

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>JOHN V. CHAMBERS and</b>	)	
<b>RHONDA E. CHAMBERS,</b>	)	
	)	
<b>Plaintiffs</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL No. 00-261-B</b>
	)	
<b>CITY OF CALAIS et al.,</b>	)	
	)	
<b>Defendants</b>	)	

**RECOMMENDED DECISION**

The City of Calais and Judith Alexander have filed a motion to dismiss Plaintiffs John and Rhonda Chambers’ claims against them for alleged federal civil rights violations (Count I). In addition, Alexander has moved to dismiss a claim against her for her part in an alleged civil conspiracy to interfere with the plaintiffs’ contract with the Calais School Committee (Count II).<sup>1</sup> (Defendants City of Calais and Judith Alexander’s Motion to Dismiss and Incorporated Memorandum of Law, Docket No. 24.) I recommend that the Court **GRANT** the motion.

**12(b)(6) STANDARD**

When considering a Rule 12(b)(6) motion to dismiss, the Court must accept as true the well-pleaded factual allegations of the complaint, draw all reasonable inferences in the claimant’s favor, and determine whether the complaint, when viewed in the light most favorable to the claimant, sets forth sufficient facts to support the challenged claims. Clorox Co. v. Proctor

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<sup>1</sup> The complaint contains four counts. Count III is a breach of contract claim against the City and the Calais School Committee that the City does not challenge in this motion. Count IV concerns a claim against another defendant not a party to this motion.

& Gamble Commer. Co., 228 F.3d 24, 30 (1st Cir. 2000); LaChapelle v. Berkshire Life Ins. Co., 142 F.3d 507, 508 (1st Cir. 1998).

## BACKGROUND

John and Rhonda Chambers (“the plaintiffs”) make the following material allegations in their complaint. In March 1999, the plaintiffs submitted a proposal to the Calais School Committee (“Committee”) in which they offered to build a new middle school facility on Plaintiffs’ property if the Committee would agree to lease the property for a five-year period. (Complaint at ¶¶ 14-16.) On March 29, 1999, the Committee approved the proposal with a unanimous vote. (Id. at ¶ 17.) On March 30, 1999, the City of Calais Planning Board approved the proposed project and the plaintiffs began excavating their property the following day. (Id. at ¶¶ 18-19.) On April 27, 1999, the State of Maine informed the Committee that it would not subsidize the Committee’s payments under the lease agreement with the plaintiffs. (Id. at ¶ 20.) In response, the Committee decided to reconsider the plaintiffs’ proposal. (Id.) Upon reconsideration, the Committee approved the proposal again, this time with a 3-2 vote. (Id.) On May 4, 1999, the Committee and the plaintiffs executed a lease agreement pertaining to the plaintiffs’ property. (Id. at ¶ 21.) On June 25, 1999, the City of Calais issued a building permit to the plaintiffs for the project. (Id. at ¶ 22.) On July 20, a recall election was held concerning the Committee positions held by the three committee members who voted in favor of the plaintiffs’ proposal. (Id. at ¶ 23.) All three members lost their positions in the election. (Id. at ¶ 24.) Subsequently, City and Committee officials stated that the plaintiffs’ lease was not valid and would not be honored. (Id. at ¶ 26.) In an effort to prevent the plaintiffs’ from continuing with the construction of the project, the City revoked the plaintiffs’ work permits and issued a work stoppage order. (Id. at ¶ 27.) The City and the Committee refused the plaintiffs’ request

for arbitration. (Id. at ¶ 28.) At undisclosed times during the breakdown of the parties’ relationship, the City and Alexander made public statements denying the legality of the lease, contrary to the opinions of their legal advisors, which were made known to them. (Id. at ¶¶ 25, 34, 47.) They are also alleged to have intentionally created a public controversy in an effort to ensure that the plaintiffs would not be able to receive financing for the project, and to have generally “encourag[ed], conniv[ed], and consent[ed] to” obstruct the plaintiffs’ efforts to perform under the contract. (Id. at ¶¶ 35, 37, 46.) Although the plaintiffs’ civil rights claim (Count I) is brought against both the City and Alexander, their civil conspiracy claim (Count II) is brought only against Alexander and other individual defendants. The plaintiffs seek compensatory damages for money expended on the project, loss of the benefit of their bargain, and opportunity costs associated with lost alternative employment. (Id. at ¶ 31.)

