

Johns v. County of San Diego, 114 F.3d 874, 877-78 (9th Cir. 1997). "Because the goal is to protect the rights of infants, the Complaint should not [be] dismissed with prejudice as to [the minor]." *Id.* at 878. Alternatively, FJ Pillias may himself sue as a plaintiff, either pro se or by counsel, within two years after he turns eighteen years old. See Tarauo, 18 FSM R. at 273 (citing Sarapio v. Maeda Road Constr. Co., 3 FSM R. 463, 464, (Pon. 1988) and Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 113-15 (Pon. 1985)); see also Johns, 114 F.3d at 878. But his father may not appear without counsel on his behalf.

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FSM SUPREME COURT TRIAL DIVISION

NAMIKO SOLOMON,)	CIVIL ACTION NO. 2014-040
)	
Plaintiff,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA,)	
JOSES R. GALLEN, in his official capacity,)	
and APRIL DAWN SKILLING (nee Cripps), in)	
her personal capacity,)	
)	
Defendants.)	
_____)	

ORDER

Beauleen Carl-Worswick
Associate Justice

Hearing: May 2, 2016
Decided: May 23, 2016

APPEARANCES:

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HEADNOTES

Civil Procedure – Pleadings

A pleading shall assert a short and plain statement of the claim showing that the pleader is entitled to relief. The claimant need not set forth any legal theory justifying the relief sought on the facts alleged, but sufficient factual averments to show that the claimant may be entitled to some relief are required. The plaintiffs' factual averments and the claims resting upon them are dispositive, not the legal theories assigned to them. Solomon v. FSM, 20 FSM R. 396, 400 (Pon. 2016).

Administrative Law – Judicial Review

An appeal of an administrative agency decision can only be reviewed on the grounds of violation of law or regulation or denial of due process or of equal protection of the laws. Solomon v. FSM, 20 FSM R. 396, 400-01 (Pon. 2016).

Civil Procedure – Pleadings

A complaint's purpose is simply to give the defendant notice of the essence of the plaintiff's claim with sufficient clarity to enable the defendant to answer, that is, fair notice of factual wrong openly stated on the basis of the facts asserted. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

Civil Procedure – Dismissal – Before Responsive Pleading; Civil Procedure – Pleadings; Public Officers and Employees – Termination

A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face, but a plaintiff's allegation that there was a "sheer possibility" that her termination was based on petty and insufficient grounds, is inadequate, as far as withstanding a Rule 12(b)(6) challenge. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

Administrative Law – Judicial Review; Civil Procedure – Pleadings

Absent sufficient factual affirmations to buttress the relevant claim, coupled with the plaintiff's failure to denote what portion of the relevant agency decision was flawed, the defendants cannot be expected to interpose an answer. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

Civil Procedure – Pleadings

It is not enough to simply cite a set of regulations and claim the alleged acts ran afoul of this compendium. A mere conclusion that these regulations were breached, which neglects to supply the necessary factual allegations in support thereof, is inadequate, and when the factual averments were solely applicable to one defendant and hence do not support the other cause of action, more specificity is required and absent some reasonable facsimile of particularity, the other cause of action fails to notify the defendants of the alleged infraction; thereby impeding their ability to interpose an answer. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

Administrative Law – Judicial Review; Public Officers and Employees – Termination

The FSM Supreme Court's review of an agency decision is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusions that a violation of the kind justifying the termination has occurred. Solomon v. FSM, 20 FSM R. 396, 402

(Pon. 2016).

