

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION**

B. THOMAS, a minor, *et al*,  
*Plaintiffs,*

v.

PRAIRIE PACKAGING,  
*Defendant.*

CASE No. 3:07-CV-00007

ORDER

JUDGE NORMAN K. MOON

This matter is before the Court on the Defendant’s March 21, 2007 Motion to Dismiss, under rule 12(b)(6). After briefing, a hearing was held on May 7, 2007.

**STANDARD OF REVIEW**

As this Court has previously stated, “[t]he purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint,” not to “resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” *Edwards v. City of Goldsboro*, 178 F.3d 231, 243--44 (4th Cir. 1999). In considering a Rule 12(b)(6) motion, a court must accept all allegations in the complaint as true, must draw all reasonable inferences in favor of the plaintiff, and should not dismiss unless the defendant demonstrates “beyond doubt that the plaintiff can prove no set of facts in support of [the plaintiff’s] claim” that would allow the plaintiff relief. *Conley v. Gibson*, 355 U.S. 41, 45–46 (1957); *see also Edwards*, 178 F.3d at 244; *Warner v. Buck Creek Nursery, Inc.*, 149 F. Supp. 2d 246, 254–55 (W.D. Va. 2001). Stated differently, a “court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be

proved consistent with the allegations.” *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 514 (2002).

Although a motion filed under Rule 12(b)(6) “should be granted only in very limited circumstances,” *Rogers v. Jefferson-Pilot Life Ins. Co.*, 883 F.2d 324, 325 (4th Cir. 1989), a plaintiff still “must sufficiently allege facts to allow the Court to infer that all elements of each of his causes of action exist,” *Jordan v. Alternative Res. Corp.*, 458 F.3d 332, 344–45 (4th Cir. 2006), *reh’g en banc denied*, 467 F.3d 378 (4th Cir. 2006); *see also Inman v. Klöckner-Pentaplast of America, Inc.*, No. 3:06cv00011, 2006 WL 3821487, at \*4 (W.D. Va. Dec. 28, 2006) (collecting post-*Swierkiewicz* holdings in Rule 12(b)(6) cases in the Fourth Circuit).

### **DISCUSSION**

This case concerns a plastic fork which broke, injuring the eye of a 5 year old child. Defendant argues, in effect, that because Plaintiff’s counsel chose to describe the child’s use of the fork with the verb “stab,” that the complaint must be dismissed. Defendant describes “stabbing” as a violent and forceful action undertaken with a pointed weapon, not the ordinary consumption of food by piercing. Plaintiff relies on a dictionary which describes someone stabbing chicken with a fork.

This Court will not delicately parse the precise meaning of “to stab,” nor will it dismiss complaints filed outside of strict semantic limits. The complaint does not allege that the fork was being used improperly, for instance in swordplay between children pretending to be medieval knights. It was being used to eat watermelon, which on the face of it is precisely the intended use of any fork. The amount of force used to pierce the watermelon at the time of the incident is a matter for proof at trial. It is plain that Plaintiff has sufficiently alleged facts which, if proven, could result in liability.

The Motion is DENIED.

The Clerk of the Court is directed to send a certified copy of this Order to all counsel of record.

ENTERED: \_\_\_\_\_  
U.S. District Judge  
\_\_\_\_\_  
Date