



Hagy v. Advance Auto Parts, Inc. et al

2016 | Cited 0 times | W.D. North Carolina | September 28, 2016

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION 3:15-CV-509-RJC-DCK AMY WORLEY HAGY, as Personal)
Representative of the ESTATE OF JESSE) JAMES WORLEY,) Plaintiff,) v.) ORDER ADVANCE
AUTO PARTS, INC.; ACE) AMERICAN INSURANCE COMPANY;) SEDGWICK CLAIMS
MANAGEMENT) SERVICES, INC.; INDEMNITY) INSURANCE COMPANY OF NORTH)
AMERICA,) Defendants.) _____

THIS MATTER 12) and the related pleadings endation the Magistrate Judge M&R (Doc. No. 25); and
the Magistrate Judge s M&R (Doc. No. 26).

I. BACKGROUND

background of this case. Therefore, the Court adopts the facts as set forth in the M&R. II.
STANDARD OF REVIEW

A district court may assign dispositive pretrial matters, including motions to dismiss, to a

t shall make a de novo determination of those portions of the report or specific proposed findings or
Id. at § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983). De novo
review is not required by the statute when an objecting party makes only general or conclusory
objections that do not direct Orpiano v. Johnson, 687 F.2d 44 (4th Cir. 1982). Further, the statute does
not on its face require any review at all of issues that are not the subject of an objection. Thomas v.
Arn, 474 U.S. 140, 149 (1985); Camby, 178 F.2d at 200. Nonetheless, a district judge is responsible for
the final determination and outcome of the case, and accordingly this Court has conducted a careful
review of the Magistrate

The standard of review for a motion to dismiss is well known and well-stated in the not resolve
contests surrounding Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). A
complaint attacked by a Rule 12(b)(6) motion to dismiss will survive if it contains enough facts to
state a claim to relief that is plausible on its Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell
Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Facial plausibility means allegations that allow
the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id.
Case 3:15-cv-00509-RJC-DCK Document 27 Filed 09/28/16 Page 2 of 7 recitals of the elements of a



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cause of action, supported by mere conclusory statements, do not Id.

Federal Rule of Civ Specific facts are not necessary; the

ds upon Twombly, 550 U.S. at 545 (quoting Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752, 775 (1984)). Additionally a judge must accept as true all of the factual allegations contained in the complaint. Erickson v.

Pardus, 551 U.S. 89, 93-94 (2007) (quoting Twombly, 550 U.S. at 555-56). Nonetheless, a court is not bound to accept as true legal conclusions couched as factual allegations. Papasan v. Allain, 478 U.S. 265, 286 (1986). Courts cannot weigh the facts or assess the evidence at this stage, but a complaint entirely devoid of any facts supporting a given claim cannot proceed. Potomac Conference Corp. of Seventh-Day Adventists v. , 2 F. Supp. 3d 758, 767-68 (D. Md. 2014). Furthermore Mylan Labs, Inc. v. Matkar, 7 F.3d 1130, 1134 (4th

Cir. 1993).

III. DISCUSSION (1) violation of the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b) (the ; (2)

violation of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75- 1.1 (the ; and (3) unjust enrichment. The Defendants made three main arguments in their motion to dismiss: (1) the UDTPA claim should be dismissed because the subject matter of d by a federal statutory scheme and application of the UDTPA would create overlapping enforcement, supervi UDTPA claim should be dismissed because the Complaint fails to allege facts showing that

Plaintiff sustained an actual injury that was proximately caused by Defendants; and (3) the unjust enrichment claim should be dismissed because the Complaint fails to allege facts showing that Plaintiff conferred a benefit on any Defendant that would be unjust for a Defendant to keep. Defendants A claim should be dismissed at this time. (Doc. No. 13, at 4-5).

The Magistrate Judge determined that all three o arguments were persuasive and recommended that the causes of action for violation of UDTPA and unjust enrichment recommendation regarding the UDTPA claim, but Plaintiff, in her objections, conceded the unjust enrichment claim and stipulated to its dismissal. (Doc. No. 25, at 1, n.1). Accordingly Motion to Dismiss as it relates to unjust enrichment claim will be granted and this Court will only address Defendan arguments regarding the UDTPA claim.