#### **DISCUSSION**

The plaintiffs contend that Count I sets forth sufficient facts to support a § 1983 claim against the City and Alexander. The federal rights they seek to base this claim on are the Fourteenth Amendment guarantees of equal protection and “substantive” due process. They also contend that Count II sets forth a civil conspiracy claim grounded on a tort theory overlooked in their response to Defendants John and Michael Sherrard’s motion to dismiss: tortious interference with an advantageous commercial relationship. The City and Alexander (“the movants”) challenge these claims with arguments (1) that an equal protection claim cannot be made out because there is no similarly situated class of persons; (2) that the municipal contract allegedly interfered with is not an interest implicated by the substantive component of the Due Process Clause; and (3) that the conduct complained of is not conscience-shocking. (Motion to Dismiss at 3-7.) They also argue that Alexander is entitled to qualified immunity on the § 1983

claim and that the civil conspiracy claim against Alexander fails to set forth the existence of any underlying tort. (Id. at 8-9.)

## **A. Federal Civil Rights**

### *1. Equal Protection*

“Under the Equal Protection Clause, similarly situated entities must be accorded similar governmental treatment.” Barrington Cove, LP v. R.I. Hous. & Mortgage Fin. Corp., 246 F.3d 1, 7 (1st Cir. 2001) (citing City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439-40 (1985)). To establish an equal protection claim, the plaintiffs must allege facts indicating that they were selectively treated, compared with others similarly situated, based on malice or personal animosity,<sup>2</sup> *id.*, or in the absence of any “rational basis for the difference in treatment,” Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). The “similarly situated” component of the equal protection claim must be clearly set forth in the complaint to survive a motion to dismiss. See Barrington Cove, 246 F.3d at 8. “The formula for determining whether individuals or entities are ‘similarly situated’ for equal protection purposes is not always susceptible to precise demarcation.” Id.

[T]he test is whether a prudent person, looking objectively at the incidents, would think them roughly equivalent and the protagonists similarly situated. Much as in the lawyer’s art of distinguishing cases, the ‘relevant aspects’ are those factual elements which determine whether reasoned analogy supports, or demands, a like result. Exact correlation is neither likely nor necessary, but the cases must be fair congeners. In other words, apples should be compared to apples.

Dartmouth Review v. Dartmouth Coll., 889 F.2d 13, 19 (1st Cir. 1989) (citation omitted).

In the instant case, all of the “incidents” are unique to the plaintiffs such that there can be no similarly situated persons. The contract that underlies this suit was a singular contract created

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<sup>2</sup> No suspect categories such as race, gender, or religion are involved in this suit.

to serve a singular purpose. There are no other apples in the basket to compare the plaintiffs to.<sup>3</sup> The breakdown in the contractual relationship was a product of the specific characteristics of that relationship, according to the allegations of the complaint, as opposed to prejudices held against the plaintiffs as individuals. In fact, the plaintiffs' allegations permit only one logical inference: that the defendants' conduct arose due to a belated disaffection with the lease agreement in light of the fact that the State of Maine would not subsidize the City's lease payments. Given the absence of allegations revealing disparate treatment based on discriminatory animus or otherwise lacking any rational basis, this claim should be dismissed.

## 2. *Substantive Due Process*

The substantive component of the Due Process Clause will support claims based on two alternative theories. The first theory requires a plaintiff to demonstrate government deprivation of an identified liberty or property interest protected by the substantive component of the due process clause. The second theory requires a plaintiff to prove that the government conduct complained of is, or was, shocking to the conscience. Brown v. Hot, Sexy & Safer Productions, Inc., 68 F.3d 525, 531 (1st Cir. 1995) (citations omitted). Under the first theory, the interests protected as "substantive" due process rights are not coextensive with all liberty and property interests created or protected by state law or protected by the procedural component of the due process clause. Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 229 (1985) ("While property

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<sup>3</sup> The plaintiffs' contend in their memorandum in opposition that the similarly situated persons are all persons receiving building permits and water and sewer connections from the City. They believe that disparate treatment is reflected in the defendants' revocation of their building permit and the issuance of the work stoppage order. (Memorandum in Opposition, Docket No. 26, at 4.) In other words, the plaintiffs' argue that they should have been permitted to build the school facility even though the City and Committee had no intention of leasing the property from them. This runs counter to their due process claim that the property interest in question is the lease agreement and that "the benefit they expected to derive was the lease payments." (Memorandum in Opposition at 7.) However, even if the plaintiffs had alleged the existence of such "similarly situated" persons, the "incidents" of a proposed class of all persons receiving a building permit or water and sewer lines is far too general to provide a basis for assessing disparate treatment. Thus, even though an equal protection claimant may constitute a "class of one," Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000), the defendant's treatment of him or her must still be measured against that accorded to similarly situated persons. See id.

