution of the eviction order.

Plaintiff names as defendants the Wayne County Sheriff's Department, John Doe of the Wayne County Sheriff's Department, the City of Detroit, and Detroit Police Department Officers Ivan Luckey (Luckey), Justin Taite (Taite), Austin Hunter (Hunter), Dennis Smith (Smith), Randy McGhee (McGhee), Auston Carr (Carr) and Willie Robinson (Robinson).

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[*] Upon review of the parties' papers, the Court deems this matter appropriate for decision without oral argument. *See* E.D. Mich. LR 7.1(f)(2).

[1] Plaintiff asserts pendent state-law claims as well as a federal claim. The Court declines to exercise supplemental jurisdiction over the state-law claims, 28 U.S.C. § 1367(c)(3). Accordingly, the state-law claims are DISMISSED.

A stipulated order changing the name of defendant "the Wayne County Sheriff's Department" to "Wayne County" has previously been entered, (Doc. 41).

B. Pending Motions and Disposition

Before the Court are motions to dismiss by Wayne County, (Doc. 44), and by the City of Detroit and Officers Luckey, Taite, Hunter, Smith, McGhee, Carr and Robinson, (Doc. 46). For the reasons below, the motions are GRANTED. The case is CLOSED.

II. BACKGROUND

A. Factual

The Court's order of June 30, 2016 recites generally the background of the case, (Doc. 16 at 2-4).

In 2014, Plaintiff's landlord filed an eviction action in the Wayne County Circuit Court for non-payment of rent and alteration of the restaurant premises. Plaintiff contested the landlord's right to evict it. A receiver was appointed by the Circuit Court to ensure the premises was maintained during the progress of the case.

To resolve the eviction case, the parties agreed to a case-evaluation award of $125,000 if plaintiff vacated the premises within 90 days. Before the 90 days expired, the landlord pursued an eviction against plaintiff. An order of eviction was signed by the Circuit Court on May 15, 2015. The same day, there was an attempt to execute it.

The eviction order later was set aside to give plaintiff the benefit of the full 90 days. Plaintiff eventually moved out.

B. Procedural

1. Dismissal of Complaint Against the Landlord and Receiver

Initially, plaintiff filed a multi-count complaint against the receiver (case no. 16-10480, doc. 1), and landlord, (case no. 16-10482, doc. 3).

In each complaint, plaintiff asserted a "complex conspiracy to evict an African-American Tenant and replace Plaintiff with a Caucasian-owned and operated bar/restaurant," (case no. 16-10480, doc. 1 ¶ 69; case no. 16-10482, doc. 3 ¶ 20).

In the landlord case, plaintiff named as defendants "the Detroit Police Department" and "John Doe of the Detroit Police Department," (case no. 16-10482, doc. 3 at 1). Plaintiff asserted various unnamed police officers were liable under 42 U.S.C. §§ 1985 and 1986 because they "assisted" in a wrongful eviction and conspired with the landlord and receiver to evict plaintiff based on race, (*id.* at 5-7).

The receiver and landlord moved to dismiss, (case no. 16-10480, doc. 6; case no. 16-10482, doc. 11). Although the City of Detroit answered the complaint, (case no. 16-10482, doc. 9), it did not join in the motion to dismiss, (*id.*, doc. 11).

The Court granted the motions, (case no. 16-10480, docs. 11, 12; case no. 16-10482, docs. 15, 16), finding that the receiver acted as "an arm of the court" entitled to quasi-judicial immunity. As to the landlord, the Court stated, (Doc. 16 at 6):

> While the complaint describes a sequence of acts in the course of the eviction, the only allegation of race as a factor in Rivertown's actions is the conclusionary statement in Paragraph 20 of the complaint: "Defendants played a substantial role in the egregious acts of misconduct that took place in this complex conspiracy to evict an African-American Tenant and replace Plaintiff with a Caucasian-owned and operated bar/restaurant/brewery, in the City of Detroit." This is too spartan an allegation to allow the case to proceed.
>
> As to a conspiracy of race discrimination . . . , there are no facts alleged to support the claim that Rivertown agreed or coordinated with others in pursuing its interest as a landlord to enforce the rental agreement. The complaint does not allege circumstances or statements or conduct by Rivertown from which to infer a racial . . . motive. . . . West Congress's case against Rivertown fails to state an actionable claim.

2. Filing of the Second Amended Complaint

Plaintiff then filed a second amended complaint against the individual and municipal defendants named above, (Doc. 33).

