

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

JOY ELAINE DALEY, ET AL.

Plaintiffs,

v.

ALPHA KAPPA ALPHA SORORITY, INC.,
ET AL.

Defendants.

CIVIL ACTION NO: 2009-CA-004456 B

JUDGE TODD E. EDELMAN

Next Event: Mediation
May 9, 2012

**DEFENDANTS' MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AND
TO STRIKE PLAINTIFFS' DEMAND FOR A JURY TRIAL**

The Defendants, Alpha Kappa Alpha Sorority, Inc. and the individual Defendants named in the Second Amended Complaint (collectively the "Defendants"),¹ by and through undersigned counsel, pursuant to Rules 12(c) and 39 of the District of Columbia Superior Court Rules of Civil Procedure, hereby respectfully move this Court to enter partial judgment in their favor and against Plaintiffs, on Plaintiffs' actual and punitive damages claims,² and to strike Plaintiffs' demand for a jury trial, and in support thereof state the following:

1. This Court should enter partial judgment in Defendants' favor and dismiss Plaintiffs' claim for actual and punitive damages pursuant to Rule 12(c) of the District of Columbia Superior Court Rules of Civil Procedure.

¹ Excluding Defendant Barbara A. McKinzie who is represented by separate counsel.

² This Motion addresses Plaintiffs claims for legal damages with the exception of Plaintiff Daley's cause of action for intentional infliction of emotional distress and the alleged damages arising therefrom. Defendants therefore, seek partial judgment on the pleadings except as to Plaintiff Daley's intentional infliction of emotional distress claim.

2. The District of Columbia precludes monetary recovery unless the plaintiff pleads that she suffered harm attributable to the defendant's conduct. *Tsintlas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009).

3. In their Second Amended Complaint, Plaintiffs seek actual damages, but have failed to plead any facts demonstrating that they suffered pecuniary harm attributable to Defendants' alleged financial improprieties and wrongdoing.

4. Moreover, in the absence of proof of actual damages, as a matter of law, a plaintiff cannot recover punitive damages from a defendant. *Maxwell v. Gallagher*, 709 A.2d 100, 104 (D.C. 1998).

5. Plaintiffs' fail in their burden to plead facts sufficient to establish a basis for recovery of actual damages by Plaintiffs against Defendants.³ Consequently, no basis exists for an award of punitive damages in this case.

6. Therefore, as a matter of law, based on the allegations contained within Plaintiffs' Second Amended Complaint, this Court should grant partial judgment on pleadings on Plaintiffs' actual and punitive damages claims.

7. Moreover, as a matter of judicial economy, it would be unduly prejudicial to require Defendants to litigate this issue when it is apparent that legal damages do not exist.

8. This Court should also strike Plaintiffs' request for a jury trial because Plaintiffs seek resolution of equitable issues which are not entitled to a jury trial. *Kudon v. f.m.e. Corp.*, 547 A.2d 976 (D.C. 1988).

9. Defendants hereby incorporate by reference herein the attached Memorandum of Points and Authorities and Proposed Order in support of their Motion for Partial Judgment on the Pleadings and to Strike Plaintiffs' Demand for a Jury Trial.

³ With the exception of Plaintiff Daley's claim for the intentional infliction of emotional distress.

WHEREFORE, for the foregoing reasons, Defendants respectfully request that this Court enter judgment in their favor and against all Plaintiffs, except Plaintiff Daly on her intentional infliction of emotional distress claim, on Plaintiffs' actual and punitive damages claims, pursuant to Rule 12(c) of the District of Columbia Superior Court Rules of Civil Procedure and further strike Plaintiffs' demand for a jury trial.

