

FILED
IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

21 SEP 20 AM 9: 2

MARK WEESE,

Plaintiff,

JOSEPH M. RUCKI

VS.

// CIVIL ACTION NO. 21-C-9 H

PRECISION PIPELINE, LLC
JASON STROMBERG, and
VANESSA STROMBERG,

Defendants.

ORDER

On a previous day came the Defendants' and filed a Motion to Dismiss the Plaintiff's Complaint for failure to state a claim pursuant to West Virginia Rules of Civil Procedure Civ. R. 12(b) (6). The matter has been fully briefed and the Court has considered the parties arguments in their entirety. The matter is ripe for the Court's decision. The Court has studied and reviewed Defendant's instant motion; Plaintiff's *Complaint*; as well as all pertinent legal authorities. As a result, the Court has concluded that Defendant's instant motion should be **DENIED**.

LAW

The singular purpose of a **Rule 12(b)(6)** motion is to seek a determination whether the Plaintiff is entitled to offer evidence to support the claims made in the complaint. *Dimon v. Mansy*, 198 W.Va. 40, 479 S.E.2d 339 (1996). The Plaintiff's burden in resisting a motion to dismiss is a relatively light one. See *John W. Lodge Distributing Co. v. Texaco, Inc.*, 161 W.Va. 603, 245 S.E.2d 157 (1978); *Mandolidis v. Elkins Industries, Inc.*, 161 W.Va. 695, 246 S.E.2d 907 (1978). Whether a complaint states a claim upon which relief can be granted is to be determined solely from the provisions of such complaint. *Par Mar v. City of Parkersburg*, 183 W.Va.

706, 398 S.E.2d 532 (1990). A 12(b)(6) motion must be denied if the complaint states a claim upon which relief can be granted under any legal theory. The trial court, in appraising the sufficiency of a complaint on a 12(b)(6) motion, should not dismiss the Complaint unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of its claim which would entitle him to relief. Sauer, Inc. v. American Bituminous Power Partners, 192 W.Va. 150, 451 S.E.2d 451 (1994)(per curiam). See State ex rel. Smith v. Kermit Lumber & Pressure Treating Co., 220 W.Va. 221, 488 S.E.2d 901 (1997); Price v. Halstead, 177 W.Va. 592, 355 S.E.2d 380 (1987); Moran v. Reed, 175 W.Va. 698, 338 S.E.2d 175 (1985); Sticklen v. Kittle, 168 W.Va. 147, 287 S.E.2d 148 (1981); Flowers v. City of Morgantown, 166 W.Va. 92, 272 S.E.2d 663; John W. Lodge Distributing Co., Inc. v. Texaco, Inc., 161 W.Va. 603, 245 S.E.2d 157 (1978); Mandolidis v. Elkins Industries, Inc., 161 W.Va. 695, 246 S.E.2d 907 (1978); Chapman v. Kane Transfer Co., 160 W.Va. 530, 236 S.E.2d 207 (1977).

The trial court should not dismiss a Complaint merely because it doubts the Plaintiff will prevail in the action because this is not the purpose or function of Rule 12(b)(6). See John W. Lodge Distributing Co. v. Texaco, Inc., 161 W.Va. 603, 245 S.E.2d 157 (1978); Mandolidis v. Elkins Industries, Inc., 161 W.Va. 695, 246 S.E.2d 907 (1978). The Complaint is to be construed in the light most favorable to the Plaintiff. See Price v. Halstead, 177 W.Va. 592, 355 S.E.2d 380 (1987). See generally, Ewing v. Board of Educ. of County of Summers, 202 W.Va. 228, 503 S.E.2d 541 (1998); Kopelman and Associates, L.C. v. Collins, 196 W.Va. 489, 473 S.E.2d 910 (1996).

In *Bell Atlantic Corp. V. Twombly*, 550 U.S. ____, 127 S.Ct. 1955, 167 L.Ed. 929 (2007), the United States Supreme Court overruled *Conley v. Gibson*, 355 U.S. 41 (1957), which had held that, "the trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief", and instead held, "[A plaintiff's obligation to provide the 'grounds' of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . Factual allegations must be enough to raise a right to relief above a speculative level,]."

"A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several types may be demanded. Every such pleading shall be accompanied by a completed civil case information statement in the form prescribed by the Supreme Court of Appeals."

Rule 8(a), W.Va. R.Civ.P.

OPINION

The Complaint is to be construed in the light most favorable to the Plaintiff. *Price v. Halstead*, 177 W.Va. 592, 355 S.E.2d 380 (1987).

Plaintiffs' *Complaint* is sufficient to satisfy the minimum requirements of Rule 8 of the W.Va. R.Civ.P.


Accordingly, it is the **ORDER** of this Court that Defendant's subject dispositive motion be and hereby is **DENIED**.

While Defendant's positions may very well be spot-on correct, it is this Court's position that the parties should be given further opportunity for discovery to develop the facts as well as exactly what causes of action are being asserted herein. When discovery has sufficiently produced such facts, Defendant may reach the same issues by way of a Motion for Summary Judgment.

Objections and Exceptions are saved.

The Clerk of this Court shall, in accord with W.Va. R.Civ.P. 77(d), transmit a copy of this Order to all counsel of record.

Entered: September 17, 2021.



DAVID W. HUMMEL, JR.
Circuit Court Judge