

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

KIRK ADRIAN JACKSON,	:	APPEAL NO. C-070439
Plaintiff-Appellant,	:	TRIAL NO. A-0701326
vs.	:	<i>JUDGMENT ENTRY.</i>
SHELL OIL COMPANY,	:	
EQUILON ENTERPRISES,	:	
BMW OF NORTH AMERICA,	:	
BOSAL INDUSTRIES-GEORGIA, INC.,	:	
CAR-X ASSOCIATES CORPORATION,	:	
and	:	
THE BAY EMM VAY STORE, INC.,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Kirk Jackson appeals the trial court’s judgment that dismissed his complaint against Shell Oil Company (“Shell”), Equilon Enterprises LLC (“Equilon”), BMW of North America, LLC (“BMW”), Bosal Industries-Georgia, Inc. (“Bosal”), Car-X Associates Corporation (“Car-X”), and The Bay Emm Vay Store, Inc. (“the BMW

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Store”). We conclude that his sole assignment of error does not have merit, so we affirm the judgment of the trial court.

In 2005, Jackson was diagnosed with chronic myeloid leukemia (“CML”). As a result of the CML, Jackson suffered leukemia priapism. In his complaint, he sought injunctive relief as well as recovery from the defendants for his damages related to the leukemia priapism. Included in the complaint were allegations that there was a link between benzene, a gasoline additive, and CML. Jackson asserted against all the defendants claims of violation of the Ohio Products Liability Act, negligence, negligence per se, misrepresentation, violation of the Ohio Consumer Protection Statute, breach of warranty, fraud, unjust enrichment, conspiracy, violation of the Ohio Antitrust Act, violation of the Ohio Corrupt Activity Act, nuisance, and willful and wanton conduct. Each of the defendants moved to dismiss the complaint. The trial court granted all the motions to dismiss.

In his sole assignment of error, Jackson asserts that the trial court erred when it granted the motions to dismiss. “In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted * * *, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery.”² Jackson correctly points out that Ohio is a notice-pleading state and that his pleading needed only to contain “a short and plain statement of the claim showing that [he was] entitled to relief.”³ But to survive a motion to dismiss, Jackson needed to provide “more than labels and conclusions, and formulaic

² *O’Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242, 327 N.E.2d 753, syllabus.

³ Civ.R. 8(A)(1).

recitation of the elements of a cause of action[.]”⁴ “Factual allegations must be enough to raise a right of relief above the speculative level.”⁵

In his complaint, Jackson merely recited the elements of each claim without alleging facts that tied each defendant to the claims. As the defendants have more than one product or service, some definite statement about the specific product or service involved was necessary. Absent making a connection between each defendant and each claim, Jackson’s claims did not raise a right a relief beyond speculation. The trial court properly dismissed Jackson’s complaint for failure to state a claim upon which relief could be granted. The sole assignment of error is overruled.

We, therefore, affirm the judgment of trial court.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HILDEBRANDT and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on April 16, 2008
per order of the Court _____.
Presiding Judge

⁴ *Bell Atlantic Corp. v. Twombly* (2007), 550 U.S. ____, 127 S.Ct. 1955, 1964-1965 (citation omitted).

⁵ *Id.* (citation omitted).