

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

Cliff Missen,)	
)	
Plaintiff,)	
)	No. LACV074511
vs.)	
)	RULING
State of Iowa, et al.,)	
)	
Defendants.)	

On this 6th day of September, 2012, the above-captioned matter came before the undersigned for review of the Motion to Dismiss and Renewal thereof filed by Defendants State of Iowa, Board of Regents—State of Iowa, and University of Iowa and Resistance thereto filed by Plaintiff. The Court finds a hearing on the Motion and Renewal thereof is unnecessary. Having considered the file, relevant case law, and written arguments of the parties, the Court hereby enters the following ruling:

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed a Complaint on May 3, 2012. By way of background information, Plaintiff alleges the University of Iowa, through its agent Heritage Property Management, leased Plaintiff property under a standard residential lease in October, 2008. Plaintiff further alleges that in January, 2009, he complained to Heritage Property Management that water was infiltrating the basement walls, causing damage to personal property and creating an unhealthy environment. Plaintiff claims he continued to make this type of complaint in March, 2009 and subsequent months, and Plaintiff spent an inordinate amount of time cleaning up the water in the basement, which was difficult due to the requirement that Plaintiff travel overseas for work for weeks at a time.

Plaintiff asserts that water and mold in the basement rendered the basement area unusable for Plaintiff and made the house unappealing for Plaintiff’s family and guests. Plaintiff further asserts that despite months of complaints, no agent of Heritage Property Management or the University of Iowa visited the house to verify the claims until days before the lease expired. Plaintiff contends the agent of the University of Iowa occasionally misrepresented the status of the home and of complaints made by Plaintiff. Plaintiff also contends he was not able to engage city or county health inspectors because of a Board of Regents rule requiring the University of Iowa to police itself. Plaintiff claims he has suffered damages as a result of the conduct of Defendants, and has stated claims for negligence and “egregious conduct” against Defendants.

Defendant Heritage Property Management has filed an Answer in which it denies Plaintiff’s claims.

In the pending Motion to Dismiss, the State Defendants argue that the facts on which Plaintiff bases the “egregious conduct” claim is Defendants’ alleged “heavy-handed response” to Plaintiff’s complaints. The State Defendants contend that, with respect to the “egregious

conduct” claim, Plaintiff has failed to state a claim upon which relief can be granted. The State Defendants assert that even if it is true that Defendants’ conduct was “heavy-handed” or “egregious,” the Complaint does not state a claim under Iowa law. At the time the Motion to Dismiss was filed, the State Defendants indicated they were not moving to dismiss Plaintiff’s negligence claim, but sought additional time to respond to the negligence claim after the Court rules on the Motion to Dismiss.

Plaintiff has filed an Opposition to Motion to Dismiss. Plaintiff argues that Heritage Property Management, as agent of the University of Iowa, misrepresented the status of the home and of Plaintiff’s complaints in emails to Plaintiff and “superiors.” Plaintiff further argues that the “arduous process” of filing claims and seeking redress has been complicated by “a persistent set of untruths used by the defendants that have even been promulgated by the executive director of the Board of Regents who wrote several blatant false statements in a letter....” Plaintiff contends Defendants’ “heavy-handed” response to Plaintiff’s injuries caused Plaintiff undue mental anguish, emotional pain, suffering, and harm of professional relationships. Plaintiff claims that given the institutional scale of the deception in this case, Plaintiff’s claims also are covered by the “federal Civil Rights Act, 42 U.S.C. Sect. 1983 and Section 1 of the 14th Amendment to the U.S. Constitution.” Plaintiff’s Opposition to Motion to Dismiss makes reference to a Defendant Joseph Blakely, although such a Defendant has not been named in the Complaint.

