

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

WALTER BROWN, et al., :  
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 Plaintiffs, :  
 :  
 v. : Civ. Action No. 08-171-JJF  
 :  
 GARY MEREDITH, :  
 :  
 Defendant. :

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Walter Brown, William Hoffman, Joseph Cane, Edward B. Walsh, and Gary H. Biddinger, Ocean View, Delaware; Lloyd Roberts, Frankford, Delaware; and Sondra Waite, Baltimore, Maryland. Pro se Plaintiffs.

Dennis L. Schrader and Lynn A. Kelly, Esquires, Wilson, Halbrook & Bayard, Georgetown, Delaware. Attorneys for Defendant Gary Meredith.

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**MEMORANDUM OPINION**

February 11, 2009  
Wilmington, Delaware

  
Farnan District Judge

Presently before the Court are Defendant's Motion To Dismiss and Plaintiffs' Motions To Transfer To Cure Want Of Jurisdiction And Statement Of Claim. (D.I. 19, 21, 25, 29.) For the reasons discussed below, the Court will grant Defendant's Motion To Dismiss For Lack Of Subject Matter Jurisdiction and will deny Plaintiffs' Motions To Transfer.

**I. BACKGROUND**

The Complaint was originally filed by Plaintiff Walter Brown ("Brown") against the Town of Ocean View, Delaware ("Ocean View"), and alleged irregularities in the 2005 mayoral election. (D.I. 2.) Brown amended the Complaint, voluntarily dismissed Ocean View, added new Plaintiffs, added Gary L. Meredith ("Defendant") as a Defendant, and added new allegations. (D.I. 7.) Plaintiffs, who proceed pro se, allege that Defendant, the former mayor of Ocean City, arranged for the creation of a public water company, enacted ordinances precluding Ocean City residents from opting out of the water system, confiscated property, and demanded payment. (Id.) Plaintiffs allege that some property owners want the option to choose whether they must participate in the water system and to exercise, without punishment, their right to decline use of the water system. Plaintiffs invoke a number of statutes and constitutional articles to support their

allegations. They ask that all actions by Defendant be declared null and void.

Defendant moves for dismissal on the grounds of lack of subject matter jurisdiction and failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). In turn, Plaintiffs filed several Motions To Transfer To Cure Want Of Jurisdiction And Statement Of Claim. Plaintiffs specifically request the Court to transfer this case to the Court of Chancery of the State of Delaware, pursuant to Kerns v. Dukes, 707 A.2d 363 (Del. 1998).

## **II. STANDARD OF LAW**

Federal Rule of Civil Procedure 12(b)(1) authorizes dismissal of a complaint for lack of jurisdiction over the subject matter, or if a plaintiff lacks standing to file the claim. Motions brought under Rule 12(b)(1) may present either a facial or factual challenge to the Court's subject matter jurisdiction. In reviewing a facial challenge under Rule 12(b)(1), the standards relevant to Rule 12(b)(6) apply. In this regard, the Court must accept all factual allegations in the Complaint as true, and the Court may only consider the complaint and documents referenced in or attached to the complaint. Gould Electronics Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000). In reviewing a factual challenge to the Court's subject

matter jurisdiction, the Court is not confined to the allegations of the complaint, and the presumption of truthfulness does not attach to the allegations in the complaint. Mortensen v. First Fed. Sav. and Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977).

Instead, the Court may consider evidence outside the pleadings, including affidavits, depositions and testimony, to resolve any factual issues bearing on jurisdiction. Gotha v. United States, 115 F.3d 176, 179 (3d Cir. 1997). Once the Court's subject matter jurisdiction over a complaint is challenged, the plaintiff bears the burden of proving that jurisdiction exists. Mortensen, 549 F.2d at 891.

### **III. DISCUSSION**

The Court liberally construes the Complaint as alleging a civil rights action under 42 U.S.C. § 1983. As Defendants argue, and as Plaintiffs seem to acknowledge by their Motions To Transfer, this Court lacks subject matter over this cause of action.

The allegations in the Complaint are strikingly similar to those in Kerns v. Dukes, 153 F.3d 96 (3d Cir. 1998). In Kerns, the property owners, invoking 42 U.S.C. § 1983 and 33 U.S.C. § 1365(a)(2), alleged that by virtue of the establishment of an expanded sewer district, they were compelled to discontinue reliance on their own septic systems and to join the expanded

sewer system, and to pay an array of service charges and fees for the privilege of obligatory participation in the expanded sewer system. Id. at 98. The Appellate Court affirmed the District Court's decision dismissing the case for want of subject matter jurisdiction. The District Court ruled that, as a challenge to a local taxation scheme, the suit ran afoul of federal comity principles and the Tax Injunction Act, 28 U.S.C. § 1341. Id. at 103; See also Kerns v. Dukes, 707 A.2d 363 (Del. 1998) (Delaware Supreme Court determines the certified question, "[t]o what extent does the jurisdiction of Delaware's courts (whether taken singly or in combination) encompass Plaintiffs' claims, and to what extent are Delaware's courts able to provide such relief as those claims, if sustained, would entail?" ).

Realizing that this Court lacks subject matter jurisdiction, Plaintiffs request a transfer of the case to the Court of Chancery of the State of Delaware. However, lack of subject matter jurisdiction terminates a case originally filed in federal court. Moravian Sch. Advisory Bd. v. Rawlins, 70 F.3d 270, 276 (3d Cir 1995); see Fed. R. Civ. P. (h) (3) (if the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action). Indeed, when the District Court is without subject matter jurisdiction, it is powerless to do anything but dismiss the action. Moravian, 70 F.3d at 277.

#### **IV. CONCLUSION**

For the above reasons, the Court will grant Defendants' Motion To Dismiss For Lack of Subject Matter Jurisdiction. The Court will not address that portion of Defendant's Motion seeking dismissal pursuant to Fed. R. Civ. P. 12(b)(6) as it lacks subject matter jurisdiction. The Court will deny Plaintiffs' Motions To Transfer To Cure Want Of Jurisdiction And Statement Of Claim. An appropriate Order will be entered.

