

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

EVERY GIGLIOTTI, et al. : CIVIL ACTION
v. :
WAWA INC., et al. : NO. 99-3432

MEMORANDUM AND ORDER

BECHTLE, J. FEBRUARY , 2000

Presently before the court is defendant Wawa, Inc.'s ("Wawa") Motion to Dismiss Count A of Plaintiff's Complaint and plaintiffs Avery Gigliotti, et al.'s (collectively "Plaintiffs") response thereto. For the reasons set forth below, said motion will be granted.

I. BACKGROUND

Plaintiffs filed a two-count Complaint against Defendants Wawa and the City of Philadelphia, the Philadelphia Police Department and an individual Philadelphia police officer ("City Defendants"). Count A of the Complaint, asserted against Wawa, arises under 42 U.S.C. § 2000a, which prohibits discrimination in places of public accommodation.¹ (Complaint ¶¶ 6 & 8-20.) Count A is predicated on incidents that allegedly occurred on July 9, 1997. (Complaint ¶¶ 8-11.) According to the Complaint, Plaintiffs were denied access to the Wawa store located at Brouse and Tyson Avenues in Philadelphia, Pennsylvania. (Complaint ¶¶ 8 & 13.)

¹ Count B of the Complaint is asserted against the City Defendants under 28 U.S.C. § 1983. (Complaint ¶¶ 7 & 21-37.)

II. LEGAL STANDARD

For the purposes of a motion to dismiss, the court must accept as true all well-pleaded allegations of fact in a plaintiff's complaint, construe the complaint in the light most favorable to the plaintiff, and determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988). The court may also consider "matters of public record, orders, exhibits attached to the Complaint and items appearing in the record of the case." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994) (citations omitted). The court, however, need not accept as true legal conclusions or unwarranted factual inferences. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) (citations omitted).

III. DISCUSSION

Title II of the Civil Rights Act of 1964 prohibits discrimination in places of "public accommodation." 42 U.S.C. § 2000a. Places of public accommodation include: "any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station." 42 U.S.C. § 2000a(b)(2).

Retail establishments are not "place[s] of public accommodation" under § 2000a. Priddy v. Shopko Corp., 918 F. Supp. 358, 359 (D. Utah 1995) (stating that "[i]t is clear that Congress did not intend for retail establishments . . . to be included in § 2000a"); see Carrington v. Lawson's Milk Co., 815 F.2d 702 (6th Cir. 1987) (slip op. at **2, available at 1987 WL 36691) (per curiam) (stating that convenience food store not "principally engaged in selling food for consumption on the premises" was not covered by Title II). In Carrington, the court concluded that Lawson's was a convenience store, where food products were sold "principally for off-premises consumption." Id. at **2; cf. U.S. v. Baird, 865 F.Supp. 659, 662-63 (E.D. Cal. 1994), rev'd on other grounds, 85 F.3d 450 (9th Cir. 1996) (stating that retail convenience store was not principally engaged in selling food for consumption on premises where store sold food which was ready to eat but had no facilities for consumption of food on premises).

Plaintiff's Complaint generally avers that Wawa is a "an establishment that affects interstate commerce as a place of public accommodation" under Title II. (Compl. ¶ 6.) Plaintiff's Complaint alleges no set of facts sufficient to support a finding that Wawa is a place principally engaged in selling food for consumption on the premises or any other type of public accommodation. See Priddy, 918 F.Supp. at 358 (dismissing complaint that alleged "no set of facts sufficient to support a finding that Shopko is either a place principally engaged in

selling food for consumption on the premises, or a hotel type establishment, or a place of entertainment"). Accordingly, the court will grant Wawa's motion to dismiss Count A of Plaintiff's Complaint.

IV. CONCLUSION

For the foregoing reasons, the court will grant defendant Wawa, Inc.'s Motion to Dismiss Count A of Plaintiff's Complaint.

An appropriate Order follows.

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ORDER

AND NOW, TO WIT, this day of February, 2000, upon consideration of defendant Wawa, Inc.'s Motion to Dismiss Count A of Plaintiff's Complaint and plaintiffs Avery Gigliotti, et al.'s response thereto, IT IS ORDERED that said motion is GRANTED. IT IS FURTHER ORDERED that:

1. Count A of Plaintiffs' Complaint, alleging a cause of action under 42 U.S.C. § 2000a is DISMISSED.
2. Defendant Wawa, Inc.'s Motion to Extend Discovery for the Limited Purpose of Taking Plaintiffs' Depositions is DENIED AS MOOT;
3. Defendant Wawa, Inc.'s Unopposed Motion to Stay All Proceedings is DENIED AS MOOT; and
4. Plaintiff Avery Gigliotti, et al.'s Motion to Extend Discovery is DENIED AS MOOT.

LOUIS C. BECHTLE, J.