

ORDERED in the Southern District of Florida on 07/11/07



Raymond B. Ray
Raymond B. Ray, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**
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Broward Division

IN RE: CASE NO. 05-22912-BKC-RBR

CERTIFIED HR SERVICES CO., CHAPTER 11

Debtor.

JAMES S. FELTMAN, Trustee

Plaintiff,

vs. ADV. NO. 07-1271-BKC-RBR-A

KOLKER LON

Defendant.

ORDER PARTIALLY GRANTING MOTION TO DISMISS

THIS MATTER came before the Court for hearing on July 11, 2007 upon the Defendant's Motion to Dismiss Adversary Proceeding (D.E.6). The Court, having reviewed the Motion and the Plaintiff's Response in Opposition thereto and having heard argument of the parties, finds as follows.

Until the recent Supreme Court decision in *Bell Atl. Corp. v. Twombly*, 550 U.S. --, 127 S. Ct. 1955 (2007), courts routinely followed the rule that, "a complaint should not be dismissed for failure to state claim unless it appears beyond a doubt that the plaintiff could prove no set of facts

in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957); *Marsh v. Butler County*, 268 F.3d 1014, 1022 (11th Cir. 2001). However, pursuant to Twombly, to survive a motion to dismiss, a complaint must now contain factual allegations which are "enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true." 127 S. Ct. at 1965. "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 1964-65. Taking the facts as true, a court may grant a motion to dismiss when, "on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action." *Marshall Cty. Bd. of Educ. v. Marshall Cty. Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993).

After reviewing the complaint filed in this case it is evident that there are insufficient facts in the complaint to meet the requirement of Fed. R. Civ. P. 8(a), of a "short plain statement of the claim showing that the pleader is entitled to relief". A showing of grounds which entitle relief must be more than simply stating a sum of money and that it is owed. Some specificity of the alleged transfer is needed.

In view of the foregoing it is hereby

ORDERED AND ADJUDGED that:

1. The Defendants Motion is **PARTIALLY GRANTED** and the complaint is dismissed without prejudice.
2. Plaintiff is **PERMITTED** 30 days from the date of this Order to amend the complaint.

Copies to:

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Kolker Lon
Dr. Lionel Kolker