Respectfully Submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April 2012, a copy of the Defendants' Motion for Partial Judgment on the Pleadings and to Strike Plaintiffs' Demand for a Jury Trial, Memorandum of Points and Authorities in Support of Defendants' Motion, and Proposed Order were electronically served via CaseFileXpress upon the following:

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE
DEFENDANTS' MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AND
TO STRIKE PLAINTIFFS' DEMAND FOR A JURY TRIAL**

The Defendants, Alpha Kappa Alpha Sorority, Inc. and the individual Defendants named in Plaintiffs' Second Amended Complaint (collectively the "Defendants"),¹ by and through undersigned counsel, pursuant to District of Columbia Superior Court Rule of Civil Procedure 12-I(e) hereby respectfully move this Court to enter judgment in their favor and against all Plaintiffs, except Plaintiff Daley,² on Plaintiffs' actual and punitive damages claims and to strike Plaintiffs' demand for a jury trial. In support thereof, Defendants state as follows:

I. OVERVIEW

Plaintiffs commenced this action against Defendants by Complaint filed in the District of Columbia Superior Court on June 20, 2009. Now, nearly three years later, the pleadings stage is closed. Sufficient time has passed for Plaintiffs to discover the nature of their alleged damages

¹ Excluding Defendant Barbara A. McKinzie who is represented by separate counsel.

² The instant Motion, which seeks partial judgment on the pleadings, does not address Plaintiff Daley's claim for intentional infliction of emotional distress and the alleged legal damages resulting therefrom. This Motion is limited to Plaintiffs' actual and punitive damages claims apart from Plaintiff Daley's intentional infliction of emotional distress claim.

and plead them accordingly. Yet, Plaintiffs have failed to articulate any harm they personally suffered which could conceivably support their legal damages claims. As detailed herein, Plaintiffs have failed to meet their burden of pleading, and thus, this Court should enter partial judgment against them, in favor of Defendants, on their damages claims.

II. FACTUAL BACKGROUND

This Court set forth the salient facts of this case in ruling on Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint. *See* Order, Feb. 29, 2012. A brief recitation of the recent and relevant procedural history of this litigation is instructive, however, for purposes of the instant Motion.

On November 28, 2011, Plaintiffs filed a Second Amended Complaint alleging causes of action against Defendants for breach of fiduciary duty, breach of contract, ultra vires, defamation, false light, intentional infliction of emotional distress, and accounting. In doing so, Plaintiffs asserted claims mirroring those contained in their June 20, 2009 Complaint and August 6, 2009 Amended Complaint, with the exception of Plaintiffs' new claims for defamation, false light, and intentional infliction of emotional distress. Plaintiffs have filed three separate complaints. In doing so, Plaintiffs have had three years and ample opportunity to meet their burden of pleading damages in this action.

Thereafter, on January 12, 2012, Defendants filed a Motion to Dismiss Plaintiffs' Second Amended Complaint in its entirety. By Order dated, February 29, 2012, the Court granted Defendants' Motion to Dismiss in part dismissing Plaintiffs' claims for defamation and false light. Plaintiffs' claims for breach of fiduciary duty, breach of contract, ultra vires, and accounting remain, as does Plaintiff Daley's claim for intentional infliction of emotional distress. Significantly, in the February 29, 2012 Order, the Court indicated that only Plaintiff Daley

alleged harm sufficient to maintain the intentional infliction of emotional distress claim against Defendants and the claim, therefore, remains only as to her.

Defendants filed their Answers to Plaintiffs' Second Amended Complaint, on March 14, 2012. Defendants subsequently filed an Amended Answer on behalf of Defendants Carolyn House Stewart, Juanita Sims Doty, Lavern Tarkington, Pamela Bates Porch, Scheylbea J. Hopkins, Lavonne Lewis, Evelyn Sample-Oates, Ella Springs Jones, Dorothy Buckhanan Wilson, Ranika Sanchez, Shaylyn Cochran, Adria Robinson, and Tari T. Bradford on March 15, 2012, and on behalf of Defendant Glenda Glover on April 3, 2012.

