UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRUSTEES OF THE LEWIS WHARF CONDOMINIUM TRUST, Plaintiff, v. JANET YELLEN et al., Defendants.	)	Civil No. 24-11679-LTS

ORDER ON MOTION TO DISMISS (DOC. NO. 8)

November 22, 2024

SOROKIN, J.

Plaintiff brought this suit seeking to enjoin the Defendants from enforcing a law against the Plaintiff. Defendants now move to dismiss, contending that Plaintiff does not have standing to do so. The Court agrees and ALLOWS the motion to dismiss, Doc. No. 8, without prejudice.

I. BACKGROUND

A. The Corporate Transparency Act

When Congress passed the National Defense Authorization Act ("NDAA") for Fiscal Year 2021, it included a bill called the Corporate Transparency Act ("CTA"), which required certain entities incorporated under state law to disclose personal stakeholder information to the U.S. Department of the Treasury's criminal enforcement arm. By requiring these disclosures, Congress aimed to prevent financial crimes like money laundering and tax evasion. See NDAA, Pub. L. No. 116-283, § 6402(5), 134 Stat. 3388, 4604 (2021). Other goals included "improv[ing] transparency for national security, intelligence, and law enforcement agencies and financial institutions concerning corporate structures," "discourag[ing] the use of shell corporations as a

tool to disguise and move illicit funds," "assist[ing] national security, intelligence, and law enforcement agencies with the pursuit of crimes," and "protect[ing] the national security of the United States." Id. § 6002, 134 Stat. 4547, 4547-4548.

The CTA requires any "reporting company" to submit to the Financial Crimes Enforcement Network ("FinCEN"), a bureau of the Treasury Department, a report containing the name, date of birth, address, and a copy of an identification document (such as a passport or state identification) of each of that company's "beneficial owners." 31 U.S.C. § 5336(b). A "beneficial owner" is "an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—(i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity." Id. § 5336(a)(3)(A). A "reporting company," in turn, is defined as a

> corporation, limited liability company, or other similar entity that is (i) created by the filing of a document with a secretary of state or similar office under the law of a State or Indian tribe; or (ii) formed under the law of a foreign country and registered to do business in the United States.

Id. § 5336(a)(11)(A).

Noncompliance with the CTA subjects a person, not the reporting company, to both civil and criminal liability. A person who willfully provides false beneficial ownership information or fails to report such information faces civil penalties of up to $500 per day, and "may be fined not more than $10,000, imprisoned for not more than 2 years, or both." 31 U.S.C. § 5336(h)(1), (3).

B. The Lewis Wharf Condominium Trust

The following factual allegations are drawn from the complaint, Doc. No. 1, which the Court accepts as true at this stage, as the law requires. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Plaintiff is comprised of the members of the Lewis Wharf Condominium Trust, a declared trust dated October 19, 1973, and recorded with the Suffolk County Registry of Deeds.

Doc. No. 1 ¶ 3. The Trust serves as the collection of unit owners for the Lewis Wharf Condominium located in Boston. Id. ¶ 4. Plaintiff is not an incorporated entity and is not registered with the Secretary of the Commonwealth of Massachusetts. Id. ¶ 24. The Condominium was created by filing a Master Deed with the appropriate Registry of Deeds in the county where the land is located, pursuant to the Massachusetts Condominium Act, Mass. Gen. Laws ch. 183A, § 8. Doc. No. 1 ¶¶ 33, 35. On June 27, 2024, Plaintiff brought this suit, seeking a "permanent injunction enjoining the Defendants and any other agency or employee acting on behalf of the Defendants from enforcing any provision of the [CTA] against any condominium associations or similar condominium entities."[1] Id. at 1.

II. LEGAL STANDARD

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is plausible on its face when the complaint contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. The Court need not, however, "accept the complaint's legal conclusions or naked assertions devoid of further factual enhancement." Soto-Torres v. Fraticelli, 654 F.3d 153, 156 (1st Cir. 2011) (cleaned up).