The text of the second amended complaint largely mirrors the language of the initial complaints against the landlord and receiver. For instance, plaintiff re-asserts a "complex conspiracy to evict an African-American Tenant and replace Plaintiff with a Caucasian-owned and operated bar/restaurant/

brewery, in the City of Detroit." (Doc. 33 ¶ 22). However, the second amended complaint omits language from the initial complaints. For example, plaintiff had alleged previously that its principal was Darnell Small, an African American male, (case no. 16-10480, doc. 1 ¶¶ 8, 42; case no. 16-10482, doc. 3 ¶ 29). The second amended complaint does not state that, (*see* Doc. 33).

Plaintiff says in the second amended complaint that the individual defendants are liable under §§ 1985 and 1986 because they "assisted" in a wrongful eviction, (Doc. 33 ¶¶ 12-13), and conspired with the landlord and receiver to evict plaintiff based on race, (*id.* ¶¶ 20, 24-26).

Plaintiff alleges that the individual defendants went to the premises and executed the eviction order, (*id.* ¶ 14).[2] Plaintiff alleges it had to vacate the premises and that the locks were changed; money was taken from the cash register, food left to spoil, the utilities left on, and the stove left running (causing its destruction), (*id.*).

The allegations of the second amended complaint concerning the acts of the municipal defendants are not particularly described.

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[2] The named defendants say a court officer executed the eviction order and they arrived in response to a 911 call for police presence during the eviction, which was scheduled at the same time as a public event outside the restaurant. For purposes of the motions, the Court assumes the truth of plaintiff's version of events.

III. LEGAL STANDARD

A motion to dismiss under Fed. R. Civ. P. 12(b)(6) tests the sufficiency of a complaint. To survive a Rule 12(b)(6) motion to dismiss, the complaint's "factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the allegations in the complaint are true." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). The court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Moreover, "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

In ruling on a motion to dismiss, the court may consider the complaint as well as (1) documents referenced in the pleadings which are central to plaintiff's claims, and (2) other matters of which a court may properly take notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). *See also Weiner v. Klais & Co.*, 108 F.3d 86, 89 (6th Cir. 1997).

Here, the Court has considered the second amended complaint and the May 15, 2015 order of eviction which it references, (Doc. 46-3), under the foregoing standard.

IV. DISCUSSION

A.

At the outset, there are gross facial deficiencies in the allegations of the second amended complaint. The allegations do not connect the corporate plaintiff with a person whose race motivated the eviction. Plaintiff does not describe any particular sheriff's deputy

present during the eviction. Plaintiff names as defendants Wayne County and the City of Detroit. However, the basis for including a claim of municipal liability is set in *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 694 (1978) ("[A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom . . . inflicts the injury that the government as an entity is responsible . . . .").

B.

The second amended complaint fails to allege an actionable claim against any of the individual defendants. Plaintiff does not describe each of the individual defendants' role in carrying out the eviction. *Binay v. Bettendorf*, 601 F.3d 640, 650 (6th Cir. 2010) ("Each defendant's liability must be assessed individually based on his own actions.").

C.

There was a facially valid order of eviction, (*see* Doc. 46-3). The generalized presence of sheriff's deputies and police officers at the scene of an eviction is not *per se* a basis for liability under §§ 1985 or 1986.

D.

In sum, there are no facts alleged from which to conclude the individual defendants were part of a conspiracy to evict plaintiff based on race, presumably the race of its owner. *See Moldowan v. City of Warren*, 578 F.3d 351, 395 (6th Cir. 2009) ("[C]onspiracy claims must be pled with some degree of specificity and . . . vague and conclusory allegations unsupported by

material facts will not be sufficient to state such a claim under § 1983.").

E.

Plaintiff's claims are insufficient as a matter of law. As a consequence, the second amended complaint is DISMISSED.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: July 24, 2017
Detroit, Michigan

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 16-10482
HONORABLE AVERN COHN

[Filed July 24, 2017]

WEST CONGRESS STREET PARTNERS, LLC,	)
Plaintiff,	)
v.	)
WAYNE COUNTY, ET. AL,	)
Defendant.	)

JUDGMENT

For the reasons stated in the Order entered on July 24, 2017, judgment is entered in favor of defendant and against plaintiff and the case is DISMISSED.

