

DOCUMENT

NOT ORIGINAL
20-CI-00590

05/01/2024 04:17:30 PM

JEFF@WALSONLCM.CO

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 20-CI-00590

COMMONWEALTH OF KENTUCKY

PLAINTIFF

V.

KKR & CO. INC.; et al.

DEFENDANTS

ORDER

This matter is before the Court on Defendants Thomas Elliot, Bobby Henson, Randy Overstreet, Vince Lang, Timothy Longmeyer, T.J. Carlson, Brent Aldridge, and William Thielen's *Motion to Dismiss Based on Qualified Official Immunity and Limitations*; Jennifer Elliott's *Motion to Dismiss Based on Qualified Official Immunity*; T.J. Carlson's *Motion to Dismiss Commonwealth of Kentucky's Amended Complaint*; William Cook's *Motion to Dismiss*; and David Peden's *Motion to Dismiss*. This matter was called before the Court on Thursday, February 29, 2024, at 1:00 p.m. Upon review of the parties' briefs and papers, and being sufficiently advised, the Court hereby **DENIES** Defendants Thomas Elliot, Bobby Henson, Randy Overstreet, Vince Lang, Timothy Longmeyer, T.J. Carlson, Brent Aldridge, and William Thielen's *Motion to Dismiss Based on Qualified Official Immunity and Limitations*; **DENIES** Jennifer Elliott's *Motion to Dismiss Based on Qualified Official Immunity*; **DENIES** T.J. Carlson's *Motion to Dismiss Commonwealth of Kentucky's Amended Complaint*; **DENIES** William Cook's *Motion to Dismiss*; and **DENIES** David Peden's *Motion to Dismiss*.

NOT ORIGINAL
20-CI-00590

05/01/2024 04:17:30 PM

JEFF@WILSONLCM.CO

DOCUMENT

Qualified immunity “is immunity from tort liability afforded to public officers and employees for acts performed in the exercise of this discretionary functions[.]” *Yanero v. Davis*, 65 S.W.3d 510, 521 (Ky. 2001). Qualified immunity applies when (1) the state actor is performing a discretionary act or function; (2) in good faith; and (3) within the scope of the person’s authority. *Id.* at 517. “An act is not necessarily ‘discretionary’ just because the officer performing it has some discretion with respect to the means or method to be employed.” *Id.* at 522 (citations omitted). “Conversely, an officer or employee is afforded no immunity from tort liability for the negligent performance of a ministerial act, *i.e.*, one that requires only obedience to the orders of others, or when the officer’s duty is absolute, certain, and imperative, involving merely execution of a specific act arising from fixed and designated facts.” *Id.* Moreover, these claims have been brought by the Commonwealth, which raises additional issues with Defendants assertion of qualified immunity. The Commonwealth has argued that the General Assembly has waived immunity related to the claims in this action and that KRS 61.645(15) is an express waiver of immunity. All of this said, the Court does not believe the issue of qualified immunity to be ripe for review at this time as no discovery has been conducted. Without discovery, Defendants’ assertion of qualified immunity cannot be adequately assessed as the Court is unable to determine, based solely on the pleadings before it, whether the acts at issue are discretionary. Therefore, the parties must engage in discovery before the Court can consider the issue of qualified immunity.

Moreover, the above-named Defendants have moved the Court to dismiss the claims based on the statute of limitations and issues with service of summons. With respect to the issue of service of summons, many of the above-named Defendants allege that this

NOT ORIGINAL
20-CI-00590

05/01/2024 04:17:30 PM

JEFF@WALSONLCM.CO

DOCUMENT

action cannot be considered to have begun against them until summons were served on them. However, CR 3.01 provides: “[a] civil action is commenced by the filing of a complaint with the court and the *issuance* of a summons or warning order thereon *in good faith*.” CR 3.01 (emphasis added). Further, the General Assembly has prescribed: “[a]n action shall be deemed to commence on the date of the first summons or process issued in good faith from the court having jurisdiction of the cause of action.” KRS 413.250.

After review of the pleadings, the Court finds that there are factual issues which prevent the Court from considering these arguments at this time—issues for which discovery is necessary particularly concerning the issuance of the summons. The Court will note that it is persuaded by the Commonwealth’s rebuttal against Defendants’ argument concerning perfect service versus issuance of summons in good faith. But again, a determination of good faith will require some discovery. Nevertheless, the Commonwealth has indicated to the Court that it has reached out to certain Defendants (trustees) about a potential resolution. While discovery is ongoing, the Court encourages the parties to continue settlement negotiations.

WHEREFORE, Defendants Thomas Elliot, Bobby Henson, Randy Overstreet, Vince Lang, Timothy Longmeyer, T.J. Carlson, Brent Aldridge, and William Thielen’s *Motion to Dismiss Based on Qualified Official Immunity and Limitations* is **DENIED**; Jennifer Elliott’s *Motion to Dismiss Based on Qualified Official Immunity* is **DENIED**; T.J. Carlson’s *Motion to Dismiss Commonwealth of Kentucky’s Amended Complaint* is **DENIED**; William Cook’s *Motion to Dismiss* is **DENIED**; and David Peden’s *Motion to Dismiss* is **DENIED**.

NOT ORIGINAL
20-CI-00590

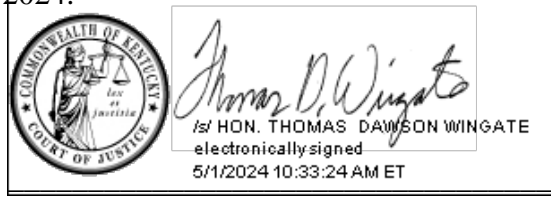
05/01/2024 04:17:30 PM

JEFF@WILSONLCM.CO

DOCUMENT

The parties shall immediately begin discovery on these issues. The Commonwealth and the trustees are encouraged to continue settlement negotiations.

SO ORDERED, this 1st day of May, 2024.



THOMAS D. WINGATE
Judge, Franklin Circuit Court

OD : 000004 of 000004