

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

SAMUEL HARRISON, et al.	:	
	:	
v.	:	Civil No. CCB-07-3399
	:	
CHAD MCNEILL, et al.	:	

MEMORANDUM

Samuel Harrison, Rosalee Harrison, and Anita Harrison (collectively, “the Harrisons”) have sued Chad McNeill and Ronetta McNeill (“the McNeills”) for various property and personal torts. The Harrisons have also sued Anne Arundel County and various county officials for state and federal constitutional violations and gross negligence. Now pending before the court is a motion to dismiss filed by the county defendants. The issue has been fully briefed and no hearing is necessary. *See* Local Rule 105.6. For the reasons articulated below, the motion will be granted as to the federal constitutional claims, and the remaining claims will be remanded to the Circuit Court for Anne Arundel County.

BACKGROUND

The case stems from a dispute between the Harrisons and the McNeills, who own two adjacent parcels of land in Severn, Maryland. Because this arises in the context of a motion to dismiss, all factual allegations in the Harrisons’ amended complaint will be taken as true. In August 2005, the McNeills began clearing a large number of trees from their property in violation of the county code, which requires that a permit be obtained before performing such work. The Harrisons complained to the Anne Arundel Department of Inspections and Permits

("the Department"), but did not receive a response. In September 2005, the McNeills obtained a permit for, and constructed, a garage structure on their property. The Harrisons state that the McNeills' garage is used as a barn for horses and ponies, violating county code requirements that such structures be placed a certain distance from the property line. At some point after September 2005, the McNeills dumped fill dirt into a storm drainage channel which crossed both properties; the channel had been conveyed to Anne Arundel County prior to the Harrisons' purchase of their property in 1978. In February 2006, the McNeills constructed a driveway on a corner of their property, raising the land to such a level that it altered the flow of rainwater onto the Harrison property; this work was done without the required permits.

The Harrisons repeatedly complained to the Department about the McNeills' failure to obtain a permit for the driveway construction, but were not satisfied with the response. In April 2006, defendant Chuck Matheny ("Mr. Matheny"), the Supervisor of Environmental Programs at the Department, met with both the Harrisons and with Mr. McNeill, and instructed the McNeills to remove the excess dirt and grade their property to the level of the Harrison property. Several visits from county officials followed, during which Mr. Matheny issued a stop-work order to the McNeills for lack of code compliance and told the McNeills to reopen a certain portion of the storm drainage channel, lower the grade behind the garage, and stabilize bare areas with mulch and seed. Mr. Matheny also ordered the McNeills to retain a surveyor in order to bring the driveway into compliance with a required public easement.

The McNeills have not complied with these requirements, and during the summer of 2006 hostilities between the two families escalated. Among other things, the Harrisons filed a complaint with the Department about the improper use of the McNeills' garage; the Harrisons

claim that although two Department officials agreed that the garage violated county code provisions, the McNeills have not been cited for such violations. The Harrisons also state that the McNeills trespassed on their property while digging a trench and threw a shovelful of dirt at them.

In May 2007, the Harrisons sued the McNeills in the Circuit Court for Anne Arundel County. Approximately six months later, the Harrisons filed an amended complaint adding the County and County officials in their official capacities. The complaint raises claims of private nuisance, trespass, negligence, conspiracy and intentional infliction of emotional distress against the McNeills, and deprivations of federal and state constitutional rights against the county defendants, along with an allegation of gross negligence or malice. The case was removed to federal court in December 2007 on the ground that the section 1983 claims raised a federal question. The county defendants have now moved to dismiss the complaint, arguing that the plaintiffs have failed to state a claim under § 1983, that any claims under § 1983 against the county officials would be barred by qualified immunity, that the state law tort claims are barred for failure to comply with the Local Government Tort Claims Act, that gross negligence has not been properly pled, and that the state constitutional charge fails to state a claim upon which relief may be granted. Because the motion to dismiss will be granted as to the § 1983 claims, and the court declines to exercise supplemental jurisdiction over the remaining state law claims, *see* 28 U.S.C. § 1367(c)(3), this memorandum will not address the county defendants' arguments regarding the remaining claims.

ANALYSIS

“The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint; importantly, a Rule 12(b)(6) motion does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999) (internal quotation marks and alterations omitted). When ruling on such a motion, the court must “accept the well-pled allegations of the complaint as true,” and “construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff.” *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997). To survive a motion to dismiss, a complaint must “in light of the nature of the action . . . sufficiently allege[] each element of the cause of action so as to inform the opposing party of the claim and its general basis.” *Chao v. Rivendell Woods, Inc.*, 415 F.3d 342, 348 (4th Cir. 2005). Following the Supreme Court’s ruling in *Twombly*, 127 S.Ct. at 1965, “[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 (even if doubtful in fact).” “Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint.” *Id.* at 1969 (quoted in *Goodman v. Praxair*, 494 F.3d 458, 466 (4th Cir. 2007)). Moreover, the “plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 1964-65.

