

LEE DRAGNA

NO. 18-C-514

VERSUS

FIFTH CIRCUIT

NEW ORLEANS LOUISIANA SAINTS, L.L.C.

COURT OF APPEAL

STATE OF LOUISIANA

October 15, 2018

Susan Buchholz
First Deputy Clerk

IN RE NEW ORLEANS LOUISIANA SAINTS, L.L.C.

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE JUNE B. DARENSBURG, DIVISION "C", NUMBER 778-527

Panel composed of Judges Robert A. Chaisson,
Hans J. Liljeberg, and John J. Molaison, Jr.

WRIT GRANTED

Defendant/relator, New Orleans Louisiana Saints, L.L.C. (“the Saints”), seeks review of the trial court’s judgment denying in part its exception of no cause of action. Finding merit in defendant’s arguments, we reverse the trial court’s judgment denying in part the exception of no cause of action, sustain the exception of no cause of action as to all claims, and dismiss plaintiff’s lawsuit.

On December 11, 2017, plaintiff/respondent, Lee Dragna, filed this lawsuit against the Saints, seeking rescission of his season ticket sale and other nonpecuniary damages. He contends that at the September 17, 2017 home game between the Saints and the New England Patriots, some Saints players, as a “protest,” refused to take the field until after the National Anthem was played. Mr. Dragna asserts that when these players entered the field after the National Anthem, they passed directly in front of his seats and many fans “booed” and “cursed” at the Saints players. According to Mr. Dragna, he would not have purchased his season tickets if he had known that Saints players would use their games as a platform for

protests, and he requested rescission of the sale. Mr. Dragna also pleaded that he purchased the tickets for entertainment and is entitled to non-pecuniary damages for those losses.

On January 19, 2018, Mr. Dragna filed a supplemental and amending petition, adding claims of intentional infliction of emotional distress, failure to warn of the potential protests, and violation of his right as a member of a captive audience to be protected from unwanted speech in the form of protests.

The Saints answered the lawsuit and thereafter, on May 1, 2018, filed an exception of no cause of action, seeking dismissal of all of Mr. Dragna's claims. After a hearing, the trial court granted the exception of no cause of action in part as to Mr. Dragna's claims for rescission of the sale of his season tickets and dismissed this claim. However, the trial court denied the exception of no cause of action in part, finding that Mr. Dragna has sufficiently "listed a cause of action under intentional infliction of emotional distress, negligence, and a Captive Audience Doctrine."

In this writ application, the Saints seek review of the trial court's denial in part of its exception of no cause of action, asserting that the facts set forth in the petitions are insufficient to state a cause of action under the tort theories pleaded therein.

The function of an exception of no cause of action is to test the legal sufficiency of the petition to determine whether the law affords a remedy on the facts alleged in the pleading. *Almerico v. Dale*, 05-749 (La. App. 5 Cir. 3/28/06), 927 So.2d 586, 591. No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. La. C.C.P. art. 931. In considering a trial court's ruling on an exception of no cause of action, all factual allegations must be accepted as true, and the exception may be sustained only if no

remedy is afforded at law under the allegations asserted. *Ulmer v. Frisard*, 97-5 (La. App. 5 Cir. 4/29/97), 694 So.2d 1046, 1048.

When a petition fails to state a cause of action, but may be amended to cure the defect, the court shall grant plaintiff leave to amend. La. C.C.P. art. 934; *Badeaux v. Southwest Computer Bureau, Inc.*, 05-612 c/w 05-719 (La. 3/17/06), 929 So.2d 1211, 1219. However, when the grounds of objection of no cause of action cannot be removed, then the plaintiffs need not be given an opportunity to amend. *Id.*; *Treasure Chest Casino, L.L.C. v. Parish of Jefferson*, 96-1010 (La. App. 1 Cir. 3/27/97), 691 So.2d 751, 755, *writ denied*, 97-1066 (La. 6/13/97), 695 So.2d 982.

In order to recover for intentional infliction of emotional distress, a plaintiff must show: 1) that the conduct of the defendant was extreme and outrageous; 2) that the emotional distress suffered by the plaintiff was severe; and 3) that the defendant desired to inflict severe emotional distress or knew that severe emotional distress would be certain or substantially certain to result from his conduct.

Scamardo v. Dunaway, 94-545 (La. App. 5 Cir. 2/15/95), 650 So.2d 417, 419; *White v. Monsanto*, 585 So.2d 1205, 1209 (La. 1991).

Our review of the original and amended petitions reveals that Mr. Dragna has failed to state a cause of action for intentional infliction of emotional distress. Accepting the alleged facts as true, the facts alleged do not satisfy the required elements of this tort. Further, the facts pleaded in the petitions do not state a valid cause of action for negligence or “failure to warn,” or a violation of the captive audience doctrine. Mr. Dragna’s claims, as stated in his petitions, are simply not actionable. Based on the facts alleged, we fail to see how Mr. Dragna can amend his petition to state a valid cause of action.

Accordingly, we grant the writ application, sustain the exception of no cause of action as to all claims, and dismiss plaintiff's lawsuit.

Gretna, Louisiana, this 15th day of October, 2018.

HJL
RAC
JJM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CHERYL Q. LANDRIEU
CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **10/15/2018** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY

CHERYL Q. LANDRIEU
CLERK OF COURT

18-C-514

E-NOTIFIED

Jeffrey D. Kessler (Relator)

James M. Garner (Relator)

Ashley G. Coker (Relator)

MAILED

Richard G. Creed, Jr. (Respondent)

Attorney at Law

8017 Jefferson Highway

Suite B3

Baton Rouge, LA 70809