

Third Time Is the Charm for Refinery in Getting Claims Dismissed With Prejudice

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In a case that tested a federal judge's patience for inadequate pleadings, a *Michigan* federal court shut down a group of business owners' repeated attempts to craft viable tort claims against an oil refinery in a semi-residential *Detroit* neighborhood. See [Mourad v. Marathon Petroleum Co. LP](#), No. 14-CV-14217, 2015 WL 5439738 (E.D. Mich. Sept. 15, 2015).

Plaintiffs were current or former business owners in the Oakwood Heights neighborhood in Detroit. Defendant operates an oil refinery that began processing tar sands in 2012 after an expansion project at the facility. Defendant initiated a buyout program for local homeowners, but not for businesses, through which Defendant acquired 277 of 294 residential properties in the neighborhood. With such a significant portion of the neighborhood's residents gone, Plaintiffs' businesses suffered.

Plaintiffs brought suit in 2014. The original and first amended complaints were both dismissed in earlier proceedings without prejudice. The second amended complaint, which was at issue here, contained two counts: tortious interference with business relationships or expectancy and nuisance.

In their tortious interference claim, Plaintiffs alleged that Defendant, through its residential buyout program, sought to reduce future liability for environmental contamination by seeking to intentionally drive out neighborhood businesses and reduce property values so Defendant could later acquire real estate at a discount. The Court dismissed this claim, finding that Plaintiffs had failed to allege Defendant acted with an improper motive.

In their nuisance claim, Plaintiffs alleged the refinery expansion caused increased air emissions. The Court found, however, that Plaintiffs' "bare bones allegations" failed to allege any facts explaining how the emissions substantially interfered with the use and enjoyment of their properties or how the interference was unreasonable in light of the refinery's utility. Plaintiffs sought leave to amend their complaint, but the Court declined, noting "Plaintiffs have benefitted from the opportunity to amend their pleading twice previously," and dismissed the complaint with prejudice. *Id.* at *20.

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