UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 24-60557-CIV-DAMIAN

SEA QUEEN SHIPPING CORPORATION AND M/V BRIGHTEN TRADER,

Plaintiff,

v.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Defendant.
_____/

ORDER GRANTING MOTION TO DISMISS [ECF NO. 5] WITH PREJUDICE

THIS CAUSE is before the Court on Defendant, Florida Department of Environmental Protection's ("FDEP" or "Defendant"), Corrected Motion to Dismiss Plaintiff's Complaint, filed May 6, 2024. [ECF No. 5 (the "Motion to Dismiss")].

THE COURT has considered the Motion to Dismiss, Plaintiff's Response thereto, filed May 27, 2024 [ECF No. 11], the pertinent portions of the record,[1] and all relevant authorities and is otherwise fully advised in the premises. For the reasons that follow, the Court grants the Motion to Dismiss with prejudice.

I. BACKGROUND

Plaintiff, Sea Queen Shipping Corporation and M/V Brighten Trader, seeks declaratory relief against FDEP. [ECF No. 1 (the "Complaint") ¶¶ 1, 6].

[1] The Court notes that Defendant did not file a Reply, and that the time to do so has expired. *See* S.D. Fla. L.R. 7.1(c)(1) ("The movant may, within seven (7) days after service of an opposing memorandum of law, file and serve a reply memorandum in support of the motion . . .").

Plaintiff filed the Complaint on April 10, 2024, asserting a single cause of action for declaratory relief. *See generally* Compl. In the Complaint, Plaintiff alleges FDEP claimed "monetary damages in the amount of $106,744.32 alleging the [Plaintiff's] anchor caused damage to coral reef at Port Everglades, Florida on June 14, 2021." *Id.* at ¶ 6. In support of this allegation, Plaintiff cites one email from FDEP which appears to be a proposal to settle FDEP's claim for monetary damages from Plaintiff under the Coral Reef Protection Act.[2] *See* ECF No. 11-1. In the Complaint, Plaintiff disputes that it "caused the claimed damage" and instead pleads that "the potential actions of another vessel and the operations conducted by Port Everglades" were the true cause of the damage to the coral reef. *Id.* at ¶ 7.

Defendant filed the Motion to Dismiss now before the Court on May 6, 2024, and asserts Plaintiff's Complaint should be dismissed on the basis of sovereign immunity. *See* Motion to Dismiss. Defendant also argues the Court lacks subject matter jurisdiction over Plaintiff's claim and that Plaintiff fails to state a claim upon which relief may be granted. *Id.*

As discussed below, the Court agrees that FDEP enjoys sovereign immunity from suit here and also finds that Plaintiff has improperly used the Federal Declaratory Judgment Act, warranting dismissal of Plaintiff's Complaint with prejudice.

[2] The Complaint references an "Exhibit A," but, as Defendant points out in the Motion to Dismiss, no exhibit was attached to or filed with the Complaint. In its Response to the Motion to Dismiss, Plaintiff states the failure to attach the exhibit was an error and attaches the exhibit to the Response. *See* ECF No. 11-1. Defendant does not dispute the exhibit attached to the Response is the document Plaintiff intended to attach to the Complaint. In any event, the Court finds the Exhibit is central to Plaintiff's pleading and will consider it. *See Harris v. Ivax Corp.,* 182 F.3d 799, 802 n. 2 (11th Cir. 1999) (explaining that "a document attached to a motion to dismiss may be considered by the court without converting the motion into one for summary judgment only if the attached document is: (1) central to the plaintiff's claim; and (2) undisputed.") (citation omitted).

II. LEGAL STANDARD

A. Federal Rule of Civil Procedure 12(b)(6)

Rule 12(b)(6) provides that a defendant may move to dismiss a complaint that does not satisfy the applicable pleading requirements for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In considering a Rule 12(b)(6) motion to dismiss, a court's review is generally "limited to the four corners of the complaint." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 959 (11th Cir. 2009) (quoting *St. George v. Pinellas County*, 285 F.3d 1334, 1337 (11th Cir. 2002)).