In their Reply and Renewed Motion to Dismiss, the State Defendants note that Plaintiff now appears to be pleading a misrepresentation or deceit claim. The State Defendants assert such claim should be dismissed on the basis of the State’s immunity, in addition to the grounds stated in the original Motion to Dismiss. The State Defendants further assert they are immune from claims of deceit or misrepresentation, and Plaintiff’s claim should be barred, even if Plaintiff persists in referring to the claim as one for “egregious conduct.” The State Defendants indicate they are unaware of the identity of Joseph Blakely, referred to in Plaintiff’s Opposition to Motion to Dismiss.

CONCLUSIONS OF LAW

“An order granting a motion to dismiss will be upheld only if the petition, on its face, fails to state a cause of action upon which relief could be granted under any circumstances.” Raas v. State, 729 N.W.2d 444, 446 (Iowa 2007). “On a motion to dismiss, the petition should be construed in the light most favorable to the plaintiff, with all doubt resolved in the plaintiff’s favor.” Id.

A Motion to Dismiss pleading for failure to state a cause of action is sustainable only when it appears to a certainty the pleader has failed to state a claim upon which any relief may be granted under any state of facts which could be proved in support of the claim asserted. Murphy v. First National Bank of Chicago, 228 N.W.2d 372 (Iowa 1975).

A Motion to Dismiss admits well pleaded facts in a petition and waives any ambiguity or uncertainty. Tate v. Derifield, 510 N.W.2d 885 (Iowa 1994).

“The petition, however, must contain factual allegations that give defendant ‘fair notice’ of the claim asserted so that defendant can adequately respond to the petition.” Rees v. City of Shenandoah, 682 N.W.2d 77, 79 (Iowa 2004). “A petition complies with the ‘fair notice’ requirement if it informs the defendant of the incident giving rise to the claim and of the claim’s general nature.” Id. “We view the plaintiff’s allegation ‘in the light most favorable to the plaintiff with doubts resolved in that party’s favor.’” Id. “In Cutler v. Klass, Whicher, & Mishne, 473 N.W.2d 178 (Iowa 1991), we expressed the pitfalls in filing a motion to dismiss and stated:

We recognize the temptation is strong for a defendant to strike a vulnerable petition at the earliest opportunity. Experience has however taught us that vast judicial resources could be saved with the exercise of more professional patience. Under the foregoing rules dismissals of many of the weakest cases must be reversed on appeal. Two appeals often result where one would have sufficed had the defense moved by way of summary judgment, or even by way of defense at trial. From a defendant’s standpoint, moreover, it is far from unknown for the flimsiest of cases to gain strength when its dismissal is reversed on appeal.”

Id. (citing Cutler, 473 N.W.2d at 181).

Having viewed the Complaint in the light most favorable to Plaintiff, the Court cannot say with certainty that Plaintiff has failed to state a claim upon which any relief may be granted under any state of facts which could be proved in support of the claim asserted. Defendants’ argument may more appropriately be the subject of a summary judgment motion. However, with respect to the descriptions Plaintiff has provided for his claims, the Court finds that Plaintiff should be directed to file an amended and substituted complaint that specifically states the claim that is based on the alleged “egregious conduct” of Defendants. If this is intended to be a misrepresentation, deceit, and/or constitutional claim, Plaintiff must specifically state the type of claim he is pursuing, as a claim for “egregious conduct” is not an appropriate description/heading for the claim. Plaintiff’s negligence claim shall remain intact. Plaintiff shall file and serve the amended and substituted complaint within thirty days of the date of this Ruling. Defendants shall have twenty days from the date of service to file an answer.

RULING

IT IS THEREFORE ORDERED that Defendants’ Motion to Dismiss and Renewal thereof is **DENIED**. Plaintiff shall have thirty days from the date of this Ruling to file and serve an amended and substituted complaint that meets the requirements set forth in this Ruling. Defendants shall have twenty days from the date of service of the amended and substituted complaint to file their answer.

Clerk to notify.
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NANCY A. BAUMGARTNER, JUDGE
Sixth Judicial District of Iowa