IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

JAMES REDDING	*	
Plaintiff,	*	
v.	*	**CIVIL ACTION NO. 1:11-cv-00674-CCB**
JUSTIA, INC., et al.	*	
Defendants.	*	

* * * * * * * * * * * * *

MOTION TO DISMISS

Defendant, Justia, Inc., by and through its counsel, Robert M. Schwartzman, Esquire, John J. Yannone, Esquire and Resnick & Schwartzman, L.L.C., pursuant to Fed. R. Civ. P. 12(b)(6), moves the Court to dismiss the Complaint filed against them in this matter by Plaintiff, James Redding.

The grounds for this Motion are fully set forth in the accompanying Memorandum in Support, which is incorporated herein by reference.

REQUEST FOR HEARING

Pursuant to Local Rule 105.6, Defendants request that the Court hear argument on this Motion.

Respectfully submitted,

/s/
Robert M. Schwartzman (Fed. Bar No. 01092)

/s/
John J. Yannone (Fed. Bar No. 04396)
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Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of September, 2011, a copy of the foregoing Motion to Dismiss was served electronically via this Court's CM/ECF System, and by first class mail, postage prepaid to the following:

Mr. James Redding
P.O. Box 3411
Washington, D.C. 20010

/s/
John J. Yannone

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* * * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Defendant, Justia, Inc., by and through its undersigned counsel, pursuant to Fed. R. Civ. P. 12(b)(6), submits this Memorandum in Support of their Motion to Dismiss filed against them in this matter by Plaintiff, James Redding ("Mr. Redding" or "Plaintiff").

INTRODUCTION

On March 14, 2011 Mr. Redding filed a four-count Complaint against six Defendants, namely Justia, Inc., Elizabeth A. McClanahan (Judge of the Court of Appeals of Virginia), James W. Haley, Jr. (Judge of the Court of Appeals of Virginia), Jere M.H. Willis, Jr. (Senior Judge of the Court of Appeals of Virginia), Cynthia L. McCoy (Clerk of the Court of Appeals of Virginia), and Justin Shelton (Deputy Clerk of the Court of Appeals of Virginia).

Mr. Redding's Complaint arises from his underlying workers' compensation claims that were denied by the Virginia Workers' Compensation Commission. Mr. Redding filed workers' compensation claims on April 5, 1996 for allegedly being exposed to bodily fluids that caused him to contract tuberculosis and Hepatitis B. The Deputy Commissioner denied Mr. Redding's claims on October 29, 2009. Mr. Redding requested a Review which was conducted on the

record. After reviewing the record, the three Commissioner panel affirmed the Deputy Commissioner's ruling that Mr. Redding had failed to prove by a preponderance of the evidence a compensable injury by accident, a compensable occupational disease, or an ordinary disease of life arising out of or in the course of employment.

Mr. Redding appealed the Review decision to the Court of Appeals of Virginia. In an unpublished Memorandum Opinion – Per Curiam, Judges McClanahan, Haley and Willis affirmed the Review decision on February 15, 2011. Justia, Inc., a provider of free online legal information, then posted the opinion on its website, www.justia.com.

Mr. Redding then filed the instant action on March 14, 2011 alleging fraud, slander, intentional infliction of emotional distress, and racial discrimination. He seeks damages, injunctive and other relief.

STATEMENT OF THE CASE

This Motion pertains solely to Justia, Inc. (hereinafter "Justia" or "Defendant"). The Motion does not pertain to Defendants Shelton, McCoy or any of the Defendant Judges.

Mr. Redding's Complaint requests that the Court award him Four Million Dollars ($4,000,000.00) in damages and an injunction ordering the Defendant to remove his medical information posted on the Internet, specific to his workers' compensation appeal. Also, Mr. Redding added a peculiar request, demanding that "Defendants create a website and post their medical information specific to later term abortions, H.I.V., Hepatitis, Human Papillomavirus (HPV), Syphilis, Gonorrhea, Anal Warts, and other viral infections, if any." (See Exhibit A, page 5).

On August 19, 2011, after being improperly served, Defendant filed a Motion to Dismiss

Due to Insufficient Service of Process. Mr. Redding then mailed a copy of the complaint and summons to the Defendant's resident agent, CSS Services of Nevada, via certified mail—restricted delivery. The complaint and summons were received on September 12, 2011.

STANDARD OF REVIEW

Federal Rule 12(b)(6) provides that a party may move to dismiss a civil action for failure to state a claim upon which relief can be granted. For purposes of deciding a Rule 12(b)(6) motion to dismiss, the court will assume the truth of the facts as alleged in the plaintiff's complaint. Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246, 249 (2009). Federal Rule of Civil Procedure 8(a)(2) provides that a plaintiff's pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." While federal courts are expected to construe *pro se* complaints broadly, the courts are not required to develop claims from scant or nonexistent assertions. See Wolman v. Tose, 467 F.2d 29, 33 n.5 (4th Cir. 1972) (citing Wright & Miller, § 1216) (complaint must set out facts sufficient for the court to *infer* that all of the required elements of the cause of action are present). Though Rule 8(a) does not require "detailed factual allegations," it does demand "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (U.S. 2009). A plaintiff is obligated to provide the grounds for his entitlement to relief, which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 554 (2007) (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)). Nor will the Complaint be adequate if it tenders naked assertions devoid of factual enhancement." Ashcroft, 129 S. Ct. at 1949. Courts are not required to "accept as true a legal conclusion couched as a factual allegation." Papasan, 478 U.S. at 286. Additionally, the

factual allegations when read together "must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 544.