A court must review the complaint in the light most favorable to the plaintiff, and it must generally accept the plaintiff's well-pleaded facts as true. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). However, pleadings that "are no more than conclusions[] are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Ashcroft*, 556 U.S. at 679. Dismissal pursuant to a Rule 12(b)(6) motion is warranted "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations of the complaint." *Shands Teaching Hosp. & Clinics, Inc. v. Beech St. Corp.*, 208 F.3d 1308, 1310 (11th Cir. 2000) (internal quotation marks omitted) (quoting *Hishon*, 467 U.S. at 73).

III. DISCUSSION

A. Declaratory Judgment Act

As a preliminary matter, the Court finds *sua sponte* that Plaintiff may not use the Declaratory Judgment Act (28 U.S.C. § 2201 *et seq*) to bring its claims here. A court has discretion whether to entertain an action for a declaratory judgment. *See Public Affairs Associates, Inc. v. Rickover,* 369 U.S. 111 (1962); *Brillhart v. Excess Insurance Company of America,*

316 U.S. 491 (1942). One basis for declining to exercise discretion to hear a case for declaratory judgment is that the "declaratory remedy is not a tactical device whereby a party who would be a defendant in a coercive action may choose to be a plaintiff if he can beat the other party to the courthouse." *Cas. Indem. Exch. v. High Croft Enterprises, Inc.*, 714 F. Supp. 1190, 1193 (S.D. Fla. 1989) (King, C.J.) (quoting *State Farm Fire & Cas. Co. v. Taylor*, 118 F.R.D. 426, 431 (M.D.N.C. 1988)). Here, Plaintiff appears to be doing just that.

Plaintiff filed the instant lawsuit in federal court on the basis of an email from FDEP in which FDEP appears to be attempting to negotiate a settlement of a claim for damages from Plaintiff based on Plaintiff's alleged violation of the Coral Reef Protection Act. Although a suit seeking to enforce the Coral Reef Protection Act might fall within this Court's federal question jurisdiction, the mere anticipation of defenses by Plaintiff against such a suit by a government agency provides no independent basis for the Court to entertain a suit under the Declaratory Judgment Act. *See Hanes Corp. v. Millard*, 531 F.2d 585, 592–93 (D.C. Cir. 1976) ("The anticipation of defenses is not ordinarily a proper use of the declaratory judgment procedure. It deprives the plaintiff of his traditional choice of forum and timing . . .").

Plaintiff may not sue under the Declaratory Judgment Act in order to simply beat FDEP to the courthouse and posture itself as the plaintiff. Therefore, Plaintiff has improperly invoked the Declaratory Judgment Act, and, as such, there is no basis for Plaintiff's claim in this Court and, likewise, no basis for federal subject matter jurisdiction.

B. Sovereign Immunity.

Even if Plaintiff were to file an amended complaint which invoked an alternative basis for relief and for federal jurisdiction, this Court agrees that FDEP, as an agency of the State of Florida, is immune from claims in federal court by private persons, like Plaintiff, pursuant

to the Eleventh Amendment of the United States Constitution when, as here, the State has not waived immunity. *See* Motion to Dismiss at 2. FDEP further avers that the Declaratory Judgment Act does not extend the jurisdiction of federal courts such that it would abrogate this sovereign immunity. *Id.* at 3–4.[3]

In response to FDEP's sovereign immunity argument, Plaintiff argues that the Eleventh Amendment's bar to suit is not absolute. Resp. at 1. Plaintiff contends that the Court can find a waiver if the State voluntarily invokes jurisdiction or if the State makes a clear declaration that it intends to submit itself to federal jurisdiction. *Id.* at 2 (citing *Halmos v. Spinard*, No. 22-10006-CIV, 2023 WL 2975020, at *1 (S.D. Fla. Mar. 24, 2023) (Martinez, J.)). Plaintiff claims that federal admiralty jurisdiction applies as "the state has claimed an interest as it pertains to the subject coral reef" which thus "invok[es] the waiver exception" discussed in *Halmos*. *Id.*

