

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

ROSALIND BETHEA, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
MICHAEL'S FAMILY RESTAURANT AND DINER	:	NO. 00-6216

MEMORANDUM AND ORDER

HUTTON, J.

June 26, 2001

Presently before this Court are the Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Docket No. 5), the Plaintiffs' Response in Opposition to Defendant's Motion (Docket No. 6), and the Defendant's Reply Brief in Support of their Motion (Docket No. 7).

I. BACKGROUND

On December 8, 2000, the Plaintiffs filed the instant complaint against the Defendant, Michael's Family Restaurant and Diner (Defendant Restaurant). See Pl.'s Compl. at ¶ 14. For purposes of the factual allegations in the complaint, the Plaintiffs are divided into two groups of diners. See Pl.'s Compl. at ¶¶ 16, 19. Plaintiffs Indira Edwards, Baseemah Jones, Carlin Williamson, Deborah Timms, and Chanel Williamson comprise the first group (Group One Plaintiffs). See Pl.'s Compl. at ¶ 16. The second group (Group Two Plaintiffs) consists of Khoscine Pinkins, Craig Robinson, Rosalind Bethea, Dennis Bethea, and Priscilla

Thorpe. See Pl.'s Compl. at ¶ 19. The allegations in the complaint stem from the Plaintiffs' visits to the Defendant's establishment on January 1, 2000. See Pl.'s Compl. at ¶ 15.

Upon accepting as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them, the pertinent facts of this case are as follows. On January 1, 2000 at approximately 2:00 a.m., the Group One Plaintiffs proceeded to the Defendant Restaurant seeking a late night meal. See Pl.'s Compl. at ¶ 15. Upon arrival at the restaurant, the Group One Plaintiffs waited over twenty minutes to be seated. See Pl.'s Compl. at ¶ 16. Once seated, they waited thirty to forty-five minutes before having their order taken. See Pl.'s Compl. at ¶ 16. After the Group One Plaintiffs had placed their orders, the Group Two Plaintiffs arrived at the Defendant Restaurant. See Pl.'s Compl. at ¶ 19. After they arrived at the restaurant, the Group Two Plaintiffs waited forty-five minutes to be seated. See Pl.'s Compl. at ¶ 19. Once seated, they waited an extended period of time without receiving service. See Pl.'s Compl. at ¶ 20.

While waiting for service, the Group Two Plaintiffs observed white patrons entering the restaurant and being seated. See Pl.'s Compl. at ¶ 22. Then the Group Two Plaintiffs viewed the white patrons having their orders taken promptly after being seated. See Pl.'s Compl. at ¶ 22. This prompted the Group Two Plaintiffs to ask three different members of the waitstaff if someone would take

their order. See Pl.'s Compl. at ¶ 23. Still failing to receive service, the Group Two Plaintiffs complained to the manager. See Pl.'s Compl. at ¶ 27. After complaining, employees of the Defendant Restaurant made racial comments at both groups of Plaintiffs. See Pl.'s Compl. at ¶ 28. The Group Two Plaintiffs never received service. See Pl.'s Compl. at ¶ 20.

As a result of these allegations, the Plaintiffs have asserted causes of action based upon 42 U.S.C. § 1981 (West 2001)(Count I), 42 U.S.C. § 1983 (West 2001)(Count II), and state law (Count III). See Pl.'s Compl. at ¶ 11. On January 19, 2001, the Defendant filed a motion to dismiss alleging that the Plaintiffs have failed to plead the required elements for a § 1981 claim, have failed to allege the existence of a state actor necessary to satisfy the requirements of a § 1983 claim, have failed to enumerate which Pennsylvania state law has been violated, and have failed to plead the egregious conduct necessary to satisfy the Plaintiffs' claim for punitive damages. The Plaintiffs disagree with the Defendant's contentions except with regards to the § 1983 claim where the Plaintiffs have requested leave to amend their complaint to correct any deficiency.

II. STANDARD OF REVIEW

When considering a motion to dismiss a complaint for failure

to state a claim under Rule 12(b)(6)¹, this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990) (citing Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988)); see also H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989). A court will only dismiss a complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" H.J. Inc., 492 U.S. at 249-50. Nevertheless, a court need not credit a plaintiff's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). The Federal Rules of Civil Procedure do not, however, require detailed pleading of the facts on which a claim is based. Instead, all that is required is "a short and plain statement of the claim showing that the pleader is entitled to relief," enough to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Fed. R. Civ. P. 8(a)(2) (West 2001).

