

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LYSUMDRA ALAWIYE,

Plaintiff

v.

MEMORANDUM and ORDER
06-C-233-S

UNIVERSITY OF WISCONSIN-MADISON
and LOCAL 143,

Defendants

Plaintiff Lysumdra Alawiye was allowed to proceed in forma pauperis on her discrimination claim against the University and AFSCME Local 2412. On June 14, 2006 defendant University of Wisconsin-Madison filed a motion to dismiss plaintiff's complaint for lack of jurisdiction. Pursuant to this Court's June 15, 2005 scheduling order plaintiff's response to defendant's motion to dismiss was to be filed not later than July 5, 2006 and has not been filed to date.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiffs can prove no set of facts in support of the claim which would entitle the plaintiffs to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6) a complaint "must contain either direct or inferential allegations

respecting all the material elements necessary to sustain recovery under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

MEMORANDUM

Defendant University of Wisconsin-Madison argues that the Court lacks jurisdiction of plaintiff's claim because it is not a suable entity. Plaintiff has not responded.

The University of Wisconsin-Madison is not a suable entity. See Derby v. University of Wisconsin, 54 F.R.D. 599, 600 (E.D. Wis. 1972, aff'd, 489 F.2d 757 (7th Cir. 1973). Claims against non-suable defendants in federal court actions should be dismissed. Whiting v. Marathon County Sheriff's Dept., 382 F.3d 700, 704 (7th Cir. 2004). Accordingly, the motion of defendant University of Wisconsin-Madison to dismiss plaintiff's complaint will be granted.

ORDER

IT IS ORDERED that the motion of defendant University of Wisconsin-Madison to dismiss plaintiff's complaint with prejudice is GRANTED.

Entered this 11th day of July, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge