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# Ashcroft v. Iqbal: Supreme Court Clarifies Pleading Requirements under Rule 8(a)(2)

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Rule 8(a) of the Federal Rules of Civil Procedure, which is incorporated into the bankruptcy arena by Rule 7008 of the Federal Rules of Bankruptcy Procedure, provides that a pleading that states a claim for relief must contain:

1. a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
2. a short and plain statement of the claim showing that the pleader is entitled to relief; and
3. a demand for the relief sought, which may include relief in the alternative or different types of relief.



Kenneth M. Miskin

The requirement that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief" had puzzled commentators and practitioners for years, given the language in the

Supreme Court's opinion in *Conley v. Gibson*, 355 U.S. 41, 45-46, which provided that it was an "accepted rule that a complaint should not be dismissed [under Rule 12(b)(6) of the Federal Rules of Civil Procedure] for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Under *Conley's* "no set of facts" language, a complaint would be properly plead and would defeat a motion to dismiss if it was merely possible that the plaintiff could prove some set of undisclosed facts to support recovery.

In 2007, the Supreme Court issued the *Bell Atlantic Corporation v. Twombly* opinion in which the Court established a new plausibility standard for evaluating complaints subject to a motion to dismiss, putting to rest the "no set of facts" test arguably outlined in *Conley*. Almost two years ago to the day, the Supreme Court issued its

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opinion in *Ashcroft v. Iqbal*, in which the Court not only clarified the plausibility test outlined in *Twombly*, but also made it clear that the plausibility standard applies in all civil actions.

This column will first discuss the *Twombly* and *Iqbal* decisions. The column will then analyze a bankruptcy case—*Angell v. Burrell (In re Careamerica Inc.)*, Case No. L-08-00173-8-JRL, 2009 Bankr. LEXIS 2328 (Bankr. E.D.N.C. July 28, 2009)—to highlight how at least one bankruptcy court has analyzed the *Twombly* and *Iqbal* decisions in the bankruptcy context.

The Second Circuit Court of Appeals reversed, holding that the plaintiff's allegations were sufficient to withstand a motion to dismiss because the plaintiffs "must plead facts that 'include conspiracy among the realm of "plausible" possibilities in order to survive a motion to dismiss,' [and] 'to rule that allegations of parallel anticompetitive conduct fail to support a plausible conspiracy claim, a court would have to conclude that there is no set of facts that would permit a plaintiff to demonstrate that the particular parallelism asserted was the product of collusion rather than coincidence.'" *Id.* at 553 (quoting *Twombly v. Bell Atl. Corp.*, 425 F.3d 99, 114 (2d Cir. 2005)).

In its opinion, the Supreme Court recognized that Rule 8(a) of the Federal Rules of Civil Procedure only requires a "short and plain statement of the claim

## Practice & Procedure

### Bell Atlantic Corp. v. Twombly

In *Twombly*, the plaintiffs represented a class of local telephone and high-speed Internet subscribers in an action brought against local exchange carriers, alleging that the carriers violated §1 of the Sherman Act, 15 U.S.C. §1, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." 550 U.S. at 550. The complaint alleged that, upon information and belief, the defendants conspired to restrain trade by (1) engaging in parallel conduct in their respective service areas to inhibit the growth of upstart service providers and (2) refraining from competing against one another in contiguous markets despite attractive business. *Id.* at 551-52.

The district court dismissed the complaint, concluding that allegations of parallel conduct, taken alone, did not state a claim under §1 of the Sherman Act. Instead, the district court explained that the plaintiffs would have to allege additional facts that would tend to exclude independent self-interested conduct as an explanation for the parallel actions. *Id.* at 552.

showing that the pleader is entitled to relief" in order to "give the defendant fair notice of what the...claim is and the grounds upon which it rests." *Id.* at 555 (quoting *Conley*, 355 U.S. at 47). The Supreme Court further recognized that "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* (internal citations omitted). In fact, the Supreme Court explained that "factual allegations must be enough to raise a right to relief above the speculative." *Id.*

Applying these standards to the antitrust complaint, the Supreme Court concluded that a complaint alleging conspiracy under §1 of the Sherman Act will survive a motion to dismiss only if it includes "enough factual matter (taken as true) to suggest that an agreement [in restraint of trade] was made" and "[t]he need at the pleading stage for allegations plausibly suggesting (not merely consistent with) agreement reflects the

threshold requirement of Rule 8(a)(2) that the ‘plain statement’ possess enough heft to sho[w] that the pleader is entitled to relief.” *Id.* 556-57 (internal quotations omitted). The Supreme Court explained that “[a]n allegation of parallel conduct is thus much like a naked assertion of conspiracy in a §1 complaint: It gets the complaint close to stating a claim, but without some further factual enhancement it stops short of the line between possibility and plausibility of ‘entitlement to relief.’” *Id.* at 557 (citations omitted).