¹ Rule 12(b)(6) provides that "[e]very defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted" FED. R. CIV. P. 12(b)(6).

III. DISCUSSION

A. Count I - 42 U.S.C. § 1981

The burden shifting framework set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824 (1973), is applicable to causes of action brought under § 1981. See Jones v. School District of Philadelphia, 198 F.3d 403, 410 (3d Cir. 1999). In the first stage of this analysis, the plaintiff must put forth allegations sufficient to satisfy a prima facie case of discrimination; if that is done, the defendant must then articulate a legitimate, nondiscriminatory reason for its action; and if the defendant meets that burden, the plaintiff must then show that the proffered reason is false and that race was the real reason for the defendant's actions. See Id. at 410-12. However, in the limited context of a motion to dismiss under Rule 12(b)(6), the Court's focus is strictly on whether the Plaintiff has plead facts necessary to make out their prima facie case. See Bobbitt v. Rage, Inc., 19 F.Supp.2d 512, 516 (W.D.N.C. 1998).

To establish a prima facie case of discrimination under § 1981, the Plaintiffs must allege that: (1) they are members of a racial minority, (2) there was an intent by the Defendant to discriminate against them on the basis of their race, and (3) the discrimination concerned one or more of the activities enumerated in the statute including the right to make and enforce contracts. See Brown v. Philip Morris, Inc., 250 F.3d 789 (3d Cir. 2001). The

Plaintiffs have clearly alleged the first requirement of their prima facie case, that they are African-American. See Pl.'s Compl. at ¶¶ 5-13. The disagreement with the parties lies in the sufficiency of the complaint regarding the second and third elements of the Plaintiffs' prima facie case.

The Defendant urges that there is no indication in the complaint that there was an intent to discriminate. The complaint essentially alleges that the Plaintiffs received an inferior level of service to that of the white patrons they observed and that when they complained to management they were subjected to racial comments by the Defendant Restaurant's employees. See Pl.'s Compl. at ¶¶ 22, 28, 29. A reasonable inference from the combination of the racial comments and the superior service afforded to the white patrons is that the Plaintiffs' service was intentionally inferior based upon their race. As a result, the Plaintiffs' complaint satisfies the pleading requirements regarding the second element of the Plaintiffs' prima facie case.

Finally, the Defendant asserts that the Plaintiffs fail to allege that they have been denied the right to contract as required under § 1981. Under § 1981, "the term 'make and enforce contracts' includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." § 1981. A contract formed between a restaurant and a customer has been found

to include all of "the accoutrements that are ordinarily provided with a restaurant meal" McCaleb v. Pizza Hut of America, Inc., 28 F.Supp.2d 1043, 1049 (N.D.Ill. 1998). This includes "'more than just the food served,' in that the experience 'includes being served in an atmosphere which a reasonable person would expect in the chosen place.'" Callwood v. Dave & Buster's, Inc., 98 F.Supp.2d 694, 703 (D.Md. 2000)(quoting Charity v. Denny's, Inc., No.CIV.A.98-0554, 1999 WL 544687, at *3 (E.D.La. July 26, 1999)). Accepting as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them, the complaint states that the Plaintiffs received an inferior level of service to that of the white patrons they observed. See Pl.'s Compl. at ¶¶ 22, 29. Therefore, the Plaintiffs have successfully plead the third element of their prima facie case.

Because the Plaintiffs have plead all of the elements necessary to state a claim under § 1981, the Defendant's motion to dismiss Count I of the complaint is denied.