ARGUMENT

A. Plaintiff's Complaint asserts unsubstantiated facts and speculative conclusions that fail to state a claim upon which relief can be granted.

Mr. Redding asserts four different causes of action against the Defendant: Fraud, Slander, Intentional Infliction of Emotional Distress, and Racial Discrimination. In order for Mr. Redding's Complaint to survive a Rule 12(b)(6) motion to dismiss, it must contain "sufficient factual matters, accepted as true, to 'state a claim to relief that is plausible on its face.'" See Ashcroft, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 557)). The mere presence of a "few conclusory legal terms does not insulate a complaint from dismissal under Rule 12(b)(6) when the facts alleged in the complaint" do not support the legal conclusion. Young v. City of Mt. Ranier, 238 F.3d 567, 577 (4th Cir. 2001). Though each count is labeled and separate from the others, the facts and assertions within each are so confounded and speculative that they do not even address the claim. The complaint falls entirely short of the simple requirements of Fed. R. Civ. P. 8(a)(2) and should be dismissed.

(1) Plaintiff's Count One: Fraud

Though Count One does not specifically state, it appears to only pertain to Defendants Shelton and McCoy. There is no mention of any facts even remotely concerning Justia. Conspicuously, the Fraud Count fails to recite any of the common-law elements of fraud: (1) False representation, (2) knowledge that the representation was false, (3) intent to deceive, (4) justifiable reliance on the representation, and (5) proximate cause of damages. See Colombo

Bank v. Sharp, 340 Fed. Appx. 899, 901 (4th Cir. 2009). Mr. Redding merely states facts pertaining to judicial acts performed by the Clerk and Deputy Clerk in their official capacities and fails to indicate a single fact concerning any element of fraud. In short, Count One is labeled "Fraud" yet has nothing to do with an actual claim for fraud. It pertains to facts wholly outside of any action or duty on the part of Justia.

(2) Plaintiff's Count Two: Slander

Count Two of Mr. Redding's Complaint is labeled "Slander". To prevail on a claim for slander a plaintiff must establish the communication of a false and defamatory statement and that the publication was negligent. Jackson v. Hartig, 645 S.E.2d 303, 308 (Va. 2007). A plaintiff can satisfy the fault element by showing actual malice or by showing mere negligence—failure to act as a reasonable person under the circumstances. Henderson v. Claire's Stores, Inc., 607 F. Supp. 2d 725, 731 (D. Md. 2009).

Mr. Redding's Complaint does not come close to an adequate statement of a claim for slander. Not only is there no allegation of malice or negligence, there was no malice or negligence on the part of Justia. The Slander Count merely asserts that the "Virginia Court of Appeals conspired with Defendant Justia, Inc. to place the Virginia Court of Appeals [sic] ruling of Plaintiff's appeal, onto Justia, Inc.'s website." (See Exhibit A, page 3). All of the Virginia Court of Appeals' opinions are a matter of public record to which the public has access. Justia also has access to the appellate opinion. There is not even a hint of a "conspiracy" between the Defendants to post the public record. Nor was there a posting of Mr. Redding's medical history, only the opinion of the Court pertaining to Mr. Redding's own claims concerning his medical conditions allegedly contracted by exposure to same in his workplace. (See Exhibit B). These

are matters which he placed at issue in his case. Discussion of these conditions was made necessary by Mr. Redding. Any references to such medical conditions were necessary as part of the legal opinion. Lastly, Mr. Redding does not allege that he suffered any harm by the publication of the opinion. The court cannot simply assume that the Plaintiff has suffered damages of any conceivable type.

(3) Plaintiff's Count Three: Intentional Infliction of Emotional Distress

To prove a prima facie case of Intentional Infliction of Emotional Distress (IIED), a plaintiff must demonstrate that: "(1) the conduct is intentional or reckless; (2) the conduct is outrageous or intolerable; (3) there was a causal connection between the wrongdoer's conduct and the emotional distress; and (4) the resulting emotional distress was severe." Almy v. Grisham, 273 Va. 68, 77 (2007). A plaintiff is able to recover whenever the wrongdoer intentionally acted with the desire to inflict emotional distress. Harris v. Jones, 281 Md. 560, 565 (1977). To satisfy the "outrageous" element, the conduct must "go beyond all possible bounds of decency, and...be regarded as atrocious, and utterly intolerable in a civilized community." *Restatement (Second) of Torts* § 46 cmt. d (1965). Emotional distress is adequately severe enough when "no reasonable man could be expected to endure it." *Restatement (Second) of Torts* § 46 cmt. j (1965).