DAVID WEAVER

Dated: July 24, 2017 By: s/Marie Verlinde
Deputy Clerk

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, July 24, 2017, by electronic and/or ordinary mail.

s/Marie Verlinde
Case Manager, (313) 234-5160

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

[Filed June 30, 2016]

Case No. 16-10480
HON. AVERN COHN

WEST CONGRESS STREET PARTNERS, LLC,

Plaintiff,

vs.

THOMAS J. RYAN,
Defendant.

Case No. 16-10482
HON. AVERN COHN

WEST CONGRESS STREET PARTNERS, LLC,

Plaintiff,

vs.

RIVERTOWN HOLDINGS, LLC,
a Michigan limited liability company,

RIVERTOWN DEVELOPMENT, LLC, a Michigan limited liability company, JOHN DOE OF THE DETROIT POLICE DEPARTMENT, an individual, THE DETROIT POLICE DEPARTMENT, and MARK REITH, an individual,

Jointly and severally,

Defendants.

DECISION[*]

I. INTRODUCTION

This is a landlord-tenant case. West Congress Street Partners, LLC (West Congress) was the tenant of Rivertown Holdings, LLC, Rivertown Development, LLC, and Mark Reith (Rivertown), and operated a restaurant on the rental premises. Rivertown brought an eviction proceeding against West Congress in the Wayne County Circuit Court. In the course of the eviction proceeding, Thomas Ryan (Ryan) was appointed receiver.

There are two cases pending before the Court, case number 16-10480 (receiver case) in which Ryan is the defendant, and case number 16-10482 (Rivertown case)

[*] This is an elaboration of remarks made at a hearing on June 22, 2016, at which the Court dismissed the case.

in which Rivertown is a defendant.[1] In both cases, West Congress seeks damages for an alleged conspiracy between Rivertown, Ryan, and others to force West Congress out of the restaurant property for discriminatory and retaliatory reasons.[2]

In the receiver case, West Congress filed a multi-count complaint essentially claiming racial animus on the part of Ryan. In the Rivertown case, West Congress filed a four-count complaint essentially claiming that Rivertown was motivated by racial animus in pursuing the eviction. Rivertown and Ryan have each moved to dismiss.

II. BACKGROUND

These two cases arise out of a landlord-tenant dispute, which began in the Wayne County Circuit Court in an eviction proceeding and ended in the termination of a tenancy and a cash payment by Rivertown to West Congress as part of a mutually accepted case-evaluation award. Ryan was appointed receiver during a portion of the eviction proceedings.

Rivertown filed the eviction action in the Circuit Court on the grounds that West Congress had breached the tenancy by altering the restaurant property without Rivertown's approval and failed to make monthly rent payments on time. The Circuit Court

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[1] West Congress also names as defendants the Detroit Police Department and an unnamed police officer. The City of Detroit filed an answer to the complaint on behalf of these defendants, (Doc. 9), and did not join in the pending motion to dismiss.

[2] West Congress's owner Darnell Small is African American.

appointed Ryan as receiver to ensure that the restaurant property was properly maintained during the eviction proceeding.

Ryan also was designated as a facilitator and, if facilitation efforts failed, to act as a case evaluator. After facilitation was unsuccessful, Ryan conducted an evaluation and recommended an award. The award dated April 13, 2015, provided that West Congress receive $125,000 and vacate the premises within 90 days. The award was accepted by West Congress and Rivertown.

Something went awry. Rivertown apparently tried to jumpstart the eviction before the 90-day period expired. In the 90-day period there was an effort to evict West Congress. The eviction was stayed so West Congress would have the benefit of the full 90 days of the award. Within that period, West Congress and Rivertown got into an argument over how Ryan was to be paid.

The Circuit Court put a stop to the eviction. The Circuit Court also directed that the $125,000 award be paid to the receiver, to be held in escrow, and directed West Congress and Rivertown to split the expenses of the receivership. The expenses of the receivership were roughly $38,000.

Eventually, West Congress moved out and the tenancy terminated. The sum of $19,000 was deducted from the $125,000 award to go toward payment of the receivership expenses. Rivertown paid the other half.

On September 11, 2015, Ryan was discharged by the Circuit Court. In the order discharging him, the Circuit Court (1) made a finding that he faithfully

performed his duties, and (2) canceled his bond. There was no effort to surcharge Ryan as receiver for misfeasance or malfeasance.

On October 30, 2015, the balance of the $125,000 award was ordered paid to West Congress. The Circuit Court said this resolved the last pending claim and closed the eviction proceeding. West Congress was paid the balance of the $125,000.

III. LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, the complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). *See also Ass'n of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 548 (6th Cir. 2007). The court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). In sum, "[t]o 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*, 556 U.S. 662, 678 (2009) (quotation and citation omitted).

In ruling on a motion to dismiss, the court may consider the complaint as well as (1) documents referenced in the complaint which are central to plaintiff's claims, and (2) other matters of which a court may properly take notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). *See also Weiner v. Klais & Co.*, 108 F.3d 86, 89 (6th Cir. 1997). As such, "documents that a defendant attaches to a

motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim." *Weiner*, 108 F.3d at 89 (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)) (alteration omitted). Here, the Court has considered documents—mostly, state court records and orders—that are attached to the motions to dismiss, referenced in the complaints, and central to West Congress's claims against Rivertown and Ryan.

IV. DISCUSSION

A. Receiver Case

In Michigan, a non-judicial official is entitled to quasi-judicial immunity if he or she acts pursuant to a court appointment "as an arm of the court" and "performed a function integral to the judicial process." *Diehl v. Danuloff*, 242 Mich. App. 120, 132-33 (Mich. Ct. App. 2000) (quotations and citation omitted). Likewise, under federal law, state officials "whose duties are related to the judicial process" are shielded from personal liability "when they, without malice or corrupt motive, carry out orders of a court." *Smith v. Martin*, 542 F.2d 688, 690-91 (6th Cir. 1976).

Ryan as receiver cannot be charged in a civil rights action; he was an arm of the court. The Circuit Court found that Ryan performed his duties and canceled his bond. There was no objection raised to anything he did prior to his discharge as receiver.

West Congress's claims against Ryan stem from his role as receiver during the eviction proceeding. Ryan's

actions were pursuant to Circuit Court orders. Ryan is entitled to immunity.[3]

B. Rivertown Case

Here, West Congress accepted the $125,000 damages award and the termination of the tenancy. There is nothing in the papers, or the record of the eviction proceeding, to suggest that West Congress is willing to tender back the money it agreed to accept.

While the complaint describes a sequence of acts in the course of the eviction, the only allegation of race as a factor in Rivertown's actions is the conclusionary statement in Paragraph 20 of the complaint: "Defendants played a substantial role in the egregious acts of misconduct that took place in this complex conspiracy to evict an African-American Tenant and replace Plaintiff with a Caucasian-owned and operated bar/restaurant/brewery, in the City of Detroit." This is too spartan an allegation to allow the case to proceed.

As to a conspiracy of race discrimination and retaliation, there are no facts alleged to support the claim that Rivertown agreed or coordinated with others in pursuing its interest as a landlord to enforce the rental agreement. The complaint does not allege circumstances or statements or conduct by Rivertown from which to infer a racial or retaliatory motive. As to the breach-of-contract claim, it was not a violation of the case-evaluation award for Rivertown to comply

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[3] In light of dismissal on the ground of immunity, it is unnecessary to consider Ryan's defenses based on: (1) the *Rooker-Feldman* doctrine, (2) the need to obtain court leave to sue a judicially appointed receiver, and (3) collateral estoppel.

with a Circuit Court order of eviction. West Congress's case against Rivertown fails to state an actionable claim.[4]

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: June 30, 2016
Detroit, Michigan

[4] Given the Court's conclusion that the complaint fails to state an actionable claim, the Court does not address Rivertown's other claims for dismissal under: (1) the *Rooker-Feldman* doctrine, (2) *res judicata*, and (3) collateral estoppel.

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

[Filed June 29, 2016]

Case No. 16-10482
HON. AVERN COHN

WEST CONGRESS STREET PARTNERS, LLC,

Plaintiff,

vs.

RIVERTOWN HOLDINGS, LLC, a Michigan limited liability company, RIVERTOWN DEVELOPMENT, LLC, a Michigan limited liability company, JOHN DOE OF THE DETROIT POLICE DEPARTMENT, an individual, THE DETROIT POLICE DEPARTMENT, and MARK REITH, an individual,

Jointly and severally,

Defendants.

ORDER DISMISSING CLAIMS AGAINST RIVERTOWN

For the reasons stated on the record at a hearing on June 22, 2016, which the Court reserves the right to elaborate, this case is DISMISSED as to defendants Rivertown Holdings, LLC, Rivertown Development, LLC, and Mark Reith.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: June 29, 2016
Detroit, Michigan