

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

JOHN R. LAMBERT, II

PLAINTIFF

VS.

4:12CV00075 JMM

LQ MANAGEMENT, LLC

DEFENDANT

ORDER

Pending is Defendant's motion to dismiss. (Docket # 4). Plaintiff has filed a response. The Court has reviewed the pleadings and finds that Defendant's motion should be DENIED.

Facts

On November 1, 2011, Plaintiff, John R. Lambert, II filed suit against LQ Management, LLC in the Circuit Court of Pulaski County, Arkansas. Defendant removed the case to this Court based upon diversity of citizenship. Plaintiff is a former employee of Defendant, LQ Management, LLC. While employed he injured his back and timely filed a Worker's Compensation claim. Plaintiff was discharged on September 30, 2010. Plaintiff alleges that the Defendant committed a felony by terminating his employment in an attempt to intimidate, harass, discriminate, and interfere with his filing a claim under the Arkansas Workers Compensation Act. By virtue of the Defendant's conduct, Plaintiff contends he is a victim within the meaning of Ark. Code Ann. § 16-118-107 and is entitled to relief under the Felony Tort Act. Defendant moves to dismiss Plaintiff's complaint arguing that Plaintiff has failed to state a claim.

Discussion

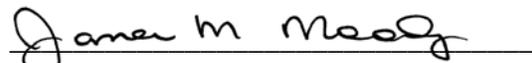
Dismissal is proper where the plaintiff's complaint fails to state a claim upon which relief

can be granted. Fed.R.Civ.P. 12(b)(6). At this stage of the litigation, the Court must accept as true all of the factual allegations contained in the complaint, and review the complaint to determine whether its allegations show that the pleader is entitled to relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1964-65 (2007). The plaintiff need not provide specific facts in support of their allegations, *Erickson v. Pardus*, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007) (per curiam), but they must include sufficient factual information to provide the “grounds” on which the claim rests, and to raise a right to relief above a speculative level. *Twombly*, 127 S.Ct. at 1964-65 & n. 3.

Plaintiff claims that he suffered damages based upon the Defendant’s felonious conduct. Ark. Code Ann. § 11-9-107 provides that any employer who “in any manner obstructs or impedes the filing of claims for benefits under this chapter . . . may be guilty of a Class D felony.” Further, Ark. Code Ann. § 16-118-107 provides that “any person injured or damaged by reason of conduct of another person that would constitute a felony” may file a civil action to recover damages. Based upon the allegations contained in the Complaint, Plaintiff has sufficiently stated a claim. *See, James Tate v. Quad/Graphics Inc., et al.*, Case No. 3:10CV00296 BSM, docket # 33, (E.D.Ark. September 19, 2011).

Accordingly, Defendant’s motion to dismiss is DENIED.

IT IS SO ORDERED this 30th day of July, 2012.


James M. Moody
United States District Judge