Plaintiffs' claims for relief in the Second Amended Complaint seek equitable remedies. Plaintiffs seek such remedies as permanent injunctions, reformation, restoration of membership privileges, imposition of a constructive trust, accounting, removal of Directorate members, publication of Directorate meeting minutes, and return of certain alleged unapproved payments and expenditures by Defendants. In addition to equitable relief, however, Plaintiffs also assert the individual right to money damages "in an amount exceeding \$50,000 to be determined at trial," as well as a claim for punitive damages against Defendants. Sec. Am. Compl. p. 47.

Most importantly, Plaintiffs fail to articulate any basis for their individual damages claims "in an amount exceeding \$50,000." Sec. Am. Compl. p. 47. They plead no facts in the Second Amended Complaint that could justify an award of actual damages, and consequently an award of punitive damages, to them as harmed individuals. The pleadings stage of this action is closed and Plaintiffs have failed to meet their burden of pleading facts demonstrating that they suffered an individual harm which would entitle them to a monetary recovery. Consequently, as a matter of law, this Court should grant partial judgment in their favor on the issue of actual and

punitive damages. Therefore, Defendants request that judgment be entered in their favor, and against Plaintiffs, on their claims for actual and punitive damages.

III. ARGUMENT

A. Standard for Considering a Motion for Judgment on the Pleadings.

A Rule 12(c) motion for judgment on the pleadings tests the formal sufficiency of a statement of the claim for relief. *District of Columbia v. Beretta USA Corp.*, 2006 D.C. Super. LEXIS 8 (2006). The standard for disposition of a motion for judgment on the pleadings under Rule 12(c) is the same standard as that for motions under a Rule 12(b)(6) motion to dismiss. *See Osei-Kuffnor v. Argana*, 618 A.2d 712, 713 (D.C. 1993). Dismissal is proper when, taking the material allegations of the complaint as admitted, and construing them in the light most favorable to the nonmoving party, the court finds that the nonmoving party has failed to allege all the material elements of her cause of action. *Taylor v. FDIC*, 132 F.3d 753, 761 (D.C. Cir. 1997).

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a complaint. It is well-settled that a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). This requires more than an unadorned statement of harm by the defendant. *Potomac Dev. Corp. v. D.C.*, 28 A.3d 531, 544 (D.C. 2011). Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements are insufficient to sustain a claim. *Ashcroft*, 556 U.S. at 678. The Court should therefore grant dismissal of Plaintiffs' damages claim as Plaintiffs have failed to sufficiently plead facts to support a conclusion that they are individually entitled to actual and punitive damages.

B. Plaintiffs Have Failed to Plead Facts Sufficient to Support the Recovery of Actual Damages.

A party asserting or pleading an issue has the burden of proving each material element of such issue to prevail. *Gilles v. Ware*, 615 A.2d 533, 551 (D.C. 1992). There can be no monetary recovery unless the plaintiff has suffered harm. *Tsintlas Realty Co. v. Mendez*, 984 A.2d 181, 187 (D.C. 2009). District of Columbia Courts have established that no action at law can be maintained in which the plaintiff cannot demonstrate that she suffered any harm attributable to the defendant's behavior. *Id.*

The pleading stage in this action is closed and Plaintiffs have failed to particularize any actual loss or damages they personally suffered as a result of Defendants' alleged wrongdoings. Plaintiffs, in their voluminous Second Amended Complaint, make sweeping allegations of financial improprieties and wrongdoing by Defendants. These allegations, if true, could only plausibly have resulted in harm to Defendant Alpha Kappa Alpha Sorority, Inc. ("AKA"). Nowhere in their pleading do Plaintiffs identify any compensable harm that they personally suffered at the hands of Defendants. Seemingly, all alleged harm, as pled, belongs to Defendant AKA and not Plaintiffs personally.

Specifically, Plaintiffs' numerous pages of factual allegations concern:

- assertions of early abuses of leadership by Defendants;
- retaliation against Plaintiff Daley;
- disregard of AKA's budget approval process;
- unapproved payments to Defendant Barbara McKinzie;
- denial of a budget debate at the 2008 Boule;
- spending of the 2008 Boule budget surplus;
- misuse of AKA credit cards;

- failed financial oversight by the Directorate;
- misuse of AKA's credit card for personal gain;
- the Directorate's failure to adopt ethics recommendations;
- retaliation against concerned sorors; and
- breach of fiduciary duties. *See* Sec. Am. Compl. ¶¶ 62-179.