This Court disagrees with Plaintiff. Absent "waiver or valid abrogation" of a state's Eleventh Amendment sovereign immunity, "federal courts may not entertain a private person's suit against a State." *Virginia Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 254 (2011). "This withdrawal of jurisdiction effectively confers an immunity from suit." *Puerto Rico Aqueduct & Sewer Auth. V. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993). FDEP, as a state agency, qualifies as part of the executive branch of the Florida government, and thus meets the requirements for sovereign immunity as an arm of the state. *See Miccosukee Tribe of Indians*

[3] FDEP also points out that the Complaint references an Exhibit A, but that, however, no Exhibit A is attached to the Complaint—arguing that this independently causes the Complaint to fail to state a claim. Motion to Dismiss at 4-5. The Court declines to substantively address this issue because Plaintiff attached the document to its Response, and, more importantly, Plaintiff's arguments on sovereign immunity are in-and-of themselves dispositive.

v. Fla. Stat. Athletic Comm'n, 226 F. 3d 1226, 1232–3 (11th Cir. 2000). FDEP is therefore immune from suit from private persons such as Plaintiff. The fact that this suit is brought under the Federal Declaratory Judgment Act does nothing to change this. *See Skelly Oil Co. v. Phillips Petroleum Co*., 339 U.S. 667, 671 (1950) (stating that through the Declaratory Judgment Act "Congress enlarged the range of remedies available in the federal courts but did not extend their jurisdiction").

Plaintiff suggests that the state has made a clear declaration submitting to federal jurisdiction, but Plaintiff fails to identify an explicit, definitive waiver. As set forth in Section 768.28(18), Florida Statutes, "No provision of . . . [any] section of the Florida Statutes . . . shall be construed to waive the immunity of the state or any of its agencies from suit in federal court, as such immunity is guaranteed by the Eleventh Amendment to the Constitution of the United States, ***unless such waiver is explicitly and definitely stated*** to be a waiver of the immunity of the state and its agencies from suit in federal court." (emphasis added). Plaintiff has not identified an explicit or definitive waiver, nor has Plaintiff identified anything the State of Florida has done to waive immunity in general or in this case in particular. And Plaintiff's suggestion that admiralty jurisdiction somehow achieves such a waiver is contrary to all relevant authority.[4] *See Welch v. Texas Dept. of Highways and Public Transp.*, 483 U.S. 468, 472–73 (1987); *Horn v. State, Dept. of Transp.*, 665 So.2d 1122, 1125–27 (1st DCA 1996) (stating "it has long been recognized that the states (and their agencies) enjoy Eleventh Amendment immunity prohibiting suits in admiralty from being brought against them by their citizens in

[4] Plaintiff's argument that the state of Florida has invoked federal jurisdiction in a suit *filed by Plaintiff* is nonsensical.

federal court . . . While a state may waive such immunity, the waiver must be clear and unequivocal").

Because the State of Florida has not clearly and unequivocally waived its immunity here, FDEP is immune from suit.

IV. CONCLUSION

For the reasons set forth above, this Court finds that it lacks jurisdiction to consider Plaintiff's claim and that the Complaint fails to state a claim for relief. Even if Plaintiff had attached Exhibit A to its Complaint, there exists no way for it to state a claim for relief given that (1) its cause of action may not be brought under the Declaratory Judgment Act, and (2) sovereign immunity blocks such a suit by Plaintiff against FDEP. As such, amendment would be futile, and the Complaint is due to be dismissed with prejudice. *See Chiron Recovery Ctr., LLC v. United Healthcare Servs., Inc.*, 438 F. Supp. 3d 1346, 1356 (S.D. Fla. 2020) (court may "dismiss a case with prejudice when amendment would be futile.") (Rosenberg, J.) (citing *Burger King Corp. v. Weaver*, 169 F.3d 1310, 1320 (11th Cir. 1999)).

Accordingly, it is hereby

ORDERED AND ADJUDGED that Defendants' Motion to Dismiss Plaintiff's Complaint **[ECF No. 4]** is **GRANTED**. It is further

ORDERED AND ADJUDGED that the Complaint is **DISMISSED WITH PREJUDICE**. The Clerk of Court is directed to **CLOSE** the case.

DONE AND ORDERED in Chambers in the Southern District of Florida this 17th day of June, 2024.

MELISSA DAMIAN
UNITED STATES DISTRICT JUDGE