

**STATE OF MINNESOTA
IN COURT OF APPEALS**

Bridgewater Telephone Company, Inc., a Minnesota corporation,

Appellant,

v.

City of Monticello, Minnesota,

Respondent.

BRIEF AND APPENDIX OF RESPONDENT CITY OF MONTICELLO

SIDLEY & AUSTIN, LLP

Richard J. O'Brien
David B. Johnson
Constantine Koutsoubas
One South Dearborn Street
Chicago, IL 60603
(312) 853-7000

Attorneys for Appellant

GRAY PLANT MOOTY

Gregory R. Merz
500 IDS Center
80 S. Eighth Street
Minneapolis, MN 55402
(612) 632-3000

(Other counsel continued inside)

Attorneys for Appellant

GREENE ESPEL, P.L.L.P.

John M. Baker, Reg. No. 174403
Pamela L. VanderWiel, Reg. No. 305960
Kathryn N. Hibbard, Reg. No. 387155
200 S. Sixth Street, Suite 1200
Minneapolis, MN 55402
(612) 373-0830

Attorneys for Respondent

**SMITH PAULSON
O'DONNELL & ASSOCIATES**

Patrick M. O'Donnell
201 West 7th Street
P.O. Box 668
Monticello, MN 55362
(763) 295-2107

Attorneys for Appellant

THE BALLER HERBST LAW GROUP

James Baller
377N Grain Exchange Building
301 Fourth Street South
Minneapolis, MN 55415
(612) 339-2026

*Attorneys for Fiber to the Home Council
and the Telecommunications Industry
Association as Amicus Curiae*

**LOCAL GOVERNMENT LAWYER'S
ROUNDTABLE**

Lani Williams
N67W34280 Jorgenson Court
Oconomowoc, WI 53066
(262) 966-7438

*Attorneys for National Association of
Telecommunications Officers and Advisors
as Amicus Curiae*

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE ISSUES	1
STATEMENT OF FACTS.....	2
SUMMARY OF LEGAL ARGUMENT	8
LEGAL ARGUMENT	11
I. THE DISTRICT COURT CORRECTLY DISMISSED BRIDGEWATER’S ACTION.	11
A. Bridgewater acknowledges that the “plain meaning” rule governs, but then relies upon anything but the plain meaning of the statute in seeking reversal of the district court’s dismissal.....	12
B. The <i>ejusdem generis</i> canon of construction set forth in Minn. Stat. § 645.08(3) helps only the City, not Bridgewater.	16
C. The canon of construction favoring interpretations that give effect to each statutory word helps only the City, not Bridgewater.	20
1. Bridgewater’s effort to limit the set of “other public conveniences” to services already in universal use demonstrates the self-interested absurdity of its approach to statutory interpretation.....	21
D. If the plain meaning of the Legislature’s words is too broad for Bridgewater’s taste, then it is for the Legislature, not the courts, to add limiting language .	23
E. Bridgewater’s nostalgic interpretation of the word “public” cannot support its effort to cause this Court to legislate from the bench	24
F. Bridgewater cannot evade the meaning of “public convenience” by claiming that a portion of the proceeds from the bonds will be used for “current expenses.”	29
1. Bridgewater’s theory ignores the structure of subdivision 1.....	30
2. The City’s authority to issue bonds for “any utility or other public convenience from which revenue is or may be derived” includes both capital and operating costs of the public convenience.	31

II. DENIAL OF BRIDGEWATER’S FIRST REQUEST TO AMEND ITS COMPLAINT WAS NOT AN ABUSE OF DISCRETION.....	34
A. Bridgewater’s challenge to denial of leave to file the First Amended Complaint mischaracterizes what the district court actually said and did with regard to the Hiawatha and Indenture allegations.....	34
B. In any event, the new material in Bridgewater’s proposed First Amended Complaint did not cure the flaws in the existing claims, or state a viable additional claim.	36
C. The special kind of prejudice that Bridgewater’s First Amended Complaint was designed to create demonstrates that denying leave to amend was not an abuse of discretion.....	39
III. DENIAL OF BRIDGEWATER’S SECOND REQUEST TO AMEND ITS COMPLAINT WAS NOT AN ABUSE OF DISCRETION.....	41
IV. SO THAT THE PARTY THAT IS ENTITLED TO PREVAIL AS MATTER OF LAW DOES NOT LOSE AS A MATTER OF FACT, THE CITY RESPECTFULLY URGES THIS COURT TO GIVE ITS RULING PRECEDENCE, AND TO RULE WITH DISPATCH.	46
CONCLUSION	47
CERTIFICATE OF COMPLIANCE	48

