

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEAN G. MINTZ : CIVIL ACTION
 :
 v. :
 :
 BELL ATLANTIC, INC., et al. : NO. 99-3546

ORDER - MEMORANDUM

AND NOW, this 23rd day of September, 1999, this action is dismissed for failure to state a claim on which relief can be granted.¹ Fed. R. Civ. P. 12(b)(6). The dismissal results from the motion of defendants Abraham, Bauer & Spalding, P.C., Robert G. Bauer, and Neil R. Durkin, as to Bell Atlantic, Inc., is sua sponte.

This action arises out of a personal injury lawsuit filed by plaintiff Jean G. Mintz in the Court of Common Pleas of Berks County, Pennsylvania (C.C.P. 6665-95-AD).² The pro se complaint alleges (1) defendant Bell Atlantic refused to settle plaintiff's case because of her gender and (2) her attorneys committed malpractice by not moving for a default judgment against one of the defendants.

A party's gender-motivated refusal to enter into a settlement agreement is not actionable under existing law. The only conceivable basis is 42

¹A pro se complaint is held "to less stringent standards than formal pleadings drafted by lawyers" and may be dismissed only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McDowell v. Delaware State Police, 88 F.3d 188, 189 (3d Cir. 1996) (quotations omitted).

²According to defendants' brief, trial is scheduled in state court for September 29, 1999.

U.S.C. § 1981. There, the statutory prohibition of racially motivated refusals to contract by a private party includes disparate handling of claims. See Harris v. McDonald's Corp., 901 F. Supp. 1552, 1558 (M.D. Fla. 1995); Broomes v. Schmidt, Civ. A. No. 95-4845, 1996 WL 724031, at *2 (E.D. Pa. Dec. 13, 1996). However, § 1981 does not encompass gender discrimination. See Runyon v. McCrary, 427 U.S. 160, 167, 96 S.Ct. 2586, 2593, 49 L.Ed.2d 415 (1976).

Since none of the defendants is a state actor, 42 U.S.C. § 1983 is unavailable. Likewise, there is no basis here for a claim under 42 U.S.C. § 1985 – conspiracy to interfere with civil rights.

Inasmuch as all of the parties are citizens of Pennsylvania, there can be no diversity jurisdiction. 28 U.S.C. § 1332. Supplemental jurisdiction over the remaining state law claim for malpractice is declined. See 28 U.S.C. § 1367(c)(3).

Edmund V. Ludwig, J.