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Twombly Pleading Standards Extend Beyond Antitrust Suits To All Federal Cases

In a recent decision in *Ashcroft v. Iqbal*, 556 U.S. ____, Slip Op., issued on May 18, 2009, the Supreme Court extended the reach of its decision in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), to a non-antitrust case and expressly affirmed that because *Twombly* construed Rule 8 of the Federal Rules of Civil Procedure, rather than any antitrust rules, its reasoning was applicable to all civil actions in the federal courts.

Twombly reached the Court on a ruling on a motion to dismiss a civil antitrust complaint. Plaintiffs there alleged that defendants "ha[d] entered into a contract, combination or conspiracy to prevent competitive entry . . . and ha[d] agreed not to compete with one another" in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. 550 U.S. at 551. Plaintiffs further alleged the defendants' "parallel course of conduct . . . to prevent competition" and to inflate prices supported the existence of the illegal agreement alleged. *Id.*

The Court found such allegations insufficient under Rule 8. First, the Court dismissed the allegations of illegal agreement as "legal conclusions" which were not entitled to the assumption of truth on a motion to dismiss as they merely restated the statutory standard for a violation of Section 1. *Id.* at 555. Next, the Court dismissed the allegations of "parallel conduct" because such conduct was as consistent with the existence of a conspiracy as it was with lawful actions explainable by free market behavior.

Although acknowledging that Rule 8 does not require "detailed factual allegations," the *Twombly* Court held that a pleading that offers "labels and conclusions" or "a formulaic recitation of elements of a cause of action will not do" and that "naked assertion[s]" devoid of "further factual enhancement" fall short of Rule 8's mandates. *Id*. at 555, 557. Instead, the complaint must state sufficient factual matter that, if accepted as true, "state a claim to relief that is plausible on its face." *Id.* at 570. The Court also explained that this plausibility standard does not rise to the level of a "probability requirement," but it does require that the allegations give rise to more than a mere possibility that the defendant has acted unlawfully. *Id*. at 556.

With *Twombly* as the backdrop, the Court turned to the allegations made by Iqbal, the respondent. Iqbal was a former government detainee who was deemed a person "of high interest" after the September 11 terrorist attacks and detained in connection with the government's

investigations into that incident. Slip Op. at 3. He claimed that he was deprived of various constitutional rights while in federal custody. *Id.* at 3-4. Among such alleged deprivations was his treatment at a facility referred to in shorthand as ADMAX SHU, where he was kept under lockdown 23 hours a day, with the remaining hour outside his cell in handcuffs and leg irons accompanied by four officers as escorts. *Id.* at 3. He later pled guilty to criminal charges, served prison time and was deported to his native Pakistan. *Id.*

After his release, Iqbal filed a "*Bivens* action" against various federal officials and Does, including the correctional officers with whom Iqbal interacted on a day to day basis, and petitioners, Ashcroft, the former United States Attorney General, and Mueller, the former Director of FBI. According to Iqbal's allegations, in addition to the highly restrictive conditions under which he was detained at ADMAX SHU, he also was subjected to mistreatment by prison officials, including beatings, serial strip and body cavity searches, as well as denial of opportunities for him and other Muslims to pray because there would be "no prayers for terrorists." *Slip Op*. at 3-4.

Iqbal alleged that "[t]he policy of holding post-September 11 detainees in highly restrictive conditions of confinement until they were 'cleared' by the FBI was approved by Defendants ASHCROFT and MUELLER in discussions in the weeks after September 11, 2001." *Id.* at 4. He further alleged that the petitioners "each knew of, condoned, and willfully and maliciously agreed to subject" Iqbal to such treatment "as a matter of policy, solely on account of [his] religion, race and/or national origin and for no legitimate penological interest." *Id.* at 4-5. He finally alleged that Ashcroft was the "principal architect" of this policy and that Mueller was "instrumental in [its] adoption, promulgation, and implementation." *Id.* at 5.

The District Court denied petitioners' motion to dismiss on the basis of qualified immunity, and the Second Circuit affirmed. Although the Second Circuit found *Twombly* applicable, it ruled that "*Twombly* called for a 'flexible "plausibility standard," which obliges a pleader to amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim *plausible*.'" *Id*. at 5 (emphasis in original). The Court of Appeals then concluded that Iqbal's case did not involve one of "those contexts" requiring amplification. *Id*.

The Supreme Court reversed, finding Iqbal's allegations insufficient under *Twombly*. Turning first to the legal standard that governs *Bivens* actions based on constitutional discrimination by officials with a defense of qualified immunity, the Court noted that the plaintiff "must plead and prove that the defendant acted with discriminatory purpose." *Id*. at 12; *accord id*. at 13 ("purpose rather than knowledge is required" to impose liability on both the subordinate and the superintendent in a *Bivens* or § 1983 action; "each Government official, his or her title notwithstanding, is only liable for his or her own misconduct"). This meant that petitioners could not be held responsible through vicarious liability for the misconduct of their subordinates. *Id.* at 13. Instead, Iqbal had to allege facts sufficient to show that petitioners adopted and implemented the detention policies at issue not for a neutral, investigative reason but for the purpose of discriminating on account of race, religion, or national origin. *Id.*

Turning to the allegations, the Court first concluded that Iqbal's mere recitations of the elements of a claims for constitutional discrimination were not entitled to the assumption of truth on a

motion to dismiss. Thus, the Court dismissed the allegations that Ashcroft was the "principal architect" of the allegedly discriminatory policy, and that Mueller was "instrumental" in carrying it out as bare legal conclusions much the same as the allegations of illegal agreement in *Twombly*. *Id.* at 17.

Moreover, the Court dismissed allegations that, post-September 11, thousands of Arab Muslim men were detained and were subjected to highly restrictive confinement pursuant to a policy adopted by the petitioners, finding that these allegations, although consistent with a discriminatory purpose, do not plausibly establish that purpose. *Id.* at 17. The Court noted that the September 11 attacks were perpetrated by 19 Arab Muslims "who counted themselves members in good standing of al Qaeda, an Islamic fundamentalist group." *Id.* at 18. In light of these facts, the Court found that "it should come as no surprise that a legitimate policy directing law enforcement to arrest and detain individuals because of their suspected link to the attacks would produce disparate, incidental impact on Arab Muslims, even though the purpose of the policy was to target neither Arabs nor Muslims. *Id.* at 18. Accordingly, much like the parallel conduct alleged in *Twombly*, Iqbal's allegations did not plausibly support a discriminatory purpose by the petitioners.

Because neither the direct allegations against petitioners, nor the allegations of misconduct by petitioners' subordinates were sufficient to establish the discriminatory purpose required for a *Bivens* action based on invidious discrimination, the Court reversed the Second Circuit's decision to allow the complaint to survive in its current state.

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