

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 10-10761

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JULY 13, 2011 JOHN LEY CLERK
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D.C. Docket No. 8:09-cv-00033-VMC-EAJ

GLENN W. CHERRY, Dr.,
CHARLES W. CHERRY, II, Esq.,
GROUP ASSETS, LLC,

Plaintiffs-Appellants,

versus

D. B. ZWIRN SPECIAL OPPORTUNITIES
FUND, L.P., BLACK ENTERPRISE/GREENWICH
STREET CORPORATE GROWTH INVESTORS,
LLC, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(July 13, 2011)

Before TJOFLAT, CARNES and HILL, Circuit Judges.

PER CURIAM:

This is an appeal from the dismissal of the plaintiffs' amended complaint, without leave to further amend, in their derivative action/class action against multiple defendants, asserting eleven (11) alleged violations, including racial discrimination under 42 U.S.C. §§ 1981 and 1982.¹ Collectively, the various defendants filed four (4) motions to dismiss. The report and recommendation of the United States Magistrate Judge recommended that the plaintiffs' amended complaint be dismissed, and the motions to dismiss be granted. The district court, after careful consideration, adopted the report and recommendation of the magistrate judge, with the added determination that the dismissal be without leave to amend.

¹ The named plaintiffs are: Dr. Glenn W. Cherry, Charles W. Cherry, II (collectively, the Cherrys), and Group Assets, LLC (Group Assets). The Cherrys are shareholders in defendant Tama Broadcasting, Inc. (Tama). They formed Group Assets, a Florida limited liability company which leased property for certain radio stations and studios owned by Tama.

The named defendants are: D.B. Zwirn Special Opportunities Fund L.P., Straight Way Radio, LLC, Bernard Radio, LLC, Daniel B. Zwirn, Peter Lieberman, Ted Bolton, Tama, Black Enterprise/Greenwich Street Corporate Growth Investors, LLC, Black Enterprise/Greenwich Street Corporate Growth Partners, L.P., Jeffrey Scott, Ed A. Williams, and Chris McMurray.

Plaintiffs alleged that certain of the defendants: (1) violated the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*; (2) violated 42 U.S.C. §§ 1981, 1982; (3) violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5; (4) violated Section 310(d) of the Federal Communications Act, 47 U.S.C. § 151, *et seq.*; (5) breached their fiduciary duties; (6) breached their duty of care and improvidently lent funds to plaintiffs; (7) breached an implied covenant of good faith and fair dealing; (8) tortiously interfered with plaintiffs' contractual relations and prospective business; (9) engaged in deceptive business practices; (10) violated Sections 448.102(1) and (3) of the Florida Whistle-Blower Act; and (11) unjustly enriched themselves by utilizing plaintiffs' property without paying rent.

We have thoroughly reviewed the record in this case, the report and recommendation of the magistrate judge, the district court order adopting the magistrate judge's report and recommendation, the determination by the district court that the dismissal be without leave to further amend, and the briefs and the arguments of counsel. Finding no error, the judgment of the district court is affirmed.

AFFIRMED.