Mr. Redding's Count Three alleges that the Defendants "modified...the Internet posting to allow their personal opinion of Plaintiff's medical information, to be viewed on the Internet. Defendants withheld medical opinions pertaining to Caucasian Defendants involved in the appeal..." (See Exhibit A, page 3). The contents of the legal opinion do no such thing. (See Exhibit B). Such allegations are unsubstantiated and completely false. The Complaint further

fails to allege any facts that would raise an insinuation of outrageous or extreme behavior by Justia. Additionally, nowhere in the Complaint does Mr. Redding allege any trace of emotional distress, let alone harm or damages caused by the acts of Justia. Lastly, as a matter of pleading, the Complaint fails to allege that Justia intended the act and intended to inflict severe emotional distress. In fact, Justia did not intend to inflict severe emotional distress. It simply posted a public record on its website. Justia maintains a website offering free online legal information to the public. Once a judicial opinion is written, Justia merely posts the case on its website without adding any commentary.

(4) Plaintiff's Count Four: Racial Discrimination

Count Four charges the Defendants, based solely upon Mr. Redding's race, with "intentionally engag[ing] in acts of judicial bullying, a high tech lynching, and abuse of authority, by conspiring with Defendant Justia Inc., to place their personal and unsubstantiated opinions specific to Plaintiff's medical information onto the Internet for public consumption." (See Exhibit A, page 3). The Count further asserts that the Defendants did so in order to exclude (1) medical histories of the insurance company's Caucasian clients that were involved in Mr. Redding's appeal, (2) medical records of all of the Defendants, and (3) Liberty Mutual's financial contributions to political organizations. The Complaint further takes a bizarre, irrelevant position that Liberty Mutual, a nonparty to Mr. Redding's complaint, has contributed to political organizations opposing insurance options that provide health coverage to the poor and African-American community.

There is no common-law right of recovery for "racial discrimination." Mr. Redding's Complaint against Justia cannot even be construed as a claim for damages under 42 U.S.C. §

1983. "To state a claim for relief in an action brought under § 1983, [plaintiffs] must establish that they were deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law." Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999). A two-part inquiry is required whenever the asserted constitutional deprivation is directed at a private actor such as Justia. The court must first ask "whether the claimed deprivation has resulted from the exercise of a right or privilege having its source in state authority." Sallie v. Tax Sale Investors, 998 F. Supp. 612, 623 (D. Md. 1998). Secondly, the court will decide whether the party who allegedly caused the deprivation of a federal right can be appropriately characterized as a state actor. Id.

Justia did not exercise a right "having its source in state authority." It simply posted a public opinion on its website. The posting of a public opinion on a private website is not the exercising of a "right created by the State." See Harrison v. Pinsky, 1995 U.S. Dist. LEXIS 20866 (D. Md. 1995) (noting that a bail bondsman is given broad powers under Maryland common law to make arrests, and that this act has its source in state authority). Second, Justia is not a state actor. Justia did not act "together with or obtain significant aid from state officials." Id. at 7. Justia's posting of the opinion was entirely separate from any action or aid from a state official. Accordingly, Mr. Redding does not have an actionable § 1983 claim against Justia.

B. Plaintiff's complaint fails to adequately state why he is entitled to injunctive relief.

Aside from claiming damages of $4,000,000.00, Mr. Redding requests an injunction ordering "Defendants to remove all medical information posted to the Internet, specific to Virginia Court of Appeals Case No. 1561-10-4, and all other medical information associated with Plaintiff." Other than Mr. Redding's Virginia Court of Appeals case, no other information on Justia's website is in any way related to Mr. Redding.

The United States Supreme Court characterized injunctive relief as an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Winter v. NRDC, Inc., 129 S. Ct. 365, 376 (2008). In order to obtain a preliminary injunction a movant must establish "(1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest." Id. at 374. Mr. Redding has satisfied none of the elements authorizing injunctive relief. Mr. Redding is highly unlikely to succeed on the merits of action because there has been no wrongdoing on the part of Justia. Again, Justia simply posted a public opinion on its website. Furthermore, Mr. Redding failed to properly state a claim demonstrating he is entitled to relief. Mr. Redding has in no way indicated that he is likely to suffer irreparable harm absent an injunction. Nor has he stated how the balance of equities tips in his favor or that his requested injunction is in the interest of the public. Rather, it is in the public's interest to protect free legal websites such as Justia and the lawful dissemination of public information.

CONCLUSION

Mr. Redding's Complaint fails to meet the simple mandates of Fed. R. Civ. P. 8. The Complaint is wholly comprised of "naked assertions" devoid of substantiating facts. See Ashcroft, 129 S. Ct. at 1949. Mr. Redding is unable to state any claim which would entitle him to relief as a matter of law. Moreover, his request for injunctive relief is moot, as Justia has removed from its website all information pertaining to Mr. Redding's medical history. Accordingly, this Complaint against Defendant Justia, Inc. must be dismissed in its entirety, with prejudice.

Respectfully submitted,

/s/
Robert M. Schwartzman (Fed. Bar No. 01092)

/s/
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Counsel for Defendants

CERTIFICATE OF SERVICE

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Mr. James Redding
P.O. Box 3411
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/s/
John J. Yannone