Civil Procedure – Pleadings; Public Officers and Employees – Termination

When the plaintiff's reasoning neglects to cite what constituted an alleged illegal termination since the only factual averments which depict allegedly untoward conduct on the defendants' part, albeit nebulous, only apply to one defendant, the requisite nexus to support a substantive due process violation is wanting. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

Civil Procedure – Pleadings

The legal theory advanced in a complaint, if one is advanced, need not be correct. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

Torts - Infliction of Emotional Distress

The tort of infliction of emotional distress is sharply limited, only applying in the most egregious circumstances, and recovery for intentional infliction of emotional distress requires conduct that is extreme and outrageous. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

Civil Procedure – Dismissal – Before Responsive Pleading; Torts - Infliction of Emotional Distress

A plaintiff's allegation of a defendant's failure to respond to the plaintiff's salutations; of projecting "bad vibes;" of purportedly not assigning an adequate work load; of a disproportionate amount of scrutiny supposedly placed on her tardiness, in juxtaposition to fellow employees and allegedly noting the employee's requests for leave, hardly rise to the level of "extreme and outrageous" conduct on the defendants' part, and as a result, falls short of a claim on which relief might be granted. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

Civil Procedure – Dismissal – Before Responsive Pleading

On a Rule 12(b)(6) motion to dismiss, only a well pled or well-pleaded facts are to be accepted as true and no matter how artfully the allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations, since conclusory allegations or legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

Administrative Law – Judicial Review; Civil Procedure – Dismissal – Before Responsive Pleading; Public Officers and Employees – Termination

When the causes of action alleged and the factual averments in support are vague and lack the particularity which would place defendants on notice about what to respond to and thereby interpose an answer; when simply claiming the plaintiff's termination was based on "petty and insufficient reasons," without citing to the purported failings within the relevant Administrative Review Decision that approved the employee's dismissal, is inadequate; when the causes of action based on an alleged statutory or regulatory violation additionally lack this underpinning; and when absent articulating how the defendants' conduct constituted an "unlawful termination," the causes of action sounding in a violation of substantive due process and civil rights also fail to survive, the court will grant a motion to dismiss for failure to state a claim upon which relief can be granted. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

Civil Procedure – Pleadings

Pleadings are designed to develop and present the precise points in dispute between parties and should narrow and focus issues for trial, not provide a vehicle for scattering legal theories to the wind in the hope that the trial process will eventually winnow some few grains from the cloud of chaff. Solomon v. FSM, 20 FSM R. 396, 403-04 (Pon. 2016).

* * * *

COURT'S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

On March 15, 2016, Defendant Cripps filed a Motion to Dismiss, pursuant to FSM Civil Rule 12(b)(6). Defendant's Opposition thereto was filed on April 4, 2016 and a Hearing on this Motion to Dismiss took place on May 2, 2016. Present at the subject Hearing were Attorney Salomon Saimon, appearing on behalf of Plaintiff; Assistant Attorney Craig D. Reffner, representing Defendants FSM, as well as Jose R. Gallen, in his official capacity (as the Secretary of the Department of Justice) and Defendant April Dawn Skilling (nee Cripps), who appeared telephonically.

I. BACKGROUND

The subject Complaint, sounding in wrongful termination, was filed on October 23, 2014 and alleged seven¹ causes of action. On October 27, 2015, Defendants filed a Motion to Dismiss for Failure to State a Claim. Defendants' 12(b)(6) motion maintained that Plaintiff had failed to allege a factual basis to support the various causes of action alleged.

On October 30, 2014, Plaintiff filed an Opposition to [the] Motion to Dismiss, wherein it was noted "Assuming the [R]ecord of the [administrative] agency is available, the facts (deemed admitted) show petty and insufficient grounds[,] that were approved by the ad hoc committee[,] to terminate a protected member of the Public Service System." Plaintiff additionally referenced the factual allegations within the Complaint (paragraphs 10 through 14); claiming these affirmations demonstrated "animosity on the part of Defendant Cripps, as well as personal hatred and ill treatment," directed toward Plaintiff during her employment with the Department of Justice. Finally, Plaintiff concedes that a civil rights cause of action would be contingent upon a finding that the termination of Plaintiff was, in fact, wrongful.²

Defendants' Reply to Plaintiff's Opposition was filed on November 6, 2014. This Reply maintained relevant facts, with respect to the alleged causes of action were sorely wanting in the Complaint and Plaintiff's October 30th filing. Defendants' Reply also countered, that there was an abject failure on the part of Plaintiff to depict any modicum of particularity, much less a nexus between the denoted factual paragraphs and the causes of action set forth.

