

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MIKE DUKE, *et al.*,
Plaintiffs,

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v.

CIVIL ACTION NO. H-08-0955

BEST BUY COMPANY, INC.,
et al.,
Defendants.

MEMORANDUM AND ORDER

This case is before the Court on the Motion to Dismiss (“Motion”) [Doc. # 8] filed by Defendant BBC Property Co. (“BBC Property”). Plaintiffs Mike Duke and Pauline Duke have neither filed a response in opposition nor requested an extension of time to do so. Based on the Court’s review of the record and the application of governing legal authorities, the Court grants BBC Property’s Motion.

In deciding whether Plaintiffs’ claims should be dismissed, this Court must determine whether the complaint states a valid claim for relief when the pleading is construed in the light most favorable to Plaintiffs and with every doubt resolved in their favor. *See Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000). Plaintiffs’ complaint must contain factual allegations of every material point necessary to sustain recovery. *See Campbell v. City of San Antonio*, 43 F.3d 973, 975

(5th Cir. 1995). If Plaintiffs fail to allege a necessary element to obtain relief, then dismissal is proper. *See id.*

Plaintiff Mike Duke alleges that he was an employee of Defendant Best Buy. Plaintiff alleges that he engaged in a separate business with Rodney Hudnall, an individual with whom Plaintiff worked before joining Best Buy. Plaintiff alleges that his side business with Hudnall experienced financial difficulties beginning in June 2004. Hudnall later was employed by Best Buy, against Plaintiff's wishes, to work for Plaintiff. Plaintiff Mike Duke alleges that, in April 2006, he was attacked in the store parking lot by Hudnall's brother and another man.

Plaintiffs allege that BBC Property, together with its partner BBC Investment, own Defendant Best Buy Stores. Plaintiffs make no other factual allegations against BBC Property, and they do not mention BBC Property in connection with any of the causes of action or in the "Damages" portion of their complaint. Indeed, after identifying BBC Property as a part owner of Best Buy Stores, Plaintiffs do not mention BBC Property again until they list them in the "Conclusion and Prayer" among the Defendants from whom Plaintiffs seek fifteen million dollars.

Plaintiffs have failed to state a claim for relief against Defendant BBC Property. Additionally, Plaintiffs have not responded to the Motion to Dismiss and have not

requested leave to plead additional facts to support their inclusion of BBC Property as a Defendant in this case. Accordingly, it is hereby

ORDERED that BBC Property's Motion to Dismiss [Doc. # 8] is **GRANTED**.

SIGNED at Houston, Texas, this 3rd day of **June, 2008**.

A handwritten signature in black ink, appearing to read "Nancy F. Atlas", written over a horizontal line.

Nancy F. Atlas
United States District Judge