

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

TRINA N. BYNUM : CIVIL ACTION  
: :  
v. : :  
: :  
AVIS RENT A CAR, INC. : NO. 98-CV-5254

O R D E R - M E M O R A N D U M

AND NOW, this 22nd day of December, 1998, the motion to dismiss of defendant Avis Rent A Car, Inc. is granted in part and denied in part. Fed. R. Civ. P. 12(b)(6).<sup>1</sup> Jurisdiction is federal question. 28 U.S.C. § 1331.

This is a § 1981 action. The following is alleged in the complaint. When plaintiff Trina N. Bynum, an African-American, telephoned defendant to reserve a car, she said she would pay with a debit card. Compl. ¶¶ 10, 11. On October 7, 1997 she attempted to pick up the car but was told debit cards were not accepted. Id. ¶¶ 14-16. This refusal was part of a pattern or practice to discriminate on the basis of race. Id. ¶¶ 17, 18. Plaintiff claims compensatory and punitive damages and injunctive relief. Id. ¶¶ 2, 3, Count I, Count II.

Defendant's motion to dismiss is ruled on as follows:

1. Violation of Fourteenth Amendment – Granted. Avis is not alleged to be a state actor. See Lugar v. Edmondson Oil

---

<sup>1</sup>Under Rule 12(b)(6), the allegations of the complaint are accepted as true, all reasonable inferences are drawn in the light most favorable to the plaintiff, and dismissal is appropriate only if it appears that plaintiff could prove no set of facts that would entitle her to relief. See Weiner v. Quaker Oats Co., 129 F.3d 310, 315 (3d Cir. 1997).

Co., 457 U.S. 922, 936, 102 S.Ct. 2744, 2753, 73 L.Ed.2d 482 (1982) (private conduct not actionable under Fourteenth Amendment). Also, a civil rights claim cannot proceed as a direct constitutional violation. It must use a statutory vehicle such as § 1981 or § 1983.

2. Violation of § 1981 – Granted as to the claim for prejudgment interest; otherwise, denied. To state a claim under § 1981, the complaint must allege that (1) plaintiff is a member of a racial minority; (2) defendant discriminated based on race; and (3) defendant denied plaintiff equal rights as defined by the statute. See Mian v. Donaldson, Lufkin & Jenrette Sec. Corp., 7 F.3d 1085, 1087 (2d Cir. 1993); Seeney v. Kavitski, 866 F. Supp. 206, 211 (E.D. Pa. 1994). Contrary to defendant's motion, the complaint states each of these elements. Compl. ¶¶ 7, 15-18.

Defendant's assertion that compensatory and punitive damages are not sufficiently pleaded is also rejected. According to the complaint, defendant's acts caused plaintiff emotional distress and were "willful, wanton, outrageous and done with reckless disregard for [her] rights." Compl. ¶¶ 19, 24; see also Roebuck v. Drexel Univ., 852 F.2d 715, 739 n.44 (3d Cir. 1988) (section 1981 "allows a plaintiff to recover money damages and punitive damages"); Holt v. Michigan Dep't of Corrections, 771 F. Supp. 201 (W.D. Mich. 1991) (section 1981 litigant may recover for pain and suffering), aff'd, 974 F.2d 771 (6th Cir. 1992).

The motion is granted as to prejudgment interest. Plaintiff does not contend that she was denied money or income as

a result of defendant's conduct. See Booker v. Taylor Milk Co., 64 F.3d 860, 868 (3d Cir. 1995) (prejudgment interest compensates for loss of money from discrimination).

---

Edmund V. Ludwig, J.