On June 5, 2015, this Court issued an Order which *inter alia*, referenced "some misgiving, concerning the adequacy of detail denoted in the various causes of action alleged with the Plaintiff's Complaint, that would enable Defendants to interpose a responsive Pleading." As such, Defendants' Motion to Dismiss was treated as a Motion for a More Definite Statement, pursuant to FSM Civil Rule 12(e) and Plaintiff was instructed to file either a Response to the Motion for a More Definite Statement or an Amended Complaint (containing the requisite detail in the respective causes of action to enable Defendants to interpose a responsive Pleading).

In response to the June 5th Order, Plaintiff filed an Opposition to [the] Motion for [a] More

¹ The seventh cause of action: *Respondeat Superior*, was abandoned, as per Plaintiff's Opposition to [the] Motion for More Definite Statement at 3 (June 29, 2015).

² Pl.'s Opp'n to [the] Mot. to Dismiss at 3 (June 29, 2015).

Definitive Statement on June 29, 2015. Although this Order placed Counsel for Plaintiff on notice, that the Court "harbored some misgivings," regarding the paucity of detail which had been set forth in the Complaint, the subject Opposition merely cited the liberal notice pleading allowed in the FSM and reaffirmed the factual averments; opting not to amend same.

On January 11, 2016, Defendants filed a Motion to Withdraw (from representing April Dawn Skilling/Cripps in her personal capacity) along with a Motion to Substitute Party (April Dawn Skilling/Cripps, in her official capacity, as a party Defendant with the current Secretary of Justice: Joses R. Gallen. On January 28, 2016, an Order was issued granting both these motions and in the wake thereof, Defendant Cripps filed the aforementioned March 15th Motion to Dismiss in issue, which as also noted, precipitated Plaintiff's April 4th Opposition, that was addressed at the May 2nd Hearing.

At the Hearing to address Defendant Cripps' Motion to Dismiss, Plaintiff's Attorney noted, that a violation of substantive due process rights constituted the theory under which this case was brought, as Plaintiff was unlawfully deprived of an expectation of continued employment with the Department of Justice. Counsel for Plaintiff also clarified³ that the first five causes of action were not lodged against the movant therein; leaving count six: Harassment, as the lone claim brought against same, in her personal capacity. Notwithstanding, Defendant Cripps noted that the instant Motion to Dismiss broached all the alleged causes of action, simply because Plaintiff's June 29th Opposition to [the] Motion for [a] More Definite Statement, addressed the sufficiency of all claims which had been brought.

Plaintiff then stated: "If the Court dismisses cause of action number six (alleging Harassment), Defendant Cripps would be out of the case, therefore we should only address this claim." In response, Defendant Cripps asked this Court to consider the present Motion to Dismiss *in toto* (i.e. as to all the causes of action alleged). Accordingly, this Court will consider the present Motion to Dismiss, with regard to the Complaint in its entirety.

Finally, Counsel for Defendants FSM and Joses R. Gallen, in his official capacity, stated no position would be taken on Defendant Cripps' Motion to Dismiss. Nevertheless, the Government's Attorney pointed out that the *de minimus* reasons cited by the Plaintiff for the subject termination contradicted the written notice which had, not only been provided to this employee (denoting *inter alia*, chronic tardiness and absenteeism), but reviewed, as well as countenanced, during the administrative review process.

