

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-005

JUNE TERM, 2020

Misbah Abdul-Kareem* v. Town of	}	APPEALED FROM:
Brattleboro	}	
	}	Superior Court, Windham Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 334-9-19 Wmcv

Trial Judge: Michael R. Kainen

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the civil division’s dismissal of his complaint seeking compensation from defendant Town of Brattleboro for the loss of his wallet in a town park. We affirm.

In September 2019, plaintiff filed a complaint against the Town of Brattleboro stating that sometime between July 9 and July 22 of 2019 he accidentally left his wallet containing \$51,000 “somewhere along the premises” of a park across from Canal Street in the Town of Brattleboro and was unable to find it when he returned shortly thereafter to retrieve it. He stated in the complaint that he was seeking to have the Town “surveillance pulled up” from that period of time to locate the person who took his wallet. He claimed \$51,000 in damages from the Town if the Town did not find his wallet through its surveillance cameras.

The Town filed an answer stating that it did not maintain security cameras that would have recorded the park in which plaintiff left his wallet. The Town further stated that it was not in possession of plaintiff’s wallet or any of its contents and that it had no leads on the whereabouts of the wallet or its contents. At the same time, the Town filed a motion to dismiss for failure to state a claim upon which relief can be granted, pursuant to Vermont Rule of Civil Procedure 12(b)(6). In December 2019, the civil division granted the Town’s motion to dismiss, stating that plaintiff’s alleged facts did not support any viable legal cause of action that could make the Town liable for plaintiff’s loss.

“We review decisions on a motion to dismiss de novo under the same standard as the trial court and will uphold a motion to dismiss for failure to state a claim only if it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.” Birchwood Land Co. v. Krizan, 2015 VT 37, ¶ 6, 198 Vt. 420 (quotation omitted) (“Our role in reviewing the trial court’s decision on such a motion is limited to determining whether the bare allegations of the complaint are sufficient to state a claim.” (quotation omitted)). As we have repeatedly stated, “the purpose of a dismissal motion is to test the law of the claim, not the facts which support it.” Montague v. Hundred Acre Homestead, LLC, 2019 VT 16, ¶ 10 (quotation omitted). Accordingly, “[w]e assume as true all facts as pleaded in the complaint, accept as true all reasonable inferences

derived therefrom, and assume as false all contravening assertions in the defendant's pleadings." Krizan, 2015 VT 37, ¶ 6.

We conclude that the Town is entitled to dismissal of plaintiff's complaint because the complaint advances no facts or legal theory that would support the claim for compensation asserted against the Town. The complaint contains no allegation that the Town or its employees were ever in possession or control of plaintiff's wallet or its contents or were in any other way responsible for the loss of the wallet. Further, the complaint assumes, but does not assert, that surveillance of the park existed, a fact denied by the Town and not challenged by plaintiff, who seeks \$51,000 in compensation from the Town if its surveillance fails to recover the wallet and its contents. In short, plaintiff has failed to allege any facts or advance any legal theory that could support the Town's liability.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

William D. Cohen, Associate Justice