The county defendants first argue that the plaintiffs’ § 1983 claim against Anne Arundel County and the county defendants in their official capacities must be dismissed because it fails to allege an official custom, policy or practice of the Department of Inspections and Permits that led to the constitutional violation. Under *Monell v. New York City Dep’t of Social Services*, 436

U.S. 658, 694 (1978), municipalities may be held liable for constitutional violations committed by their employees only where the municipality itself (in the form of an official custom, policy or practice) is responsible for causing the deprivation. The Harrisons have sued the county officials in their official capacities. (See Amended Compl. ¶¶ 7-10.) “[A] §1983 suit against an officer in his official capacity is no different from a suit against the [government entity] itself,” *Randolph v. State*, 74 F. Supp. 2d 537, 541 (D. Md. 1999), because a suit against an official in his or her official capacity “is not a suit against the official but rather is a suit against the official’s office.” *Will v. Mich. Dep’t State Police*, 491 U.S. 58, 71 (1989) (citing *Brandon v. Holt*, 469 U.S. 464, 471 (1985)). “Liability of local governments and their officials sued in their official capacity under § 1983 cannot be based on *respondeat superior* but arises only when city or county officials themselves, through an act establishing a policy or custom, cause the constitutional violation.” *Gordon v. Kidd*, 971 F.2d 1087, 1097 (4th Cir.1992) (citing *Monell*, 436 U.S. at 694)).

“Section 1983 plaintiffs seeking to impose liability on a municipality must, therefore, adequately *plead and prove* the existence of an official policy or custom that is fairly attributable to the municipality and that proximately caused the deprivation of their rights.” *Jordan by Jordan v. Jackson*, 15 F.3d 333, 338 (4th Cir. 1994) (emphasis added). Nowhere in the amended complaint do the Harrisons allege that the constitutional deprivations they complain of - namely, disparate treatment at the hands of the county officials - were the result of any official custom, policy or practice of Anne Arundel County.

The Harrisons counter that to require plaintiffs in § 1983 cases to specifically allege an official custom, policy or practice would impose a pleading standard higher than that required by

the Federal Rules of Civil Procedure. The Harrisons cite *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163 (1993), for the proposition that “it is not possible to square the heightened standard applied in this case with the liberal system of ‘notice pleading’ set up by the Federal Rules.” (Pl’s Opp’n 7.) The “heightened pleading standard” rejected by the Supreme Court in *Leatherman*, however, was not the requirement that a plaintiff allege an official custom, policy or practice; the failings identified by the Court included a requirement that “‘the plaintiff’s complaints state with factual detail and particularity the basis for the claim which necessarily includes why the defendant-official cannot successfully maintain the defense of immunity.’” *Leatherman*, 507 U.S. at 167 (describing the heightened pleading requirement of the Fifth Circuit and quoting *Elliott v. Perez*, 751 F.2d 1472, 1473 (5th Cir. 1985)).¹

Indeed, although “[t]here is no requirement [that a 1983 plaintiff] detail the facts underlying his claims, or that he plead the multiple incidents of constitutional violations that may be necessary at later stages to establish the existence of an official policy or custom and causation,” a plaintiff must still allege that such a policy or custom existed. *See Jordan*, 15 F.3d at 339-40 (noting that the *Leatherman* Court contrasted the rejected Fifth Circuit standard with a

¹There appears to be some confusion as to whether the Supreme Court rejected a fact pleading requirement or the Circuit court’s ruling that a plaintiff plead multiple incidents of unconstitutional conduct. *See Jordan*, 15 F.3d at 338-39 (noting that “[t]here is some question as to the precise ‘heightened standard’ rejected by the Court in *Leatherman*,” but that the Fourth Circuit “believe[s] it is clear . . . that the Supreme Court’s rejection . . . constituted a rejection of the specific requirement that a plaintiff plead multiple instances of similar constitutional violations to support an allegation of municipal policy or custom.”)

In any event, there is no suggestion, either in *Leatherman* or in *Jordan*, that the Supreme Court has rejected the requirement that the plaintiff “plead and prove” an official policy or custom in a 1983 case.

presumably acceptable standard from the Ninth Circuit, which required “nothing more than a bare allegation that the individual officers’ conduct conformed to official policy, custom or practice.” *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 624 (9th Cir. 1988)). Because they have failed even to make such a “bare allegation,” the Harrisons’ claim against Anne Arundel County and the county officials must be dismissed.

The county defendants’ motion to dismiss will be granted as to the § 1983 claims, and the case will be remanded to the Circuit Court of Anne Arundel County for disposition of the remaining state law claims. The defendants’ motion to strike the plaintiffs’ proposed experts (docket entry no. 25) also will not be ruled on. A separate order follows.

May 9, 2008
Date

/s/
Catherine C. Blake
United States District Judge

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ORDER

In accordance with the foregoing Memorandum, it is hereby ORDERED that:

1. The county defendants' Motion to Dismiss (docket entry no. 24) is **GRANTED** as to the claim arising under 42 U.S.C. § 1983 ("Sixth Cause of Action");
2. The case is **REMANDED** to the Circuit Court of Anne Arundel County for disposition of the remaining state law claims; and
3. The Clerk shall **CLOSE** this case.

May 9, 2008
Date

/s/
Catherine C. Blake
United States District Judge