Plaintiff asserts that the Magistrate Judge erred by recommending that the MSPA preempts the UDTPA. As Plaintiff admits, the Magistrate Judge never made an explicit finding that the MSPA preempted the UDTPA, but Plaintiff although the magistrate did not use these words, the magistrate, in effect, believes 42 U.S.C. 1395y(b)(3)(A) preempted [T] Based on this assumption,



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Plaintiff then turns to an examination of the Supremacy Clause and argues that, because there is no actual preempt the UDTPA. But, as Defendants point out, the application of the UDTPA in this case is

not a question of preemption. Rather, it is a question of the scope of the UDTPA. The UDTPA Food Lion, Inc. v. Capital Cities/ABC, Inc., 194 F.3d 505, 519 (4th Cir. 1999). To do so, it Id. Nevertheless,

Wilson v. Blue Ridge Elec. Membership Corp., 578 S.E.2d

692, 694 (N.C. Ct. App. 2003); see also Linder v. Durham Hosiery Mills, Inc., 761 F.2d 162, damages, a UDTPA count Broussard v. Meineke Discount

Muffler Shops, Inc., 155 F.3d 331, 347 (4th Cir. 1998) (quoting Allied Distributors, Inc. v. Latrobe Brewing Co., 847 F. Supp. 376, 379 (E.D.N.C. 1993)).

Despite the frequent appearance of claims under the UDTPA, North Carolina courts have refused to apply the UDTPA to certain matters, including to matters already and intricate regulati by other statutory schemes that contain separate enforcement,

supervisory, and remedial provisions. Skinner v. E.F. Hutton & Co, Inc., 333 S.E.2d 236, 241 (N.C. 1985) (quoting Linder, 761 F.2d at 167). UDTPA is commonly pled in an attempt to receive treble damages, but courts have held that remedy, through a UDTPA claim, is not Wake County v. Hotels.com,

LP, 2007 WL 4125456 (N.C. Sup. Ct. Nov. 19, 2007) (quoting HAJMM Co. v. House of Raeford Farms, Inc., 403 S.E.2d 483, 493 (N.C. 1991)); see, e.g., Skinner, 333 S.E.2d at 241 (holding that the UDTPA does not apply to securities transactions because they are subject to Linder, 761 F.2d at 167)); Bache Halsey Stuart, Inc. v. Hunsucker, 248 S.E.2d 567 (N.C. Ct. App. 1978) (holding that the UDTPA does not apply to .

and commodities transactions governing Medicare. Th administrative regulations. Bache Halsey Stuart, Inc., 248 S.E.2d at 568 (describing

commercial activity surrounding the commodities futures exchanges). In fact, the laws and regulations governing Medicare have ted and complex, further indicating its pervasiveness and intricacy. Estate of Urso v. Thompson, 309 F. Supp. 2d 253, governing Medicare generally Medicare Secondary Payer claims. 42 U.S.C. §§ 1395y(b)(2) and (3) address, among other

things, when Medicare can make secondary payer payments, repayments to Medicare, actions by the U.S. government, right of appeal, and enforcement of matters related to a violation of the repayment requirement, including providing for a private cause of action. As noted by Defendants, the MSPA



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provides for its own enforcement, supervision, and remediation. Medicare Secondary Payer claims are clearly regulated by a pervasive and intricate statutory scheme the MSPA and that scheme provides a remedy for violations and a means to obtain that remedy dismissed. system specifically

established to govern Medicare Secondary Payer claims. Furthermore, an examination of the purpose of the UDTPA makes clear that it is not Indeed, the purpose of UDTPA is an important factor in determining the scop Food Lion, Inc. fundamental purpose of the U[D]TPA is to protect the consumer, and courts invariably look to

Plaintiff is not a consumer who purchased goods from Defendants. Rather, Plaintiff is a former employee to one of the Defendants, Advanced Auto Parts, and the other Defendants are insurance companies and a third-party administrator for Advanced Auto Parts, not for Plaintiff. Simply put, this is not a case between buyer and seller or business competitors, and accordingly, the UDTPA does not apply.

Having determined that the UDTPA is not applicable to the current case and that ds it unnecessary to address whether the Plaintiff has plead an injury sufficient under the UDTPA to survive the Motion to Dismiss.

IV. CONCLUSION

IT IS, THEREFORE, ORDERED that Defendants Motion to Dismiss (Doc. No. 12) is GRANTED. causes of action, for Unfair and Deceptive Practices under N.C. Gen. Stat. § 75-1 et seq. and for unjust enrichment, are DISMISSED st cause of action, for a violation of the Medicare Secondary Payer statute, 42 U.S.C. § 1395y(b), may proceed to discovery.

Signed: September 27, 2016