II. LIBERAL PLEADING IN JUXTAPOSITION TO THE NEED FOR SUFFICIENT FACTUAL AFFIRMATIONS

Rule 8(a) of the FSM Rules of Civil Procedure provides that a pleading shall assert "a short and plain statement of the claim showing that the pleader is entitled to relief." Under this [R]ule, the claimant need not "set forth any legal theory justifying the relief sought on the facts alleged, but the [R]ule does require sufficient factual averments to show that the claimant may be entitled to some relief." . . . [T]he plaintiffs' factual averments and the claims resting upon them . . . are dispositive, not the legal theories assigned to the claims."

Adams v. Island Homes Constr. Inc., 11 FSM R. 218, 230 (Pon. 2002) (citations omitted).

As noted above, the instant Complaint alleged six remaining causes of action. The first cause of action is entitled: "Appeal of [the] Decision of [the] Administrative Agency." Under 52 F.S.M.C.

³ Pl.'s Opp'n to Mot. to Dismiss at 2 (Apr. 4, 2016).

157, this Decision can only be reviewed "on the grounds of violation of law or regulation or denial of due process or of equal protection of the laws."

Plaintiff makes reference within its April 4, 2016 Opposition to Motion to Dismiss and at the May 2nd Motion to Dismiss Hearing, that an allegation predicated upon a unlawful deprivation of substantive due process rights, in terms of Plaintiff's expectation of continued employment, was being alleged. Nevertheless, nowhere in the subject Complaint (including the factual averments delineated therein) is there mention made of how the Decision purportedly offends the cited substantive process rights afforded Plaintiff/employee.

In Faw v. FSM, 6 FSM R. 33 (Yap 1993), the Court held "The purpose of a [C]omplaint is 'simply to give the [D]efendant notice of the essence of the [P]laintiff's claim with sufficient clarity to enable the [D]efendant to answer, that is, fair notice of factual wrong openly stated on the basis of the facts asserted.'" *Id.* at 37 (quoting 27 FEDERAL PROCEDURE § 62:20 (L. Ed. 1984)).

In the instant case, Plaintiff essentially capitulates that this alleged cause of action is predicated upon an administrative review process that is suspected of being flawed, *to wit*: "Assuming the [R]ecord of the lower agency is available, the facts (deemed admitted), show petty and insufficient grounds were approved by the ad hoc committee to terminate a protected member of the Public Service System."⁴ The gravamen of the Faw Holding is similarly set forth in Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), where the United States Supreme Court found: "A claim is plausible when the Complaint alleges facts "that allows the court to draw the reasonable inference that the Defendant is liable for the misconduct alleged. . . . Where a complaint pleads facts that are merely consistent with the defendant's liability" or allow the court to infer only the mere possibility of misconduct, the complaint "stops short of the line between possibility and plausibility." *Id.* at 678-79, 129 S. Ct. at 1949-50, 173 L. Ed. 2d at 864.

With the exception of factual averments (which are rather *de minimus*) set forth in paragraphs 10 through 14, that reference the failure of Defendant Cripps to reciprocate when greeted by Plaintiff at the workplace; the former giving off "bad vibes to the latter;" allegedly not delegating an adequate work load to this employee; purportedly devoting an inordinate amount of attention to Plaintiff's lack of punctuality, *vis a vis* coworkers and noting her requests for leave, the instant Complaint falls short of the pleading requirements of FSM Civil Rule 8(a).

"[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft, 556 U.S. at 678, 129 S. Ct. at 1949, 173 L. Ed. 2d at 864. A "sheer possibility" that the subject termination was based on petty and insufficient grounds (as alleged by Plaintiff herein), is inadequate, as far as withstanding a Rule 12(b)(6) challenge.

Accordingly, absent sufficient factual affirmations to buttress the relevant claim, coupled with the failure on the part of Plaintiff to denote what portion of the relevant decision was flawed in this cause of action, Defendants herein cannot be expected to interpose an answer.

The second cause of action alleged within Plaintiff's Complaint sets forth: "Violation of [the Public Service System Regulations] PSSR." Plaintiff contends "The acts stated above, which culminated in the decision to terminate the [P]laintiff[,] violated regulatory authorities found in the Public Service System Regulations, which were promulgated under the auspices of 52 F.S.M.C. 124."

