Introduction to Lawyering II
Spring 2020

CLASS 4: FEDERAL MOTION PRACTICE EXERCISES

Fed R. Civ. P. 12(b)(6)

A party may move to dismiss a complaint for "[f]ailure to state a claim upon which relief can be granted . . . ." Fed. R. Civ. P. 12(b)(6). In evaluating a Rule 12 motion, the complaint's factual allegations are "accepted as true." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

Fed. R. Civ. P. 56(a)

"A party may move for summary judgment, identifying each claim . . . or the part of each claim . . . on which summary judgment is sought." Fed. R. Civ. P. 56(a). "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Id.

Federal Housing Discrimination

To state a prima facie case for federal housing discrimination under the Federal Housing Act ("FHA"), the plaintiff must allege that she is (1) a member of a statutorily protected class, (2) applied for and (3) was qualified to rent or purchase housing, (4) but was rejected even though housing remained available. Those with a disability are members of a statutorily protected class. Soules v. U.S. Dep't of Hous. & Urban Dev., 967 F.2d 817, 822 (2d Cir. 1992). Those with disabilities are in a statutorily protected class. See Rodriguez v. Vill. Green Realty, Inc., 788 F.3d 31, 40 (2d Cir. 2015) (The FHA "require[s] that plaintiffs show the existence of a disability within the meaning of the FHA in order to state a claim . . . .").

Venue and Jurisdiction for Today's Hypotheticals

Both civil actions are venued in the U.S. District Court for the District of New Scotland, which is in the U.S. Court of Appeals for the Fourteenth Circuit. The U.S. Supreme Court hears appeals from the Fourteenth Circuit.

HYPOTHETICAL 1: OSCAR ZOROASTER V. YBR APARTMENTS, INC.

Hypothetical 1-a

Oscar Zoroaster ("Ozzy") sued YBR Apartments, Inc. ("YBR") for federal housing discrimination. Ozzy's Complaint alleges the following:

1. He applied for an apartment at YBR;
2. The annual income requirement for an apartment at YBR is $50,000;
3. Ozzy earns an annual salary of $75,000;
4. None of the current tenants at YBR have Ruby Slippers Syndrome; and
5. YBR rejected Ozzy's application even though ten units are available.

Assume that the Court will presume that Ruby Slippers Syndrome is a disability. Rather than serve an Answer, YBR moved to dismiss the Complaint under Rule 12(b)(6).

Should the Court GRANT or DENY the motion?

For each question, students also have the option of choosing "It depends."

In Hypol. 1-a, most students recognized that the Complaint should be denied because Ozzy failed to allege that he's in a statutorily protected class, an element of a prima facie case.

Stop! Do Not Move On Until Instructed Otherwise!

Hypothetical 1-b

The Court dismissed Ozzy's Complaint without prejudice. Ozzy filed an Amended Complaint against YBR for federal housing discrimination. The Amended Complaint alleges the following:

1. Ozzy suffers from Ruby Slippers Syndrome;
2. Ruby Slippers Syndrome is a disability;
3. He applied for an apartment at YBR;
4. The annual income requirement for an apartment at YBR is $50,000;
5. Ozzy earns an annual salary of $75,000;
6. None of the current tenants at YBR have Ruby Slippers Syndrome; and
7. YBR rejected Ozzy's application even though ten units are available.

Assume that the Court will presume that Ruby Slippers Syndrome is a disability. Rather than serve an Answer, YBR moved to dismiss the Complaint under Rule 12(b)(6).

Should the Court GRANT or DENY the motion?

> The Amended Complaint may still be insufficient even though it alleges that Ozzy is a member of a statutorily protected class. Some students said that it is unclear if the income requirement is a maximum or minimum. If students don't notice, then point out the omission. Under both scenarios, it's a good opportunity to discuss how to draft better complaints.

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Hypothetical 1-c

YBR serves an Answer to the Amended Complaint. YBR rejected all allegations of unlawful conduct. The parties then engage in discovery. The parties stipulate to the following:

1. Ozzy is a member of a protected class;
2. The annual minimum income requirement for YBR is $50,000;
3. None of the current tenants at YBR have Ruby Slippers Syndrome; and
4. YBR rejected Ozzy's application even though ten units are available.

The documents that Ozzy and YBR produced during discovery revealed the following:

a. YBR, as a part of the application process, contacted Ozzy's employer to verify Ozzy's income;

b. The employer said that Ozzy earns an annual salary of $40,000

c. YBR's rejection letter stated, "Your application for an apartment is rejected because you do not meet the minimum income requirements."