B. Count II - 42 U.S.C. § 1983

In order to bring a successful section 1983 claim, a plaintiff must demonstrate that the challenged conduct was committed by a person acting under color of state law and that the conduct deprived the plaintiff of a right, privilege, or immunity secured by the Constitution or federal law. See § 1983; Piecknick v. Pennsylvania, 36 F.3d 1250, 1255-56 (3d Cir. 1994). The Defendant

alleges that the Plaintiffs complaint is faulty because it fails to allege any state action. In their response to the Defendant's motion to dismiss, the Plaintiffs concede that there is no action "under color of state law" and the § 1983 claim was inappropriately raised. As there is no question regarding the deficiency in the Plaintiffs' claim under § 1983, the Court grants the Defendant's motion to dismiss on Count II.²

C. Count III - Pendant State Law Claims

Count III of the Plaintiffs' complaint contains very cursory allegation that the Defendant's conduct "constituted unlawful discriminatory practices in violation of Pennsylvania law." See Pl.'s Compl. at ¶ 38. The Defendant asserts that the lack of any statutory or common law authority to support this proposition should result in its dismissal. The Plaintiffs state that the state law claim is made pursuant to the Pennsylvania Human Relations Act (PHRA). 43 Pa. Cons. Stat. Ann. §§ 953, 955 (West 2001). To that contention, the Defendant responds that a PHRA claim cannot be filed at this time due to the Plaintiffs' failure

² The Plaintiffs indicate that they would like leave to amend Count II of their complaint to assert a claim under 42 U.S.C. § 2000a. The Defendant claims that the Court is "not permitted" to allow this amendment. However, a motion to dismiss pursuant to rule 12(b)(6) is not a responsive pleading and "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served" Fed. R. Civ. P. 15(a); see Centifanti v. Nix, 865 F.2d 1422, 1431 n.9 (3d Cir. 1989) ("a motion to dismiss . . . [does not] constitute a responsive pleading under Federal Rule of Civil Procedure 15(a)). Because the Plaintiffs have never amended their complaint and there has been no responsive pleading filed, the Plaintiffs do not need permission from the Court prior to amending their complaint.

to exhaust administrative remedies and therefore, Count III of the complaint should be dismissed.

Prior to bringing a claim pursuant to the PHRA, a party must first exhaust all administrative procedures that have been established within the act. See Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1997); see also Clay v. Advanced Computer Applications, Inc., 559 A.2d 917, 919 (Pa. 1989). Under the PHRA, a party must first bring a claim to the Pennsylvania Human Rights Commission within 180 days of the alleged act. See id. After filing that claim, the party is prohibited from filing an action in court for a period of one year, giving the PHRC an opportunity to investigate the allegations. See Clay, 559 A.2d at 920. "A complaint does not state a claim upon which relief may be granted unless it asserts the satisfaction of the precondition to suit specified [in the statute]." Robinson v. Dalton, 107 F.3d 1018, 1022 (3d Cir. 1997) (dealing with the administrative requirements of Title VII which are analogous to those in the PHRA). The Plaintiffs have not attempted to set forth satisfaction of the administrative prerequisites to filing suit. Therefore, the Defendant's motion to dismiss Count III of the Plaintiffs' complaint will be granted.

D. Count IV - Punitive Damages

The Defendant's also ask the Court to dismiss Count IV of the Plaintiffs complaint which requests punitive damages. The

Defendant claims that the Plaintiffs' allegations do not support the awarding of punitive damages and a count for punitive damages cannot stand as an independent cause of action. It appears clear to the Court that the Plaintiffs' claim for punitive damages is a remedy for the alleged wrongdoing of Count I. While the pleading may be inartful, that does not require dismissal. Punitive damages may be awarded for violations of § 1981. See Pollard v. E.I. du Pont de Nemours & Co., ___ U.S. ___, 121 S.Ct. 1946, 1951 (2001). The Court finds that, without further factual development, it is unclear whether the Defendant's behavior merits the imposition of punitive damages. Therefore, the Court finds that it is premature to dismiss the Plaintiffs' claim for punitive damages and the Defendant's motion will be denied as it relates to Count IV.

An appropriate Order follows.

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MICHAEL'S FAMILY RESTAURANT	:	
AND DINER	:	NO. 00-6216

O R D E R

AND NOW, this 26th day of June, 2001, upon consideration of the Defendants' Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Docket No. 5), the Plaintiffs' Response in Opposition to Defendant's Motion (Docket No. 6), and the Defendant's Reply Brief in Support of their Motion (Docket No. 7), IT IS HEREBY ORDERED that said Motion is **GRANTED IN PART and DENIED IN PART**; and

IT IS HEREBY FURTHER ORDERED that Counts II and III of the Plaintiff's Complaint are **DISMISSED**.

BY THE COURT:

HERBERT J. HUTTON, J.