From the four corners of their pleading, Plaintiffs asserted harm resulting from each of these allegations is attributable only to Defendant AKA. Plaintiffs fail to set forth any harm resulting from Defendants' alleged actions which would provide a basis for recovery of monetary damages by Plaintiffs individually.

Beyond Plaintiffs' factual allegations, Plaintiffs fail to plead a basis for recovery of monetary damages. *See* Sec. Am. Compl. ¶¶180-259. Plaintiffs' claims for breach of fiduciary duty against Defendants Glover and James and the Directorate Defendants merely provide an unadorned statement that "breaches of fiduciary duty have caused financial...harm to AKA and Plaintiffs, both as members of AKA and individuals." Sec. Am. Compl. ¶¶ 187,197. Plaintiffs offer no factual allegations to support the alleged individual harm however. Plaintiffs' breach of contract claim against Defendants again fails to plead facts establishing that Plaintiffs suffered actual harm at the hands of Defendants.

Rather than meet their burden of pleading damages, Plaintiffs provide the bald assertion that the alleged breach of contract caused them financial harm. Plaintiffs' ultra vires claim lacks even a blanket assertion and makes no allegation that any Plaintiff even suffered individual harm. Only Plaintiff Daley's claim for intentional infliction of emotional distress plausibly articulates a claim for monetary damages. However, this claim is limited to Plaintiff Daley and is insufficient to establish a right to monetary recovery by any other individual Plaintiff.

Plaintiffs' Second Amended Complaint also fails to articulate specific conduct by Defendants which caused the alleged corresponding personal pecuniary harm. Plaintiffs provide an exhaustive rendition of factual allegations against Defendants; but fail to link those allegations to specific resulting monetary damage they personally suffered. While the allegations may provide the implication of actual harm to Defendant AKA, no set of facts are plead that supports a claim for damages on behalf of the individual Plaintiffs.

Further, Plaintiffs fail to quantify the monetary loss they allege to have suffered. To meet their pleading burden, Plaintiffs must articulate some connection between the damages sought and Defendants' conduct. Plaintiffs fail to meet this threshold burden. Plaintiffs make no mention of actual damages anywhere in the factual allegations and/or causes of action sections of the Second Amended Complaint. Plaintiffs do not allude to the existence of damages – in the ambiguous amount of “that exceeding \$50,000 to be determined at trial” – until their claim for relief. Sec. Am. Compl. p. 47. Plaintiffs plead entitlement to at least \$50,000 with no indication of any connection between this amount and Defendants' conduct. Such a conclusory allegation is insufficient to support a claim for damages. *Ashcroft*, 556 U.S. at 678.

Further, Plaintiffs omit any indication of how the amount of \$50,000 is derived which would lend credibility to the claim. At the end of the day, Plaintiffs have initiated this costly litigation, seeking judicial resolution of an internal dispute of a private organization, based upon a Second Amended Complaint that fails to meet Plaintiffs' basic pleading requirements - evidence that Plaintiffs have suffered legal damages at the hands of Defendants.

Consistent with the standards imposed by Super. Ct. R. Civ. P. 12(c), even considering the allegations in the light most favorable to Plaintiffs, the Second Amended Complaint is void of any facts asserting that Plaintiffs personally suffered damages which could possibly give rise

to Plaintiffs' damages claim. Absent evidence of any harm suffered by Plaintiffs which may be attributable to Defendants' conduct, as a matter of law, Plaintiffs cannot maintain their claim for actual damages. Consequently, based on the allegations of the Second Amended Complaint, Defendants respectfully request this Court grant partial judgment on the pleadings as to Plaintiffs actual damages claim.