At the close of discovery, YBR moved for summary judgment under Rule 56. Ozzy did not respond to the motion.

Should the Court GRANT or DENY the motion?

I use this question to assess whether students understand what "no issue of material fact" means. This question also presents a good opportunity to talk about summary judgment practice and standards:

- Responding to the moving party's averments;
- Construing ambiguities in the non-moving party's favor;
- Judge considering summary judgment motion cannot make credibility determination;
- Credibility determinations for factfinder, i.e. jury or judge if bench trial.

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HYPOTHETICAL 2: DOROTHY GALE V. YBR APARTMENTS, INC.

Hypothetical 2-a

Dorothy Gale's Complaint against YBR Apartments, Inc. ("YBR") for federal housing discrimination alleges the following:

1. She suffers from Ruby Slippers Syndrome;
2. Ruby Slippers Syndrome is a disability;
3. She applied for an apartment at YBR;
4. The annual minimum income requirement for YBR is $50,000;
5. Gale earns an annual salary of $75,000;
6. None of the current tenants at YBR have Ruby Slippers Syndrome.
7. YBR rejected Gale's application even though ten units are available.

YBR served an Answer. In addition to denying all allegations of unlawful conduct and absent any contrary authority, YBR, for the purposes of the Answer only, presumed that Ruby Slippers Syndrome is a disability, and thus, Gale is a member of a protected class. The parties agreed that YBR could revisit that issue. The parties then engaged in discovery, which revealed the following:

- Gale suffers from Ruby Slippers Syndrome;
- The annual minimum income requirement for an apartment in YBR is $50,000;
- Gale earns an annual salary of $90,000; and
- None of the current tenants at YBR have Ruby Slippers Syndrome.

A former janitor at YBR testified at his deposition that he heard YBR's landlord say, "YBR will never rent apartments to people with Ruby Slippers Syndrome even if those apartments stay empty forever!"

YBR's landlord, at his own deposition, denied making the statement. He also testified that there are no units available and that there's a waiting list of over fifty people.

If YBR moves for summary judgment under Rule 56, should the Court GRANT or DENY the motion?

To avoid confusion, I changed the plaintiff to assess a different aspect of Rule 56. I use to show what it means to deny summary judgment because there is a "dispute as to [a]"dispute as to material fact."

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Hypothetical 2-b:

[Partial Continuation of Hypothetical 2-a]

After the close of discovery, but before YBR moved for summary judgment, the Fourteenth Circuit held that those with Ruby Slippers Syndrome are not members of a "protected class" for the purposes of a federal housing discrimination claim. The Fourteenth Circuit's holding does not contradict any applicable statute or controlling precedent. YBR moves for summary judgment under Rule 56 based entirely on the Fourteenth Circuit's holding.

Should the Court GRANT or DENY the motion?

I use this question to demonstrate when a fact is "material." Because a binding court held that those with Ruby Slippers Syndrome are not a protected class, it is no longer material that Dorothy has the syndrome and it is no longer material that YBR denied Dorothy's application on that basis. Thus, defendants are entitled to judgment as a matter of law."

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Hypothetical 2-c

[Partial Continuation of Hypothetical 2-a – NOT 2-b]

After the close of discovery, but before YBR moved for summary judgment, the ***Fifteenth Circuit*** rules that those with Ruby Slippers Syndrome ***are not a protected class***, and the **Sixteenth Circuit** rules that those with Ruby Slippers Syndrome **are a protected class**. **There is no Fourteenth Circuit decision on point.** Assume that the rulings from the Fifteenth and Sixteenth Circuits do not contradict any applicable statute or controlling precedent.

If YBR moves for summary judgment under Rule 56, should the Court GRANT or DENY the motion?

I use this hypothetical to show that when there's no binding precedent, a district court may rely on other courts for persuasive authority. Students also recognize that the posture of this hypothetical is the same posture as the summary judgment they're writing, i.e. convince a district court to adopt the position of another circuit because there is no authority that binds the district.

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Hypothetical 2-d

[Continuation of Hypothetical 2-c]

The District Court, adopting the Fifteenth Circuit's rule that those with RSS are not a protected class for the purposes of a federal housing discrimination claim, granted YBR's motion for summary judgment, and thus, YBR is entitled to judgment as a matter of law regardless of any issues of fact. Gale files and serves a Notice of Appeal.

Will Gale's appeal to the Fourteenth Circuit be successful?

I use this question to show students the posture of the appellate brief they'll submit after the summary judgment motion.