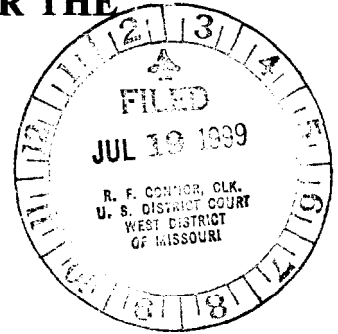


IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION



CRAFTSMEN LIMOUSINE, INC., et al.,)
)
)
Plaintiffs,)

VS.

No. 98-3454-CV-S-RGC-ECF

FORD MOTOR COMPANY, et al.,
Defendants.

ORDER

A review of this file reflects that the following motions are pending in this case: (1) plaintiffs' motion to dismiss defendant Empire Coach without prejudice; (2) defendant General Motors' motion to dismiss; and (3) plaintiffs' motion to dismiss defendant Ford Motor Company's counterclaims. Only plaintiffs' motion to dismiss defendant Empire Coach will be granted. Both defendant General Motors' motion to dismiss and plaintiffs' motion to dismiss counterclaims of defendant Ford Motor Company will be denied.

In passing on a motion to dismiss, a court must view the facts alleged in the complaint in the light most favorable to the plaintiff. Sheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); Conlev v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80 (1957); Toombs v. Bell, 798 F.2d 297, 298 (8th Cir. 1986). A court should dismiss “only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” Hishon v. King & Spalding, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed.2d 59 (1984). The court should not grant a motion to dismiss merely because the complaint does not

state with precision every element of the offense necessary for recovery. 5 **WRIGHT & MILLER**, **FEDERAL PRACTICE AND PROCEDURE: CIVIL**, § 1216, at 120 (1969). A complaint is sufficient if it contains “allegations from which an inference can be drawn that evidence on these material points will be introduced at trial. ” Id. at 122-23. Moreover, a court should not dismiss unless it “appears beyond a reasonable doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Conley, 355 U.S. at 45-46, 78 S.Ct. at 102. Thus, a motion to dismiss is likely to be granted “only in the unusual case in which a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief. ” Fusco v. Xerox Corp., 676 F.2d 332, 334 (8th Cir. 1982).

The Federal Rules of Civil Procedure require only notice pleading. Plaintiff must only set forth a short and plain statement showing that it is entitled to relief, not all the facts which establish that it is entitled to relief. FED. R. CIV. P. 8(a). Plaintiffs have sustained this low burden in the complaint against General Motors, as has Ford Motor Company in its allegations against plaintiff. The Court will, therefore, deny those motions to dismiss.

Further, the Court notes that the file does not reflect service on the following defendants: **AHA Automotive Design**, **Krystal Koach**, **LCW**, and **Picasso Coach Builder**. Plaintiff will be directed to show cause why their complaint against these defendants should not be dismissed for failure to obtain service.

Defendant **Royale Limousine Manufacturers** filed a waiver of service on March 1, 1999, but as of this date, has not responded to plaintiff’s complaint. The waiver of service was signed by MacGregor Smith as Vice President. No address is given. The only address given by plaintiffs was Harverhill, Massachusetts.

Accordingly, it is

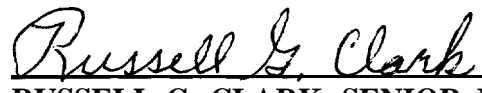
ORDERED plaintiffs' motion to dismiss defendant Empire Coach without prejudice is granted; and it is further

ORDERED that defendant General Motors' motion to dismiss is denied; and it is further

ORDERED that plaintiffs' motion to dismiss defendant Ford Motor Company's counterclaims is denied; and it is further

ORDERED that on or before August 27, 1999, plaintiffs shall show cause why the complaint against defendants AHA Automotive Design, Krystal Koach, LCW, Picasso Coach Builder, and Royal Limousine Manufacturers should not be dismissed for failure to obtain service; and it is further

ORDERED that defendant Royale Limousine Manufacturers, on or before August 27, 1999, shall show cause why default judgment should not be entered against it.



RUSSELL G. CLARK, SENIOR JUDGE
UNITED STATES DISTRICT COURT

Date: JUL 19 1999