



**Louisa Lodging, LLC v. Falls Creek, Inc.**

2017 | Cited 0 times | E.D. Kentucky | December 28, 2017

STATES COURT

OF DIVISION

CIVIL NO.

LOUISA

OPINION

FALLS INC.

U.S.C. U.S.C.

Super

South UNITED DISTRICT EASTERN DISTRICT KENTUCKY

NORTHERN

ASHLAND ACTION 16-151-HRW

LODGING, LLC

v. MEMORANDUM AND ORDER

PLAINTIFF,

CREEK, DEFENDANT.

This matter is before the Court upon Defendant Falls Creek, Inc. 's Partial Motion to Dismiss Plaintiffs Amended Complaint [Docket No. 22]. The motion has been fully briefed by the parties [Docket Nos. 22-1, 25 and 26]. For the reasons stated herein, the Court finds that the Amended Complaint fails to state a claim under 42 § 1981 or 42 § 1982 upon which relief can be granted. Therefore, Counts II and III of the Amended Complaint will be dismissed.



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I. This case arises from the purchase and sale of the 8 Motel in Louisa, Kentucky and the appurtenant assignment of the property lease to the purchaser, between Louisa Lodgers, LLC and Falls Creek, Inc. The purchaser, Louisa Lodgers, LLC, brought this civil action against the seller, Falls Creek, Inc., alleging that Falls Creek, Inc. violated the terms of the Ground Lease agreement and discriminated against its members on the basis of their national origin of the members of its LLC, to-wit, Asian.

Plaintiff filed its original Complaint against Falls Creek, Inc. in the Circuit Court of Case: 0:16-cv-00151-HRW Doc #: 29 Filed: 12/28/17 Page: 1 of 6 - Page ID#: 250

U.S.C. Shortly

("Title ("IRCA") State

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Sixth 509 (6th 2012)

Supreme 550 U.S. (2007) Lawrence County, Kentucky. The case was removed to this Court by Defendant pursuant to 28

§§ 1331 and 1441. [Docket No. 1]. thereafter, Defendant filed a Motion to Dismiss the portions of the Plaintiffs Complaint which sought relief under Title VII of the Federal Civil Rights Act of 1964 (Title VII), the Immigration Reform and Control Act of 1986

and the Kentucky Constitution as such claims were not colorable under applicable and Federal law. [Docket No. 15]. In response to the motion, Plaintiff conceded that the specific causes of action were not tenable and sought leave to amend its Complaint. [Docket Nos. 16 and 17]. This Court granted Plaintiff leave to amend its Complaint and overruled the Defendant's motion as moot. [Docket No. 18].

Plaintiffs Amended Complaint seeks a declaration as to the parties' rights under the Ground Lease agreement and alleges violations of 42 §§ 1981 and 1982. [Docket No 19].

Defendant seeks to dismiss Counts II and III of the Amended Complaint, which purport to allege violations of 42 §§ 1981 and 1982. Specifically, in these Counts, Plaintiff alleges that Defendant discriminated against its members upon the basis of national origin.

II. Dismissal of a complaint is warranted under Fed.R.Civ.P. 12(b)(6) if it fails to state a claim upon



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which relief can be granted. With respect to a motion to dismiss under Fed.R.Civ.P. 12(b)(6), the Circuit Court of Appeals explained in *Estate of Ezra G. Smith v. United States*, Fed.Appx. 436 Cir. that:

[t]he Court held in *Bell Atlantic Corp. v. Twombly*, 544 that to survive a motion to dismiss under Rule 12(b)(6) a complaint must contain (1) enough facts to state a claim to relief that

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Smith, 509 "Conclusory

face." LLC, 520, (foCir. 2013). "complaint

theory." Inc.,520 2008) Sixth

520 "At is plausible; (2) more than a formulaic recitation of a cause of actions' elements; and (3) allegations that suggest a right to relief above a speculative level. (internal citation omitted) ... A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. (internal citation omitted) ... For a complaint to survive a motion to dismiss, the non-conclusory factual content and the reasonable inferences from that content, must be plausibly suggestive of a claim entitling a plaintiff to relief. (internal citation omitted) Where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged--but it has not show[n]--that the pleader is entitled to relief

*Estate of Ezra G.* Fed.Appx. at 439.

assertions, e.g., that...[the] defendants engaged in 'outrageous' and 'unlawful' behavior ... are insufficient to state a claim that is plausible on its Ogle v. Columbia Gas Transmission, 513 Fed.Appx. 522-523 The must contain either direct or inferential allegations respecting all material elements to sustain a recovery under some viable legal Bishop v. Lucent Technologies, F.3d 516, 519 (6th Cir. (internal citation omitted). As the Circuit stated in Bishop:

[ c ]onclusory allegations or legal conclusions masquerading as factual allegations will not suffice. Even under Rule 12(b)(6), a complaint containing a statement of facts that merely creates a suspicion of a legally cognizable right of action is insufficient. (internal citations omitted) The factual allegations must be enough to raise a right to relief above the speculative level; they must state a claim to relief that is plausible on its face.