⁴ Pl.'s Opp'n to Mot. to Dismiss at 2 (Apr. 4, 2016).

Plaintiff's reliance on 52 F.S.M.C. 124, as authority to substantiate this cause of action is clearly misplaced. This statute section, entitled "Regulations," merely provides the protocol for a Personnel Officer, with respect to drafting regulations for personnel administration and notes the controlling authority of same, once promulgated by the President.

It is not enough to simply cite a set of Regulations and claim the alleged acts ran afoul of this compendium. A mere conclusion that these regulations were breached, which neglects to supply the necessary factual allegations in support thereof, is inadequate. For instance, does the Complaint intend to reference the section addressing merit principles; discrimination; preference to citizens or tenure? Furthermore, Plaintiff concedes that the factual averments (set forth within paragraphs 10 through 14) were solely applicable to Defendant Cripps, in her personal capacity⁵ and hence, hardly support this cause of action. In sum, more specificity is required and absent some reasonable facsimile of particularity, this cause of action fails to notify the Defendants of the alleged infraction; thereby impeding the latter's ability to interpose an answer.

Plaintiff's third cause of action is captioned: "Violations of 52 F.S.M.C. 111 *et seq.*" The Complaint simply maintains "The acts stated above, which became the decision to terminate the [P]laintiff, violates the National Public Service Act, codified at 52 F.S.M.C. 111 *et seq.*"

Semens v FSM, 4 FSM R. 66 (App. 1989), held that under the National Public Service System Act, where the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of factual findings is limited to determining whether substantial evidence in the [R]ecord supports the conclusions of the administrative official, that a violation of the kind justifying the termination has occurred" *Id.* at 72.

With the exception of factual affirmations contained in the Complaint, that reflect the purported treatment of Plaintiff by her Superior while in the employ of the Department of Justice (i.e. paragraphs 10 through 14 - which, as previously noted, is of marginal support), there is no representation this conduct constituted the underlying reasoning for termination, much less that "the conclusions of the administrative official," in terms of an alleged violation "justifying the termination," which is to be scrutinized here. Once again, Plaintiff's reference to this statutory section is far too obscure and fails to denote a discernible cause of action that would enable Defendants to interpose an answer thereto.

Plaintiff's fourth cause of action is entitled "Due Process" and states: "The decision to take the [P]laintiff's employment or not pay her after she had not been legally terminated were violations of Article IV, Section 3 of the Constitution of the FSM[,] that guarantees all citizens and residents of the FSM of Due Process." The syllogistic reasoning utilized by Plaintiff, neglects to cite what constituted an alleged illegal termination (since, as set forth above, the only factual averments which depict allegedly untoward conduct on the part of Defendants, albeit nebulous, only apply to Defendant Cripps, in her personal capacity) and therefore the requisite nexus to support a substantive due process violation is wanting.

Plaintiff's fifth cause of action alleges "Civil Rights Violations." The Complaint notes, "The actions of the [D]efendants above, acting in concert with each other and/or individually, constitute policy decisions to violate the rights of the [P]laintiff and such [D]efendants are therefore liable to the [P]laintiff for violations of 11 F.S.M.C. 701(3)."

At the expense of repetition, the only marginally sufficient factual affirmations appear in

⁵ Pl.'s Opp'n to Mot. to Dismiss at 4 (Apr. 4, 2016).

paragraphs 10 through 14 and Plaintiff readily admits "If the [P]laintiff can prove after review[,] that the termination was in fact wrongful, the relief under 11 F.S.M.C. 701 would be available to this [P]laintiff⁶." As set forth above, given the deficiencies of the present Complaint, in terms of adequately placing Defendants on notice of the purported constitutional, statutory or regulatory violative behavior, to which they need to interpose an answer, coupled with the fact that a civil rights claim is contingent on such wrongful termination, this cause of action must also fall.