[1] To the extent that Plaintiff requests relief for an unknown number of "similarly situated" plaintiffs, the Court does not reach the issue. The Court cannot opine on any cases other than the one before it. See Carney v. Adams, 592 U.S. 53, 58 (2020) ("We have long understood that [a court's limit of deciding cases and controversies] to require that a case embody a genuine, live dispute between adverse parties, thereby preventing the federal courts from issuing advisory opinions."). Different homeowner associations are formed in different ways in different counties, let alone states, and the Court's focus in this case is necessarily limited to the particular association involved. Moreover, Plaintiff does not bring a class action, define what a purported class would be, or allege that the requirements of a class are met. See Fed. R. Civ. P. 23.

III. DISCUSSION

The sole issue presently before the Court is whether Plaintiff has standing to bring the suit. To meet the standing requirements under Article III, a plaintiff must establish an "injury in fact"; that is, the injury must be an "invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992) (cleaned up). After the preliminary showing of an injury in fact, a plaintiff must also demonstrate "a sufficient causal connection between the injury and the conduct complained of, and . . . a likelihood the injury will be redressed by a favorable decision." Woodhull Freedom Found. v. United States, 948 F.3d 363, 370 (D.C. Cir. 2020) (cleaned up).

In some cases, the threatened enforcement of a law or a future injury may qualify as an injury in fact. Reddy v. Foster, 845 F.3d 493, 500 (1st Cir. 2017). But the allegation of future injury must be "certainly impending," or there must be a "'substantial risk' that the harm will occur." Susan B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014) (quoting Clapper v. Amnesty Int'l USA, 568 U.S. 398, 409, 414, n. 5 (2013)). In other words, when plaintiffs "do not claim that they have ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible, they do not allege a dispute susceptible to resolution by a federal court." Babbitt v. UFW Nat'l Union, 442 U.S. 289, 298-99 (1979) (cleaned up); see also Reddy, 845 F.3d at 503 ("[A] plaintiff's conjectural fear that a government actor might in the future take some other and additional action detrimental to her does not suffice to create standing." (cleaned up)).

Plaintiff has not met its burden of showing that the future enforcement of the CTA is "certainly impending" or that there is a "substantial risk that the harm will occur." In fact, both parties agree, accepting the facts in the complaint as true, that the CTA does not apply to

Plaintiff. See, e.g., Doc. No. 13 at 8 ("A domestic company is only required to report beneficial ownership information to FinCEN under the CTA if it is created by the filing of a document with a state secretary of state or similar office."); Doc. No. 1 ¶ 24 ("[N]o condominium governing documents, including the declaration of trust, created under M.G.L. c.183A are filed with the Secretary of State's office."); Doc. No. 9 at 7 ("Plaintiffs have not alleged facts that would place their organization within the scope of the CTA's reporting requirements."). The Court sees no reason to question the parties' reading of the applicability of the law. "So the threat remains hypothetical, given the limited facts before" the Court. Reddy, 845 F.3d at 502.

Instead, Plaintiff would like to "obtain a declaration as to the applicability of the statutory provisions." Doc. No. 13 at 8. But while "the question of the Statute's validity is primarily a legal one, the concrete factual situation placing the facial constitutionality of the [Statute] at issue does not yet exist." Ocean State Power LLC v. Town of Burrillville, No. 15-046-ML, 2015 U.S. Dist. LEXIS 107233, at *15-16 (D.R.I. Aug. 14, 2015). "Accordingly, the Court finds that determining the Statute's constitutionality" at least on the present factual record, "before its enforcement has even been attempted amounts to rendering an advisory opinion." Id.

The Court therefore need not go further. Because Plaintiff has not alleged facts that would render the alleged future enforcement (or injury) beyond "hypothetical" or "conjectural," the Court ALLOWS Defendants' motion to dismiss without prejudice. A separate judgment will enter, and each side will bear its own costs and fees.

SO ORDERED.

/s/ Leo T. Sorokin
United States District Judge