

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

BOBBY KITCHION and CANDANCE REAM,
individually; and SQUIRREL CHOPS LLC, a
Washington limited liability company,

Plaintiffs,

v.

CITY OF SEATTLE, WASHINGTON, a
municipal corporation,

Defendant.

NO. 19-2-25729-6 SEA

ORDER DENYING
DEFENDANT’S MOTION
FOR PARTIAL JUDGMENT
ON THE PLEADINGS

On February 11, 2022, this matter came before the court for oral arguments on the Defendant’s Motion for Partial Judgment on the Pleadings (“**Motion**”) (Dkt. 34). This order reflects and incorporates the court’s oral ruling at the hearing.

The court has considered the parties’ oral arguments and has reviewed the documents filed to date in this case, including:

	<u>Pleading</u>	<u>Dkt. No.</u>
Complaint		1
Defendant City of Seattle’s Motion for Partial Judgment on the Pleadings		34
Plaintiffs’ Opposition to Defendant’s Motion for Partial Judgment on The Pleadings		35

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Pleading

Dkt. No.

Defendant City of Seattle’s Reply in Support of Motion for Partial Judgment on the Pleadings	37
Plaintiffs’ Statement of Additional Authority	38

1. Legal Standards for Motions for Judgment on the Pleadings

“Washington is ... a notice pleading state, requiring only a simple concise statement of the claim and relief sought.” *Thomson v. Doe*, 189 Wn.App. 45, 59, 356 P.3d 727 (2015); CR 8(a).

In considering a motion for a judgment on the pleadings pursuant to CR 12(c), the court must treat the motion in the same manner as it would treat a CR 12(b)(6) motion to dismiss for failure to state a claim.” *P.E. System, LLC v. CPI Corp.*, 176 Wn.2d 198, 203, 289 P.3d 628 (2012).

For purposes of a CR 12(c) motion, the court must examine the pleadings to determine whether the plaintiff can prove any set of facts consistent with the complaint that would entitle the plaintiff to relief. *N. Coast Enterprises, Inc. v. Factoria Partnership*, 94 Wn.App. 855, 859, 974 P.2d 1257 (1999).

Dismissal under CR 12(c) or CR 12(b)(6) is warranted only if the court “concludes beyond a reasonable doubt that the claimant cannot prove any set of facts which would justify recovery.” *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007) (internal quotation marks omitted); *Haberman v. Wash. Pub. Power Supply System*, 109 Wn.2d. at 120, 744 P.2d 1032; *Bavand v. OneWest Bank, F.S.B.*, 176 Wn.App. 475, 485, 309 P.3d 636 (2013); *Leishman v. Ogden Murphy Wallace, PLLC*, 196 Wn.2d 898, 903-904, 479 P.3d 688 (2021).

Both CR 12(c) and CR 12(b)(6), read together with CR 8(a)(1), require the court to decide whether the allegations in a complaint constitute a short and plain statement of the claim showing that the pleader is entitled to relief. *See Orwick v. Seattle*, 103 Wn.2d 249,

1 254, 692 P.2d 793 (1984). The factual allegations contained in the complaint must be
2 accepted as true for purposes of the motion. *N.W. Animal Rights Network v. State*, 158
3 Wn.App. 237, 241, 242 P.3d 891 (2010). Generally, the court may consider only the
4 allegations contained in the complaint and may not go beyond the face of the pleadings.
5 *Jackson v. Quality Loan Serv. Corp.*, 186 Wn.App. 838, 844, 347 P.3d 487 (2015).

6 The court also must consider any “hypothetical facts” asserted by the claimant, even
7 if “not part of the formal record;” and the court is “required to deem as true any assertions
8 consistent with the complaint. *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 750, 888 P.2d 147
9 (1995); *Gorman v. City of Woodinville*, 175 Wash.2d 68, 71, 283 P.3d 1082 (2012); *Reid v.*
10 *Pierce County*, 136 Wash.2d 195, 201, 961 P.2d 333 (1998); *Lien v. Barnett*, 58 Wn.App.
11 680, 683, 794 p.2d 865 (1990); *Lakey v. Puget Sound Energy, Inc.*, 176 Wash.2d 909, 922 n.
12 9, 296 P.3d 860 (2013). “But, ‘[i]f a [claimant’s] claim remains legally insufficient even
13 under his or her proffered hypothetical facts, dismissal pursuant to CR 12(b)(6) is
14 appropriate.’ ” *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180
15 Wash.2d 954, 963, 331 P.3d 29 (2014) (quoting *Gorman v. Garlock, Inc.*, 155 Wash.2d 198,
16 215, 118 P.3d 311 (2005)).