interests are protected by procedural due process even though the interest is derived from state law rather than the Constitution, Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972), substantive due process rights are created only by the Constitution.”) (Powell, J., concurring). Rather, substantive due process interests are typically interests recognized by the courts as deserving special protection in light of our history and tradition, interests to which the government must accord due respect. Washington v. Glucksberg, 521 U.S. 702, 720 (1997) (“[T]he Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition.”) (quotation marks and citation omitted); see also Santiago de Castro v. Morales Medina, 943 F.2d 129, 130-131 (1st Cir. 1991) (“[I]n the realm of substantive due process ‘it is only when some basic and fundamental principle has been transgressed that the constitutional line has been crossed.’”) (quoting Amsden v. Moran, 904 F.2d 748, 754 (1st Cir. 1990), *cert. denied*, 498 U.S. 1041 (1991)).<sup>4</sup> Under the second theory, the nature or quality of the government’s exercise of power serves as the point of departure, rather than the nature or quality of the right or interest at stake. County of Sacramento v. Lewis, 523 U.S. 833, 847 (1998).<sup>5</sup> Thus, it is said in this Circuit that “substantive due process prevents ‘governmental power from being used for purposes of oppression,’ or ‘abuse of government power that shocks the conscience,’ or ‘action that is legally irrational in that it is not sufficiently keyed to any legitimate state interests.’” PFZ Props., Inc. v. Rodriguez, 928 F.2d 28, 31-32 (1st

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<sup>4</sup> This distinction succinctly highlighted in Santiago de Castro, appears to have been inadvertently overlooked in the more recent First Circuit opinion of Barrington Cove v. Rhode Island Hous. and Mortg., 246 F.3d 1, 5, (1st Cir. 2001) (describing the first theory of substantive due process as merely requiring plaintiff to identify a “cognizable” property interest of the nature protected by procedural due process and citing Roth, 408 U.S. at 577, a procedural due process case).

<sup>5</sup> Assuming that the conscience-shocking line is crossed, there remains an issue as to whether the right or interest at stake is sufficiently “fundamental” to deserve substantive due process protection. Lewis, 523 U.S. at 847 (distinguishing “executive action” cases from “legislative action” cases). See also Charles v. Baesler, 910 F.2d 1349, 1353 (6th Cir. 1990) (“Routine state-created contractual rights are not deeply rooted in this Nation’s history and tradition, and, although important, are not so vital that neither liberty nor justice would exist if they were sacrificed.”) (quotation marks and citations omitted).

Cir. 1991) (quoting Committee of U.S. Citizens in Nicaragua v. Reagan, 859 F.2d 929, 943 (D.C. Cir. 1988)).

It is not clear whether the plaintiffs argue that their § 1983 claim is supported by both substantive due process theories. Given that they are complaining about acts undertaken by Alexander and the City in an “executive” capacity, i.e., breaching a contract and revoking a permit, I presume that they would agree that their claims fall under the “conscience-shocking” theory. See Lewis, 523 U.S. at 847. Certain opinions issued by the First Circuit have indicated that disputes originating from the municipal permitting process and related land development matters will only rise to the conscience-shocking level in the most extreme circumstances. See, e.g., Nestor Colon Medina & Sucesores, Inc. v. Custodio, 964 F.2d 32, 45 (1st Cir. 1992) (“[T]he Due Process Clause may not ordinarily be used to involve federal courts in . . . local planning disputes. . . . We have left the door slightly ajar for federal relief in truly horrendous situations.”); see also Licari v. Ferruzzi, 22 F.3d 344, 349 (1st Cir. 1994) (intimating that a case might be sustainable if a municipal authority’s land use decisions were guided by “hostility and animus” toward an applicant based on his or her “political affiliation, belief, stance, or immutable characteristic”). Although none of these cases involved a breach of a municipal contract, to the extent that these cases serve as precedent, they clearly would bar the instant suit. The allegations in the complaint do not support an inference of animus based on the plaintiffs’ political or personal views. Nor are there any “truly horrendous” facts. In any event, assuming that the plaintiffs’ interests in their municipal contract and building permit are of greater weight and concern than contract bids or permit applications, there is still nothing conscience-shocking about the facts alleged. The complaint is wholly devoid of any allegation that the defendants possessed an improper motive in breaching the contract or even that their conduct was in any

way aimed at or intended to harm the plaintiffs individually. The natural inference to be drawn from the complaint is that the defendants' actions were aimed simply at avoiding a financial obligation they did not want the City or Committee to be subject to. Furthermore, the plaintiffs' memorandum reveals a clear understanding on the plaintiffs' part that the defendants' motives were related to the merits of the proposal and the wisdom of maintaining the contract with the plaintiffs:

The Defendants were simply determined to thwart the construction of the school building by any means at hand. The Plaintiffs' proposed project was in opposition to the Defendants' own agenda. Alexander publicly favored the leasing of portable classroom trailers instead of a newly built ten-room school building . . . . The only obstacle in the way of Alexander achieving her goal was the Plaintiffs' lease . . . . To remedy the situation, Alexander and the City employed various tactics, obstructions, and controversies.