**Ashcroft v. Iqbal**

Following the Sept. 11, 2001, terrorist attacks, Javid Iqbal, a Pakistani citizen, was arrested in the United States and detained by federal employees. Iqbal pleaded guilty to the criminal charges, served prison time and was removed to Pakistan. *Ashcroft v. Iqbal*, 556 US \_\_\_, 129 S.Ct. 1937, 1944 (2009). Following his release from imprisonment, Iqbal claimed that he was deprived of various constitutional protections and, as a result, filed a complaint against numerous federal officials, including John Ashcroft, the former Attorney General of the United States, and Robert Mueller, the Director of the Federal Bureau of Investigation. In particular, the complaint alleged, among others, the following facts:

- (i) Ashcroft and Mueller designated Iqbal as a person of high interest on account of his race, religion, or national origin.
- (ii) The FBI, under Mueller’s direction, arrested and detained thousands of Arab Muslim men as part of its September 11 investigation.
- (iii) Ashcroft and Mueller approved the policy of holding the detainees in highly restrictive conditions of confinement until they were “cleared” by the FBI.
- (iv) Ashcroft and Mueller each knew of, condoned, and willfully and maliciously agreed to subject Iqbal to harsh conditions of confinement as a matter of policy, solely on account of his race, religion, or national origin and for no legitimate penological interest.
- (v) Ashcroft was the principal architect of the policy, and Mueller was instrumental in its adoption, promulgation and implementation.

*Id.* at 1944.

Ashcroft and Mueller moved to dismiss the complaint for failure to state sufficient allegations to show their involvement in any unconstitutional conduct. *Id.* The district court denied their motions to dismiss, and they appealed. *Id.* at 1942.

*Bankruptcy practitioners need to be aware of the new pleading requirements outlined in Twombly and Iqbal and as analyzed by the Angell bankruptcy court in not only drafting and filing complaints, but also to determine the proper strategy for defending against the complaints.*

While the appeal was pending before the Second Circuit Court of Appeals, the Supreme Court issued its opinion in *Twombly*. The Second Circuit discussed the “standard for assessing the adequacy of pleadings” set forth in *Twombly* at length. *Iqbal*, 129 S.Ct. at 1944 (quoting *Iqbal v. Hasty*, 490 F.3d 143, 155 (2d Cir. 2007)). The Second Circuit concluded that *Twombly* required a “flexible ‘plausibility standard,’ which obliges a pleader to amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim plausible.” *Id.* (quoting *Iqbal v. Hasty*, 490 F.3d at 157-58). The Second Circuit concluded, however, that the allegations in the complaint did not present one of “those contexts” requiring amplification, and thus held that Iqbal’s allegations were adequate. *Id.* (citing *Iqbal v. Hasty*, 490 F.3d at 174).

The issue before the Supreme Court was whether Iqbal pleaded factual matters that, if taken as true, stated a claim that Ashcroft and Mueller deprived him of his clearly established constitutional rights. The Supreme Court held that the pleadings were not sufficient.

The Supreme Court explained its ruling in *Twombly* by reiterating that “[d]etailed factual allegations are not required, but the Rule does call for sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570). The Supreme Court further explained that “[a] claim has facial

plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). The Supreme Court explained further that “[t]he plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (“Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’”) (quoting *Twombly*, 550 U.S. at 555).

The Supreme Court explained that two principles underlie its decision in *Twombly*. “First, the tenet a court must accept as true all allegations contained in a complaint is inapplicable to legal conclusions.” *Id.* Thus, mere recitals of the elements of the cause of action are not entitled to be accepted as true. *Id.* “Second, only a complaint that states a plausible claim for relief survives a motion to dismiss.” *Id.* (citing *Twombly*, 550 U.S. at 556). In other words, the well-pleaded facts must allow the court to infer more than the mere possibility of misconduct. *Id.*

The Supreme Court thus concluded that under *Twombly*’s construction of Rule 8 of the Federal Rules of Civil Procedure, Iqbal’s complaint has not “nudged [his] claims” of invidious discrimination “across the line from conceivable to plausible” because (1) certain of the allegations contained in the complaint were conclusory and not entitled to be assumed true, and (2) the remaining factual allegations suggest a lawful and nondiscriminatory intent to detain illegal aliens who had potential connections to terrorist acts. *Id.* at 1952. The Supreme Court explained that “[a]s between that ‘obvious alternative explanation’ for the arrests, and the purposeful, invidious discrimination [Iqbal] asks us to infer, discrimination is not a plausible connection.” *Id.*

Notably, Iqbal had argued that the *Twombly* standard for pleading was only applicable to antitrust actions. The Supreme Court made short-shrift of this argument by stating that “[t]his argument is not supported by *Twombly* and is incompatible with the Federal Rules of Civil Procedure... Rule [8]... governs the pleading standard for ‘all civil actions,’ and it applies to antitrust and discrimination suits alike...” *Id.*

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### Angell v. Burrell (In re Caremerica Inc.)