17 The court need not accept legal conclusions as correct. *See Orwick*, 103 Wn.2d at
18 254, 692 P.2d 793; *State ex rel. Pirak v. Schoettler*, 45 Wash.2d 367, 370, 274 P.2d 852
19 (1954); *Haberman v. Wash. Public Power Supply System*, 109 Wn.2d. 107, 120, 744 P.2d
20 1032 (1987).

21 “A motion to dismiss is granted sparingly and with care and, as a practical matter,
22 only in the unusual case in which [a claimant] includes allegations that show on the face of
23 the complaint that there is some insuperable bar to relief.” *Kinney v. Cook*, 159 Wn.2d at
24 842, 154 P.3d 206; *Collins v. Lomas & Nettleton Co.*, 29 Wn.App. 415, 419, 628 P.2d 855
25 (1981).

1 **2. Discussion**

2 The Defendant seeks an order dismissing “one claim, one Plaintiff, and one request
3 for relief.” Motion at 2 (Dkt. 34).

4 First, the Defendant seeks an order dismissing the Plaintiffs’ third claim for relief,
5 which seeks a declaratory judgment determining that the Defendant’s actions amount to cruel
6 punishment in violation of article I, section 14 of the Washington State Constitution. The
7 Defendant argues that the Plaintiffs “have failed to plead a valid claim for cruel punishment
8 based on alleged threats of arrest for refusing to clear from particular sites.” Motion at 8
9 (Dkt. 34).

10 Second, the Defendant seeks an order dismissing all claims asserted by Plaintiff
11 Squirrel Chops LLC, on grounds that Squirrel Chops LLC “lacks taxpayer standing to
12 challenge Seattle’s administration of encampment removals.” *Id.* at 11.

13 Third, the Defendant seeks an order dismissing the Plaintiffs’ claim for a “declaratory
14 judgment that [the Defendant’s] staff have engaged in ‘unconstitutional acts.’ ” *Id.* at 13.

15 Having reviewed the Complaint and the parties’ briefing on the Defendant’s Motion,
16 and having considered the parties’ oral arguments, and assuming all facts pleaded by the
17 Plaintiffs to be true for purposes of the Motion – as the court must at this point – the court
18 concludes that: (1) the Plaintiffs sufficiently have pleaded their claims for relief against the
19 Defendant; (2) based upon the facts pleaded in the Complaint, the Plaintiffs have legal
20 standing to assert the claims that they have asserted; and (3) the Defendant has not established
21 beyond a reasonable doubt that the Plaintiffs cannot prove any set of facts that would justify
22 granting relief on the claims that they have pleaded.

23 At this stage of the case, the potential affirmative defenses and other legal and factual
24 issues that are discussed in the Defendant’s Motion are not properly before the court, and so
25 cannot be resolved now.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

3. Order

For the reasons stated above, and for the reasons stated in its oral ruling, which are incorporated herein, the court **denies** Defendant City of Seattle’s Motion for Partial Judgment on the Pleadings.

Date: February 16, 2022.

/s/ John R. Ruhl

John R. Ruhl, Judge

King County Superior Court
Judicial Electronic Signature Page

Case Number: 19-2-25729-6
Case Title: KITCHION ET AL VS CITY OF SEATTLE
Document Title: ORDER RE -ORDER DENY'G D'S MF JGMT ON PLDGS
Signed By: John Ruhl
Date: February 16, 2022



Judge: John Ruhl

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 6A525D55EB6EDD1D8D3683F58F2E80754B69D73B
Certificate effective date: 3/18/2019 8:27:16 AM
Certificate expiry date: 3/18/2024 8:27:16 AM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="John Ruhl:
3AXSIAvS5hGZA1z3AFk6yQ=="