Bishop, F.3d at 519 (internal citations omitted) (emphasis original). the very least, trial



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asserted." Sampson (6th See Scheid Shops, (6th "more requirements.")

Plaintiff

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United States Supreme Sixth See, and appellate courts should not have to guess at the nature of the claim Kafele v. Lerner, & Rothfuss, 161 Fed.Appx. 487, 491 Cir. 2005). also

v. Fanny Farmer Candy Inc., 859 F.2d 434 Cir. 1988)(holding that than bare assertions of legal conclusions is ordinarily required to satisfy federal notice pleading

III. alleges that Defendant discriminated and/or retaliated against its members upon the basis of their national origin and, by doing so, Defendant ran afoul 42 §§ 1981 and 1982. [Docket No. 19, 26-36].

The relevant paragraphs of the Amended Complaint allege:

That Louisa Lodging engaged in protected activity under 42 § 1981 when it complained to Falls Creek that its refusal to approve an assignment of the Ground Lease from Louisa Lodging to the prospective purchasers was unlawful discrimination on the basis of ethnicity and national origin. That Louisa Lodging engaged in protected activity under 42 § 1982 when it complained to Falls Creek that its refusal to approve an assignment of the Ground Lease from Louisa Lodging to the prospective purchasers was unlawful discrimination on the basis of ethnicity and national origin.

Id. at 27 and 33 (emphasis added).

As defendant points out, Sections 1981 and 1982 apply to discrimination upon the basis or race, not national origin. Courts, including the Court as well as the

Circuit have held the same time and time again. Jones v. Alfred H. Mayer Co., 392



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U.S. 409, 2000 U.S. LEXIS 24005, Sep. 2000). See "discrimination §1981."); 460, 2006) "it

Plaintiff

Plaintiff

"on purchasers."

"legal allegation." 413 (1968) and Blank v. Cox, App. at \*3-4 (6th Cir. 21, also, Ana Leon T v. Fed. Res. Bank, 823 F.2d 928, 931 (6th Cir. 1987)(

based solely on the place or nation of a plaintiffs origin is not actionable under El-Zabet v. Nissan N Am., Inc., 211 F. App'x 462 (6th Cir. is legally impossible to state a claim for national-origin discrimination under section 1981 ).

Indeed, in its response to Defendant's motion, Plaintiff appears to concede that national origin or ethnicity cannot be the basis for the claims alleged in Counts II and III of its Amended Complaint.

Yet, maintains that it asserted a viable claim of racial discrimination and that the motion should be overruled. The Court disagrees. Notably absent from the Amended Complaint are any factual allegations regarding the alleged acts of discrimination. Plaintiff makes no reference to any statement or action by Defendant disparaging, or even mentioning, the skin color, race, or any other alleged ethnic characteristic of its members. fails to specifically denotes what Defendant said or did that supports the claims of discrimination. Rather, Plaintiffs claim is a single conclusory allegation that Falls Creek imposed umeasonable conditions on Plaintiffs lease assignment account of the national origin of the prospective

Declaring that the Defendant discriminated against its members, without any details, is not sufficient. The lone allegation of discrimination is a mere conclusory assertion or, to quote Bishop, a conclusion masquerading as a factual As set forth supra, Twombly requires more.

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IV.

IS HEREBY ORDERED

SUSTAINED DISMISSED. INTERLOCUTORY NON- ORDER.



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/: , . Signed :1' . '

„ • .:iL:d District The Counts II and III of the Amended Complaint fail to pass Twombly muster. Accordingly, IT that Defendant Falls Creek, Inc.'s Partial Motion to Dismiss Plaintiffs Amended Complaint [Docket No. 22] be and that Counts II and III of the Amended Complaint be

This is an and APPEALABLE This 28 1

h day of December, 2017.

By: i WilhoitLJr.

Judge

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