

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Randy Joseph Flores, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	CIVIL ACTION NO. H-07-316
	§	
Eagle Lake Detention Center, <i>et al.</i> ,	§	
	§	
Defendants.	§	

MEMORANDUM AND RECOMMENDATION

Defendant Eagle Lake Detention Center has filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) asserting that plaintiffs cannot show that Eagle Lake is a legal entity capable of being sued. (Dkt. 12).

The court may not dismiss a complaint under Rule 12(b)(6) “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). In other words, a claim is legally insufficient under Rule 12(b)(6) “only if there is no set of facts that could be proven consistent with the allegations in the complaint that would entitle the plaintiff to relief.” *Power Entm’t, Inc. v. Nat’l Football League Prop., Inc.*, 151 F.3d 247, 249 (5th Cir. 1998).

Defendant has offered evidence that Eagle Lake Detention Center was owned and operated by Colorado County, Texas in January 2006 when the alleged events giving rise to this lawsuit occurred. A plaintiff may not bring a claim against a servient political agency or department unless such agency or department enjoys a separate and distinct legal

existence. *Darby v. Pasadena Police Dep't*, 939 F.2d 311, 313-14 (5th Cir. 1991). The capacity of a putative governmental entity to sue or be sued is ordinarily determined by the law of the state in which the district court sits. *See* Fed. R. Civ. P 17(b). Because plaintiffs have tendered no proof or argument that Eagle Lake Detention Center is a separate legal entity capable of being sued, it is recommended that defendant's motion to dismiss be GRANTED and Eagle Lake Detention Center be dismissed.

The parties have ten (10) days from receipt of this Memorandum and Recommendation to file written objections. See FED. R.CIV.P. 72. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error.

Signed at Houston, Texas on April 30, 2007.



Stephen Wm Smith
United States Magistrate Judge