Moreover, the Court of Appeals has established that equity has no jurisdiction over a controversy for which there is a complete and adequate remedy at law. *Square 345 Limited Partnership v. District of Columbia*, 927 A.2d 1020 (D.C. 2007). Thus, as in the instant case, when no adequate remedy at law exists, equitable remedies may be granted. A careful examination of Plaintiffs' Second Amended Complaint reveals that Plaintiffs seek equitable remedies for which no remedy at law exists and any legal damages suffered lack any cognizable foundation.

Plaintiffs, despite failing to articulate a proper basis, baldly assert the right to legal damages. Yet, legal damages will not afford Plaintiffs complete and adequate relief for the harms complained of in their pleading. Consequently, because Plaintiffs failed to meet their burden of pleading damages, the Court should enter judgment in Defendants' favor on Plaintiffs' legal damages claims and limit any potential relief to that which is equitable in nature.

C. Plaintiffs Failed Their Burden of Pleading Facts Demonstrating They Suffered Actual Pecuniary Harm, And Therefore, They Failed to Articulate an Entitlement to Punitive Damages.

A plaintiff must prove a basis for actual damages to justify the imposition of punitive damages. *Maxwell v. Gallagher*, 709 A.2d 100, 104 (D.C. 1998). Absent proof of at least nominal actual damages, punitive damages may not be awarded. *Id.*

In their prayer for relief, Plaintiffs seek punitive damages in an unspecified amount. The law it is well-settled that in the absence of actual harm to a party, an award of punitive damages is improper. *Id.* As detailed in Section B above, Plaintiffs' Second Amended Complaint fails to plead facts sufficient to establish a basis for recovery of actual damages by Plaintiffs against Defendants. Consequently, a basis for an award of punitive damages does not exist in this case. Therefore, as a matter of law, based on the allegations contained within Plaintiffs' Second Amended Complaint, Defendants respectfully request that the Court enter partial judgment on the pleadings as to Plaintiffs' punitive damages claim.

D. Plaintiffs' Demand for a Jury Trial Should Be Stricken Because Plaintiffs Seek Resolution of Equitable Issues.

A party has no constitutional right to a jury trial when the issues presented are equitable in nature. *Kudon v. f.m.e. Corp.*, 547 A.2d 976 (D.C. 1998). In their Second Amended Complaint, Plaintiffs demand a jury trial on all counts. Sec. Am. Compl. p. 47. However, the pleadings stage is now closed and Plaintiffs have failed to articulate any basis for a jury trial. As explained above, Plaintiffs seek equitable relief. As a matter of law, in the absence of legal damages, no right to a jury trial exists. Consequently, this Court should strike Plaintiffs' jury request and have the Court determine the equitable matters raised by Plaintiffs.

IV. CONCLUSION

Plaintiffs have failed to meet their burden of pleading damages in this case. As explained herein, under District of Columbia law, this Court should dismiss a Plaintiffs' claim to monetary damages when Plaintiffs cannot demonstrate that they suffered legal damages attributable to the Defendants' behavior. Moreover, in the absence of actual damages, a party may not be awarded punitive damages. Plaintiffs' failure to plead legal damages therefore precludes them from recovering punitive damages. Moreover, as a matter of judicial economy, the parties have been

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ORDER

This matter came before the Court on Defendants' Motion for Partial Judgment on the Pleadings and to Strike Plaintiffs' Demand for a Jury Trial. Upon consideration thereof, the opposition thereto, and the entire record herein, good cause having been shown, it is this _____ day of _____, 2012, hereby

ORDERED that Defendants' Motion is GRANTED; and it is further

ORDERED that Plaintiffs' actual and punitive damages claims are hereby DISMISSED with prejudice, with the exception of Plaintiff Daley's damages claim in connection with her cause of action for intentional infliction of emotional distress; and it is further

ORDERED that Plaintiffs' demand for a jury trial is stricken in full;

SO ORDERED.

Hon. Todd E. Edelman

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