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

PASTORI M. BALELE,

Plaintiff,

v.

SEARS, ROEBUCK AND CO.

Defendant.

ORDER

12-cv-140-bbc

In this case removed from Dane County Circuit Court, plaintiff Pastori Balele is suing defendant Sears, Roebuck and Co. after he attempted to have his car serviced at a Sears Auto Center. Defendant has filed a motion to dismiss the case pursuant to Fed. R. Civ. P. 12(b)(6). After considering the parties' submissions, I conclude that plaintiff's complaint fails to comply with Fed. R. Civ. P. 8. Given plaintiff's unique status in this court and this circuit, I will not give him an opportunity to amend his complaint.

ALLEGATIONS OF FACT

Plaintiff Pastori Balele is a Madison resident. On November 21, 2011, plaintiff was driving his Ford Explorer when he noticed that "the front wheels of his truck would sometimes go astray causing steering wheel to twitch wildly," making him unable to fully control the truck. Plaintiff suspected that this was due to the wheels not being properly aligned.

That same day, he took his truck to the Sears Auto Center at West Towne Mall and asked for a wheel alignment. An employee told him that an alignment would cost $79.99. Plaintiff agreed to the repair and left his truck with the shop. The receptionist told him it would be ready in about an hour and a half.

Plaintiff came back after one hour and sat in the customers' waiting room. The Sears employee told plaintiff that the repairs to the truck would actually cost $876.12 because there

"were some bolts that had to [be] tighten[ed] before alignment work could be done." The Sears employee typed on a computer monitor several lines detailing what was required before fixing the alignment. Each line had a price at the end. Plaintiff said that he did not have the money to make more extensive repairs. He asked to get a printout of what was listed on the computer screen. The employee refused to give plaintiff a printout, erased detailed list of repairs and stated, "I can't give you that." The employee said that he would circle on a different sheet "the price for fixing the truck and what was wrong with the truck." He said it would take about five to six hours to fix the truck and that plaintiff would have to make another appointment. Plaintiff declined to have the truck repaired at that cost. The employee told him to call back when he had the money to have the truck repaired.

Plaintiff drove his damaged truck to work for five days, during which time he "had mental stress for fear it would stray and probably hit other cars." On November 26th 2011, plaintiff drove his truck to another repair shop. The mechanic showed plaintiff that his wheels were out of alignment. He had the alignment repaired for $79.99 plus tax. After the repairs, his truck handled properly.

Plaintiff filed a complaint against Sears with the State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). The DATCP sent Sears a "warning letter" stating that the information provided by Sears failed to demonstrate that Sears was in compliance with administrative regulations requiring that repair orders contain certain repair price information and include a written notice that customers have the right to inspect or receive parts replaced by the repair shop.

DISCUSSION

In reviewing a motion to dismiss under Rule 12(b)(6), the court takes as true all factual allegations in plaintiff's complaint and draws all reasonable inferences in his favor. *Killingsworth v. HSBC Bank Nev., N.A.*, 507 F.3d 614, 618 (7th Cir. 2007). To survive a Rule 12(b)(6) motion to dismiss, the claim first must comply with Rule 8(a) by providing "a short and plain statement of the claim showing that the pleader is entitled to relief," such that the defendant is given "fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In other words, the allegations in a complaint must "allo[w] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The factual allegations in the claim must be sufficient to raise the possibility of relief above the "speculative level," assuming that all of the allegations in the complaint are true. *E.E.O.C. v. Concentra Health Servs., Inc.*, 496 F.3d 773, 776 (7th Cir. 2007).

Defendant argues that plaintiff's allegations fail to state a claim under either federal or Wisconsin law and the case should be dismissed with prejudice. Alternatively, defendant argues that plaintiff fails to meet Rule 8's pleading requirements and the complaint should be dismissed. This raises the question what claims plaintiff is attempting to bring in this lawsuit. Pro se complaints are construed generously. *McCormick v. City of Chicago*, 230 F.3d 319, 325 (7th Cir. 2000). There are several theories upon which plaintiff may be proceeding, including a claim under Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a, 42 U.S.C. § 1981 or Wis. Stat. § 106.52(3)(a)(2), all of which prohibit discrimination in places of public accommodation.

Although defendants initially argue that plaintiff outright fails to state a claim upon which relief can be granted with regard to these theories, the real problem with plaintiff's complaint is the conclusory nature of his allegations that defendants' actions were motivated by racial bias, making it unclear whether he could state a claim on these theories. Plaintiff states that defendant "lied to [him] because of his black race," "did not want to repair his truck at listed price because of his black race" and inflated the price for repairs as "pretext to refuse repair of his car because of his black race." These allegations amount to no more than plaintiff's hunch that he was discriminated against because of his race. As this court noted in *Kyle v. Holinka*, No. 09-cv-90-slc, 2009 WL 1867671, *1 (W.D. Wis. June 29, 2009), "*Iqbal* . . . implicitly overturned decades of circuit precedent in which the court of appeals had allowed discrimination claims to be pleaded in a conclusory fashion." In *Riley v. Vilsack*, 665 F.Supp. 2d 994 (W.D. Wis. 2009), this court suggested that under this new pleading standard, "a complaint should include enough facts to suggest that the plaintiff has reasonable grounds to believe that discovery will lead to evidence that the defendant may be held liable for a particular violation of the law." *Id.* at 1006. In this case, plaintiff has not alleged enough facts to suggest that discovery, however robust and thorough, ever will lead to evidence showing that defendant discriminated against him because of his race.

Usually in situations where a civil complaint fails to comply with Rule 8, this court dismisses the complaint without prejudice and gives the plaintiff a chance to amend his complaint to provide more detailed allegations. In the present case, such an option is not a foregone conclusion because plaintiff is under sanction by the Court of Appeals for the Seventh Circuit: courts in this circuit are forbidden from accepting further filings from plaintiff until he

proves that he has paid off various costs assessed him in previous cases in the circuit. Plaintiff has filed a motion to file further papers in this court, in which he avers that he "believe[s]" that he has paid off these costs. This ambiguous assertion doe not meet the explicit requirements of the Court of Appeals's sanction order, which requires either a copy of a certified check or money order or an order entered by the garnishment court. Accordingly, I will deny plaintiff's motion.

This court already has more than adequately accommodated plaintiff in the instant lawsuit: it has deemed defendant's removal of this case an exception to plaintiff's no-filing rule, and it has allowed plaintiff to respond substantively to defendant's motion to dismiss. One response option available to plaintiff was to proffer "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570, quoted in defendant's brief in support of dismissal, dkt. 12 at 7. Plaintiff did not do so. This court will not give plaintiff yet another opportunity to pursue what has the earmarks of being yet another vexatious lawsuit. In this circumstance, which may be *sui generis*, allowing plaintiff to file an amended complaint in federal court could be viewed as creating a loophole in the Seventh Circuit's sanction order preventing plaintiff from filing any more lawsuits in federal court until he pays what he owes in his previous cases. This court has been more than fair to plaintiff; defendant is entitled to fair treatment as well. Here, that means dismissing this lawsuit.

ORDER

It is ORDERED that:

(1) Plaintiff Pastori Balele's motion to file further papers in this court, dkt. 30, is DENIED.

(2) Defendant Sears, Roebuck and Co.'s motion to dismiss, dkt. 11, is GRANTED

(3) Plaintiff's complaint is DISMISSED WITH PREJUDICE. The clerk of court is directed to enter judgment closing this case.

Entered this 3rd day of December, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge