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Tennessee Supreme Court Rejects Federal Plausibility Pleading Standard

On July 21, 2011, the Tennessee Supreme Court found that lawsuits filed in state court are not subject to heightened pleading requirements applicable to cases filed in federal court.

Background

Under state and federal rules of civil procedures, complaints must contain a concise statement for relief and generally allege facts supporting each claim for relief. A defendant may file a "Rule 12 motion," seeking to dismiss a complaint that is deficient. Until 2007, state and federal courts applied essentially the same standard for considering whether a complaint should be dismissed for failure to state a claim for which relief may be granted. Under the lenient standard articulated in *Conley v. Gibson*, 355 U.S. 41 (1957), a complaint was not subject to dismissal unless, construing all allegations in the complaint as true, it appeared beyond doubt that the plaintiff could prove no set of facts in support of its claim which would entitle it to relief. *Conley's* "no set of facts" standard had been the focal point of both state and federal pleading doctrine for many years.

Within the last five years, however, the United States Supreme Court has departed from the standard set forth in *Conley* and required litigants to be more precise and detailed in their pleadings. In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009), the Court found that federal court pleadings are subject to dismissal unless they set forth sufficient facts to state a claim for relief that is "plausible on [their] face." Under *Twombly/Iqbal*, allegations of a complaint that are only threadbare recitals of a cause of action's elements, supported by mere conclusory statements, are not entitled to a presumption of truth. To pass muster, the remaining allegations of the complaint must include enough facts to state a claim to relief that is plausible on its face. In essence, the Court found that claims that are merely "possible" should be dismissed and, instead, a plaintiff must allege facts that would show that its claims are "plausible."

Because federal court complaints are now subject to closer scrutiny at their inception, many more federal court lawsuits have been thrown out at the outset of the case. Thus *Twombly* and *Iqbal* have greatly benefited defendants, particularly given that a defendant generally is not required to respond to discovery unless and until the trial court has denied a Rule 12 motion to dismiss.

After *Twombly* and *Iqbal* were issued, Tennessee state courts have struggled with determining whether this new plausibility standard should also apply in state court lawsuits. Over the past four years, the Tennessee Court of Appeals has cited *Twombly* and/or *Iqbal* on eight occasions, and on one particular occasion, purported to recognize *Twombly's* applicability in Tennessee state court proceedings.

Webb v. Nashville Area Habitat for Humanity, Inc.

On July 21, 2011, the Tennessee Supreme Court resolved all lingering questions about whether the *Twombly/Iqbal* standard applies in state court when it issued its decision in *Webb v. Nashville Area Habitat for Humanity, Inc.* In that case, the trial court dismissed a plaintiff's retaliatory discharge claims on the basis that the plaintiff failed to allege

sufficient facts to demonstrate a plausible claim for relief. The Tennessee Supreme Court reversed the trial court's dismissal and unanimously determined that the *Conley* standard continues to apply to lawsuits filed in Tennessee state court. In doing so, the Court explicitly rejected the *Twombly/Iqbal* standard utilized in federal court.

The Tennessee Supreme Court noted that adoption of the *Twombly/Iqbal* plausibility pleading standard would entail abandonment of pleading principles that have been stable and predictable for forty years in Tennessee. The Court also found that, under the *Twombly/Iqbal* framework, trial judges are faced with the precarious task of weighing evidence at the pleading stage, and that certain cases should not be dismissed before a plaintiff has the opportunity to avail itself of the ability to conduct discovery to determine the merits of its claims.

As a result of the Tennessee Supreme Court's decision, it will remain fairly easy for a plaintiff to defeat a motion to dismiss in state court. As a result, defendants will be required to respond to requests for discovery, even in many lawsuits that are frivolous. Nevertheless, a defendant may still obtain a summary judgment dismissal of a plaintiff's claims at a later date if the plaintiff is unable to support its claims after engaging in the discovery process.

If you have any questions, please contact David Johnson at djohnson@millermartin.com, Sepideh Khansari at skhansari@millermartin.com or any other member of Miller & Martin's [Labor & Employment](#) or [Litigation](#) Practice Groups.

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