This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0729

Raymond L. Semler,
Appellant,

vs.

Eastbay Inc.,
Respondent,

Unknown Jane and John Does at the
Minnesota Sex Offender Program Moose Lake,
in their individual and official capacities,
Defendants.

Filed April 5, 2021
Affirmed
Worke, Judge

Ramsey County District Court
File No. 62-CV-18-6453

Raymond L. Semler, Moose Lake, Minnesota (pro se appellant)

Stephanie D. Sarantopoulos, Corey J. Christensen, Littler Mendelson, P.C., Minneapolis, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court erred by dismissing his complaint for failure to state a claim upon which relief can be granted, asserting that he has claims for violations of the Minnesota Consumer Fraud Act (CFA) and the Minnesota Health Records Act (MHRA), and breach of contract. We affirm.

FACTS

Appellant Raymond L. Semler is civilly committed as a sexually dangerous person at the Minnesota Sex Offender Program Moose Lake (MSOP). *See In re Civil Commitment of Semler*, No. A06-2213 (Minn. App. Apr. 3, 2007), *review denied* (Minn. May 30, 2007). Semler has purchased a platinum membership with respondent Eastbay Inc., a shoe and clothing company, for $39.99 annually, a benefit of which is rush delivery on purchases.

In 2018, Semler filed a complaint against Eastbay and defendants unknown Jane and John Does at the MSOP in their individual and official capacities, alleging that individuals at the MSOP informed Eastbay that Semler resides at the MSOP, causing Eastbay to deny him platinum-membership benefits because Eastbay does not do business with "incarcerated" persons. Semler alleged violations of the CFA, the MHRA, and the Minnesota Government Data Practices Act (MGDPA).[1] Semler also alleged that Eastbay was in breach of contract.[2]

Eastbay moved to dismiss pursuant to Minn. R. Civ. P. 12.02. The district court granted Eastbay's motion to dismiss, concluding that Semler's CFA claim failed because he lacked standing under the private-attorney-general statute for failing to allege a public benefit, his MHRA claim failed because the statute does not apply to Eastbay, and his

[1] Semler raised the MGDPA claim against only the individuals at the MSOP.
[2] Semler also pleaded a Fourteenth-Amendment violation, which a federal court dismissed.

breach-of-contract claim failed because he did not show that he had any rights under the contract or that Eastbay violated any right. This appeal followed.

DECISION

Semler argues that the district court erred by dismissing his complaint. A district court will dismiss a complaint when the plaintiff "fail[s] to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). "A Rule 12.02(e) motion raises the single question of whether the complaint states a claim upon which relief can be granted." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000). This court reviews de novo whether the complaint sets forth a legally sufficient claim for relief. *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019). "We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank*, 851 N.W.2d 598, 606 (Minn. 2014). This court is not bound, however, by legal conclusions in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008).

CFA claim

Semler argues that the district court erred in concluding that he lacked standing to assert a CFA claim. The CFA does not provide for a private cause of action. *See Wiegand v. Walser Auto. Grps., Inc.*, 683 N.W.2d 807, 809 (Minn. 2004). Instead, a plaintiff must raise a claim in accordance with the requirements of the private-attorney-general statute, Minn. Stat. § 8.31, subd. 3a (2020). *See id.* But section 8.31 applies "only to those claimants who demonstrate that their cause of action benefits the public." *Ly v. Nystrom*, 615 N.W.2d 302, 314 (Minn. 2000) (declining to apply the statute to a one-on-one transaction involving fraudulent misrepresentation).

The district court concluded that Semler's claim failed because he complained only of "one-on-one transactions with Eastbay." Semler alleged that Eastbay terminated his platinum membership because he is an "incarcerated" person. Semler sought "damages in excess of $300,000," a "lifetime platinum membership,"[3] and "$2,000 worth of merchandise." The complaint and the sought-after damages relate solely to Semler. Semler claimed that his CFA claim would benefit others because it "affects everybody here at the facility that deals with Eastbay." But the district court concluded that it could not assume that others share Semler's alleged negative experience. The district court did not err by granting Eastbay's motion to dismiss Semler's CFA claim.

MHRA claim

Semler next argues that the district court erred in dismissing his MHRA claim. First, Semler claimed that Eastbay would be in violation of the MHRA if the individuals at the MSOP were found to be in violation of the MHRA, "under [an] umbrella" theory of liability. But at the time that the district court considered the motion to dismiss, no individuals at the MSOP had been served, and no action had been commenced against them. Thus, because Semler asserts that his MHRA claim against Eastbay is contingent on the liability of individuals at the MSOP, and no determination has been reached regarding

[3] Semler conceded that, following commencement of the lawsuit, Eastbay offered him a lifetime platinum membership and refunded the $39.99 membership fee.

any wrongdoing on any individual's part, then, even if Semler has a MHRA claim against Eastbay, it is premature at this stage and fails.

Second, Semler claims that Eastbay obtained information regarding his residence from individuals at the MSOP who violated the MHRA by releasing the information without consent. The MHRA, Minn. Stat. §§ 144.291-.298 (2020), regulates the release and disclosure of health records. Minn. Stat. § 144.293. Under the MHRA, "A provider, or a person who receives health records from a provider, may not release a patient's health records to a person without . . . consent from the patient or the patient's legally authorized representative." *Id.*, subd. 2(1).

The MHRA defines "[p]rovider" as "any person who furnishes health care services and is regulated to furnish the services," a licensed home-care provider, a licensed health-care facility, and a registered physician's assistant. Minn. Stat. § 144.291, subd. 2(i). "Health record" is defined as information "that relates to the past, present, or future physical or mental health or condition of a patient; the provision of health care to a patient; or the past, present, or future payment for the provision of health care to a patient." *Id.*, subd. 2(c).

Semler has not alleged that Eastbay is a "provider" or that a "health record" was released. Semler also has not alleged that Eastbay received a health record from the MSOP and then released that information. Therefore, the district court properly dismissed Semler's MHRA claim for failing to state a claim upon which relief can be granted.

Breach-of-contract claim

Semler argues that the district court erred in dismissing his breach-of-contract claim because the complaint sufficiently pleaded that Eastbay breached the membership-renewal contract. In setting forth a breach-of-contract claim, Semler must show (1) the formation of a contract, (2) the plaintiff's performance of any conditions precedent to its right to demand performance from the defendant, and (3) the defendant's breach of the contract. *See Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014).

The contract at issue provides:

> All interpretations of the EASTBAY MEMBERSHIP terms and conditions shall be at our sole discretion.
>
> We may, at our discretion, cancel, modify, or restrict the EASTBAY MEMBERSHIP program at any time without prior notice. Eastbay has the right, in its sole discretion, to modify, add, or delete any of the MEMBERSHIP terms, conditions, or benefits, in whole or in part, at any time, with or without notice, even though such changes may reduce (or increase) the value of a member's benefit, except where prohibited by law. Continued use of your MEMBERSHIP privileges constitutes acceptance of any modifications, additions, or deletions.
>
> Our failure to exercise or enforce any right or provision of these rules shall not constitute a waiver of such right or provision.

The agreement allows Eastbay to cancel or restrict the membership program at any time without notice. As the district court determined, Semler has not shown that he had any rights under the contract or that Eastbay violated any such rights. As such, Semler has failed to state a claim upon which relief can be granted, and the district court properly dismissed Semler's breach-of-contract claim.

Affirmed.