

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BOROUGH OF BLAWNOX PENNSYLVANIA,)
Plaintiff,)
)
v.) Civil Action No. 01-678
)
COMCAST CABLEVISION OF THE SOUTH,)
INC., TCI OF DAYTON, INC. (d/b/a)
AT&T BROADBAND), and AT&T)
CORPORATION,)
Defendants.)

MEMORANDUM ORDER

Gary L. Lancaster,
District Judge.

March 21, 2002

This is an action stemming from the operation of a local cable company. Plaintiff, the Borough of Blawnox, contends that the defendants acting alone and in concert have breached the provisions of section 621(b)(1) of the Communications Act of 1934, 47 U.S.C. § 541(b)(1)(2001); Federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"); and related common law claim. Plaintiff seeks money damages and certain equitable relief. Defendants have filed motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) arguing that the complaint fails to state a claim for which relief can be granted.

When the court considers a Rule 12(b)(6) motion to dismiss, the issue is not whether plaintiff will prevail in the end, or

whether recovery appears to be unlikely or even remote. The issue is limited to whether, when viewed in the light most favorable to plaintiff, and with all well-pleaded factual allegations taken as true, the complaint states any valid claim for relief. In this regard, the court will not dismiss a claim merely because plaintiff's factual allegations do not support the particular legal theory he advances. Rather, the court is under a duty to independently examine the complaint to determine if the factual allegations set forth could provide relief under any viable legal theory. See 5A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1357, at 337 & n. 40 (2d ed. 1990). See also Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

It is on this standard that the court has reviewed defendants' motions. Based on the pleadings of record, the arguments of counsel and the briefs filed in support and opposition thereto, the court is not persuaded "beyond a doubt that the 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.

Therefore, this day of March, 2002, IT IS HEREBY ORDERED that defendants' motions to dismiss [documents #34 and 36] are denied without prejudice to defendants' right to raise

these same matters under Fed.R.Civ.P. 56(c) on a fully developed record.

IT IS FURTHER ORDERED that a status conference in this matter shall be held on the _____ day of _____, 2002 at _____ .

BY THE COURT:

_____, J.

cc: All Counsel of Record