(Memorandum in Opposition at 8.) Because the complaint cannot support an inference of oppressive purpose, or an intent to injure the plaintiffs, or any other similarly shocking inference, the substantive due process claim should be dismissed.

## **B. State Law Civil Conspiracy**

The plaintiffs do not press this claim against the City, only against Alexander, other individual defendants, and a Public Action Committee. (Complaint, Count II at p.5) Under Maine law, a civil conspiracy claim requires proof of the commission of an underlying tort. Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell, 1998 ME 70, ¶ 8, 708 A.2d 283, 286 (citing Cohen v. Bowdoin, 288 A.2d 106, 110 (Me. 1972)). “[C]onspiracy is not a separate tort but rather a rule of vicarious liability.” McNally v. Mokarzel, 386 A.2d 744, 748 (Me. 1978). In contrast to the last go-round in this case, the plaintiffs now advance “interference with a contract” as the pertinent underlying tort. (Plaintiffs’ Memorandum in Opposition, Docket No.

26, at 13.) The movants argue that the complaint does not set forth the predicate facts for such a claim. (Defendants' Reply Memorandum, Docket No. 27, at 4-5.)

To sustain a claim for tortious interference with a business relationship, the plaintiffs must show "the existence of a valid contract or prospective economic advantage, interference with that contract or advantage through fraud or intimidation, and damages proximately caused by the interference." Barnes v. Zappia, 658 A.2d 1086, 1090 (Me. 1990). The movants challenge the claim with regard to the second element. On this element, the complaint alleges that Alexander (1) conspired with others to create a public controversy designed to influence the bank not to fund the plaintiffs' project so that the plaintiffs would not be able to fulfill their obligations under the lease (Complaint at ¶ 46); and (2) conspired to influence the municipal officials "to ignore the signed lease on the grounds it was not valid after being informed of its legality by two attorneys" (Id. at ¶ 47.)

These allegations do not make the grade. Essentially, the plaintiffs' allegations and arguments reveal that the issue of whether to honor the lease agreement became a heated public controversy in large part due to the actions of Alexander, acting in her role as the City's mayor.<sup>6</sup> There is nothing intimidating or fraudulent about these acts. With regard to the first allegation against Alexander, there is no suggestions that she and her alleged co-conspirators intimidated the bank, only that their actions made it appear likely that the City/Committee would not honor the contract, indicating to the bank that an important source of revenue would likely not be available to the plaintiffs.<sup>7</sup> With regard to the second allegation against her, there is no indication that Alexander's alleged statements about the validity of the contract actually mislead

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<sup>6</sup> The fact that Alexander is or was the City's mayor is only revealed in page 3 of the defendants' reply memorandum, docket number 27. I do not have any personal knowledge of the composition of Calais's city government.

<sup>7</sup> Although it is not made clear from the plaintiffs' submissions, I do not believe that they actually wish to build a school house that the City will not utilize.

the “municipal officials.” For instance, if the municipal officials were all privy to the attorneys’ opinions that the contract was binding on the Committee, how could they be deceived by Alexander’s alleged statements? Paragraph 26 of the complaint speaks to this concern by alleging that the City and Committee officials *all* stated that the contract was invalid. In other words, it appears that the plaintiffs want to hold the municipal officers liable as conspirators for acts they took as the agents of and on behalf of the municipality with respect to the municipality’s own contract. I do not see how this claim fails to be subsumed within the breach of contract claim as a matter of law.

#### CONCLUSION

For the foregoing reasons, I recommend that the Court **GRANT** the motion and **DISMISS** Count I against the City of Calais and Judith Alexander and Count II against Judith Alexander.

#### NOTICE

A party may file objections to those specified portions of a magistrate judge’s report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten days of being served with a copy thereof. A responsive memorandum shall be filed within ten days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court’s order.

Dated: June 26, 2001

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Margaret J. Kravchuk  
U.S. Magistrate Judge

U.S. District Court  
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 00-CV-261

CHAMBERS, et al v. CALAIS, CITY OF, et al Filed: 12/18/00

Assigned to: JUDGE D. BROCK HORNBY Jury demand: Plaintiff

Demand: \$0,000 Nature of Suit: 440

Lead Docket: None Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:1983 Civil Rights Act

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