Finally, Plaintiff's sixth cause of action is captioned: "Tort of Harassment – [D]efendant Skilling Only." In support thereof, Plaintiff notes: "The actions of the [D]efendant Skilling aimed at the [P]laintiff, annoyed, alarmed and caused substantial emotional distress [and] served no purpose."

The tort of "Harassment" is not recognized in the FSM. However, Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111 (Chk. 1995) found that: "The legal theory advanced, if one is advanced, need not be correct." *Id.* at 114. Notwithstanding, if the Plaintiff intended to bring a cause of action alleging Infliction of Emotional Distress, this particular tort "is sharply limited and only applies in the most egregious circumstances." Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010), (quoting 38 AM. JUR. 2d *Fright, Shock and Mental Disturbance* § 15, at 21-22 (rev. ed. 1999)). Furthermore, "Recovery for intentional infliction of emotional distress requires conduct that is extreme and outrageous." *Id.*

The failure of Defendant Cripps to respond to Plaintiff's salutations; projecting "bad vibes;" purportedly not assigning an adequate work load; a disproportionate amount of scrutiny supposedly placed on her tardiness, in juxtaposition to fellow employees and allegedly noting the employee's requests for leave, hardly rise to the level of "extreme and outrageous" conduct on the part of Defendants. As a result, this cause of action also falls short of a claim upon which relief might be granted.

Arthur v. Pohnpel, 16 FSM R. 581 (Pon. 2009), held "on a Rule 12(b)(6) motion to dismiss, only a well pled or well-pleaded facts are to be accepted as true" and "no matter how artfully the allegations may be crafted, the [C]ourt does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations," since "conclusory allegations or legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss." *Id.* at 593.

III. CONCLUSION

This Court finds, that the causes of action alleged within the present Complaint and the factual averments in support of same, are vague and lack the particularity which would place Defendants on notice, in terms of what to respond to and thereby interpose an answer. Simply claiming Plaintiff's termination was based on "petty and insufficient reasons," without citing to the purported failings within the relevant Administrative Review Decision that approved the dismissal of this employee by Defendants, is inadequate. As such, the causes of action based on an alleged statutory or regulatory violation additionally lack this underpinning. Finally, absent articulating how the conduct of Defendants constituted an "unlawful termination," the causes of action sounding in a violation of substantive due process and civil rights also fail to survive, since they too are predicated on such a threshold violation.

"Pleadings are designed to develop and present the precise points in dispute between parties" and "should narrow and focus issues for trial, not provide a vehicle for scattering legal theories to the wind in the hope that the trial process will eventually winnow some few grains from the cloud of

⁶ Pl.'s Opp'n to Mot. to Dismiss at 2 (Apr. 4, 2016).

chaff." Senda v. Semes, 8 FSM R. 484, 494 (Pon. 1998).

Accordingly, under FSM Civil Rule of Procedure 12(b)(6), this Court hereby GRANTS Defendant's Motion to Dismiss this case, for failure to state a claim upon which relief can be granted; without prejudice.

* * * *

FSM SUPREME COURT TRIAL DIVISION

SILIPINO HAIRENS,)
)
 Plaintiff,)
)
 vs.)
)
 FEDERATED SHIPPING CO. LTD.,)
)
 Defendant.)
)

CIVIL ACTION NO. 2015-023

ORDER

Beauleen Carl-Worswick
Associate Justice

Hearing: May 2, 2016
Decided: May 24, 2016

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* * * *

HEADNOTES

Employer - Employee

Pohnpei and the FSM have no workers' compensation law. Hairens v. Federated Shipping Co., 20 FSM R. 404, 406 (Pon. 2016).

Civil Procedure – Summary Judgment – Procedure

In determining the merit of a summary judgment motion, a court will consider all the facts in the light most favorable to the non-moving party. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407