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FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

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

OCT 15 1998

JAMES W. MCGORMACK, CLERK
By: *[Signature]*
DEP CLERK

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Plaintiff

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VS.

NO. B-C-98-65

JAYCO ACQUISITION AND
HOLDING CO., INC., d/b/a
COMPTON'S OAK GROVE LODGE,
Defendant

ORDER

The Equal Employment Opportunity Commission ("EEOC") brings this action under the Age Discrimination in Employment Act ("ADEA") to correct alleged age-based discriminatory employment practices of the defendants, Jayco Acquisition and Holding Co., Inc. ("Jayco") d/b/a Compton's Oak Grove Lodge ("Compton's"). Jayco filed a 12(b)(6) motion to dismiss [Docket No. 2]. The EEOC responded to the motion [Docket No. 4] and Jayco replied to the response [Docket No. 6]. The motion is ready for review; and after careful consideration, the Court denies the motion.

In deciding whether to dismiss a complaint for failure to state a claim, the Court must test whether any of the plaintiff's allegations establish a cause of action entitling legal relief. See *Springdale Educ. Ass'n v. Springdale Sch. Dist.*, 133 F.3d. 649, 651 (8th Cir. 1998). Under the Federal Rules of Civil Procedure, plaintiffs need only set forth a short and plain statement of a claim unless a particular claim requires pleading with heightened particularity under Rule 9(b). See FED. R. CIV. P. 8(a). Rule 9(b) does not require heightened pleading for claims brought under the ADEA.

Additionally, the Court must accept the factual assertions in a complaint as true and interpret those facts in a light most favorable to the plaintiff. See *id.* Finally, the plaintiff's complaint "should not be dismissed unless it appears beyond a doubt the plaintiff can prove no set of facts in support of his claim that would demonstrate an entitlement to relief. *Id.*

In its complaint, the EEOC alleges that Jayco and Compton's engaged in unlawful employment practices, including terminating Dollie Henderson ("Henderson") because of her age. Jayco asserts that Compton's, not Jayco, employed Dollie Henderson and that Jayco is not a proper party to this action. Jayco contends that the EEOC named Jayco as a defendant only because Compton's is a wholly-owned subsidiary of Jayco. Further, Jayco maintains that the EEOC failed to allege any facts establishing a basis for treating Jayco and Compton's as one entity.

The ADEA makes it unlawful for an employer to "discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. §

623. Further, the Act gives the EEOC authorization to bring actions to enforce provisions of the ADEA. In its complaint, the EEOC alleges that Jayco, as an employer, engaged in unlawful employment practices that violated the ADEA, including terminating Henderson. The EEOC's allegation sets forth a plain statement of a claim which, if true, would entitle legal relief. Therefore, the Court should and hereby does deny Jayco's motion to dismiss the EEOC's complaint against it.

IT IS SO ORDERED THIS ^m15 DAY OF OCTOBER, 1998



CHIEF JUDGE
UNITED STATES DISTRICT COURT

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ON 10/16/98 BY TS