In *Angell*, the defendant filed a motion to dismiss the trustee's claims to avoid alleged preferential and fraudulent transfers. The bankruptcy court concluded that based on the Supreme Court's holdings in *Twombly* and *Iqbal*, the trustee's complaint must satisfy the two-pronged test to defeat a Rule 12(b)(6) motion to dismiss. *Angell*, 2009 Bankr. LEXIS 2325, at \*5. Under the two-pronged test, the bankruptcy court explained, the trustee must plead sufficient factual allegations to establish that a preference cause of action is plausible. *Id.* The court then analyzed each element of the preference statute to determine if sufficient factual allegations were pleaded.

#### Transfer of an Interest of the Debtor in Property

In the complaint, the trustee alleged that the debtors transferred funds to various defendants in the amount of at least \$49,539. The bankruptcy court concluded that the complaint did not contain sufficient factual allegations because facts such as the dates or the amounts of each alleged transfer were missing. The bankruptcy court also explained that the complaint failed to identify which of the debtors made the alleged transfers.

#### To or For the Benefit of a Creditor

The trustee's complaint alleged that "each preferential transfer was made to or for the benefit of the Defendant receiving such preferential transfer as a creditor of the debtors." *Id.* at 7. The bankruptcy court again concluded that the complaint lacked factual content supporting entitlement to relief because, for example, the complaint contained no facts in support of his allegations that the defendants were transferees. The complaint lacked information as to the dates, amounts and number of transfers. *Id.* at 7.

#### For or On Account Of an Antecedent Debt

The bankruptcy court explained that "the trustee must assert the nature and amount of the antecedent debt in order to allege a plausible claim for relief." *Id.* at 8. The trustee's complaint merely recited the statutory element that the transfer was made "for, or on account of, an antecedent debt owed by the Debtors to the Defendant before the transfers were made." *Id.* The complaint lacked any facts showing the existence of an antecedent debt. The bankruptcy court explained that in order to satisfy the pleading requirements under *Iqbal*, "the trustee must allege facts regarding the nature and amount of the antecedent debt which, if true, would render plausible the assertion that a transfer was made for or on account of such antecedent debt." *Id.* at 9.

#### Made While the Debtor Was Insolvent

The bankruptcy court recognized that the Bankruptcy Code provides that the trustee may presume a debtor to be insolvent during the 90-day preference period. *Id.* However, the presumption only applies during the 90-day preference period. Where the plaintiff is seeking the recovery of alleged preference payments from insiders (where the look-back period is one year), the plaintiff will have to allege facts to support insolvency beyond the 90-day presumption period.

In the *Angell* case, the trustee alleged that "the preferential transfers were made while the debtors were insolvent." *Id.* The bankruptcy court explained that "because the complaint alleges transfers beyond the period in which insolvency is presumed, the trustee must assert factual content to support his allegations that the debtors were insolvent on the date of the transfers." *Id.* at 10.

#### Within 90 Days, or Within One Year if the Creditor Was an Insider

The trustee again recited the statutory language by alleging that the transfers occurred within one year of the petition date. *Id.* The bankruptcy court explained

that "[i]n order to plead facts in support of the timing element of a preference claim...the trustee must allege specific dates corresponding to each transfer." *Id.*

### Conclusion

The Supreme Court's *Iqbal* decision makes it clear that the *Twombly* standard for pleading applies with equal force in all civil cases in which Rule 8 is applicable. Rule 8 of the Federal Rules of Civil Procedure is incorporated into the bankruptcy arena by Rule 7008 of the Federal Rules of Bankruptcy Procedure. Thus, a plain reading of *Twombly* and *Iqbal* leads to the conclusion that the *Twombly* standard for pleading applies in all adversary proceedings brought in a bankruptcy case. This would include, for example, complaints filed by trustees, in which some courts have concluded that trustees have a lower pleading threshold because a trustee is a third party who is pleading based on second-hand information (see, e.g., *Schlick v. Penn-Dixie Cement Corp.*, 507 F.2d 374, 379 (2d Cir. 1974)). Indeed, the complaint filed in the *Angell* case was brought by a trustee, and the court analyzed the factual pleadings consistent with the standard outlined in *Twombly* and *Iqbal*.

Bankruptcy practitioners need to be aware of the new pleading requirements outlined in *Twombly* and *Iqbal* and as analyzed by the *Angell* bankruptcy court in not only drafting and filing complaints, but also to determine the proper strategy for defending against the complaints. For a small-dollar preference matter, it may not make sense to file a motion to dismiss because the cost of bringing the motion may outweigh the benefit. However, if the complaint alleges a substantial preference payment (or a series of payments), or other causes of action such as fraudulent transfers, substantive consolidation, deepening insolvency or the like, filing a motion to dismiss based on the *Twombly* and *Iqbal* standard may be a good strategy to put the plaintiff and his allegations to the test. ■

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