TABLE OF AUTHORITIES

Minnesota State Cases

Amaral v. St. Cloud Hosp., 598 N.W.2d 379 (Minn. 1999)	19, 20
Amoco Pipeline Co. v. Minn. Valley Landscaping, Inc. 467 N.W.2d 351 (Minn. Ct. App. 1991), aff'd, 481 N.W.2d 557 (Minn. 1992).....	20
Arcadia Dev. Corp. v. City of Bloomington, 267 Minn. 221, 125 N.W.2d 846 (1964).....	12
Astleford Equip. Co. v. Navistar Intern. Transp. Corp., 632 N.W.2d 182 (Minn. 2001)	20
Auto Owners Ins. Co. v. Perry, 749 N.W.2d 324 (Minn. 2008).....	14
Barton v. Moore, 558 N.W.2d 746 (Minn. 1997)	11
Bebo v. Delander, 632 N.W.2d 732 (Minn. Ct. App. 2001).....	1, 36, 39
Bohn Mfg. Co. v. Hollis, 54 Minn. 223, 232, 55 N.W. 1119 (1893).....	15
Borgelt v. City of Minneapolis, 271 Minn. 249, 135 N.W.2d 438	26
Burns v. Essling, 156 Minn. 171, 194 N.W. 404 (1923)	27
City of Morris v. Sax Invs., Inc., 749 N.W.2d 1 (Minn. 2008).....	14, 15
City of Pipestone v. Madsen, 287 Minn. 357, 178 N.W.2d 594 (1970)	27, 28, 29
Clark v. Pawlenty, 755 N.W.2d 293 (Minn. 2008).....	1, 14
Educ. Minn.-Chisholm v. Indep. Sch. Dist. No. 695, 49 N.W.2d 474 (Minn. Ct. App. 2002)	23
Envall v. Indep. Sch. Dist. No. 704, 399 N.W.2d 593 (Minn. Ct. App. 1987).....	39, 40
Fabio v. Bellomo, 504 N.W.2d 758 (Minn. 1993).....	34, 44
Franklin v. Western Nat'l Mut. Ins. Co., 574 N.W.2d 405 (Minn. 1998).....	43
Hebert v. City of Fifty Lakes, 744 N.W.2d 226 (Minn. 2008)	11
ILHC of Eagan v. County of Dakota, 693 N.W.2d 412 (Minn. 2005)	9
In re Bd. of County Comm'rs of Cook County, 146 Minn. at 106, 177 N.W. at 1014.....	7, 12
In re Welfare of J.R.Z., 648 N.W.2d 241 (Minn. Ct. App. 2002).....	23
Koes v. Advanced Design, Inc., 636 N.W.2d 352 (Minn. Ct. App. 2001)	22, 24
Lefto v. Hoggsbreath Enters. Inc., 581 N.W.2d 855 (Minn. 1998)	16, 19
Marchant Inv. & Mgmt. Co. v. St. Anthony West Neighborhood Org., Inc., 694 N.W.2d (Minn. Ct. App. 2005)	4

McIntire v. State, 458 N.W.2d 714 (Minn. Ct. App. 1990).....	42
Melina v. Chaplin, 327 N.W.2d 19 (Minn. 1982).....	42
Munger v. State, 749 N.W.2d 335 (Minn. 2008).....	12
Naegele Outdoor Advertising Co. v. Village of Minnetonka, 281 Minn. 492, 162 N.W.2d 206 (1968).....	7
Nelson v. Productive Alternatives Inc., 715 N.W.2d 452 (Minn. 2006).....	11
Orme v. Atlas Gas & Oil Co., 217 Minn. 27, 12 N.W.2d 757 (1944).....	1, 19, 20
Otter Tail Power Co. v. Village of Wheaton, 235 Minn. 123, 49 N.W.2d 804 (1951).....	1, 7, 31, 32
Pettit Grain & Potato Co. v. N. Pac. Ry. Co., 227 Minn. 225, 35 N.W.2d 127 (1948).....	20
Port Auth. of City of St. Paul v. Fisher, 275 Minn. 157, 145 N.W.2d 560 (1966).....	27
R.E. Short Co. v. City of Minneapolis, 269 N.W.2d 331 (Minn. 1978).....	27, 28
Rosenberg v. Heritage Renovations, LLC, 685 N.W.2d 320 (Minn. 2003).....	1, 34, 36
Sprangers v. Fundamental Bus. Tech., 412 N.W.2d 47 (Minn. Ct. App. 1987).....	1, 36
State v. Colvin, 645 N.W.2d 449 (Minn. 2002).....	12
State v. Browning, 192 Minn. 25, 255 N.W. 254 (1934).....	25
State v. Jackson, 742 N.W.2d 163 (Minn. 2007).....	14
State v. Northwest Airlines, 213 Minn. 395, 7 N.W.2d 691 (1942).....	13
Thiele v. Stich, 425 N.W.2d 580 (Minn. 1988).....	1, 42, 45
Tischendorf v. Tischendorf, 321 N.W.2d 405 (Minn. 1982).....	43
Watson v. United Servs. Auto. Ass'n, 566 N.W.2d 683 (Minn. 1997).....	43
Winters v. City of Duluth, 82 Minn. 127, 84 N.W. 788 (1901).....	19
Other Cases	
Abrams v. City of Rockville, 596 A.2d 116 (Md. Spec. App. 1991).....	13
Anspach v. City of Philadelphia, 503 F.3d 256 (3d Cir. 2007).....	11
Autotech Techs. Ltd. P'ship v. Automationdirect.com, Inc. 235 F.R.D. 435 (N.D.Ill. 2006).....	13
Cequel III Comm. I, LLC, v. Local Agency Formation Comm'n of Nevada County, 149 Cal. App. 4th 310 (Cal. App. 3d 2007).....	18
Dole Food Co. v. Patrickson, 538 U.S. 468 (2003).....	20
Henrietta Country Club v. Jacobs, 269 S.W. 137 (Tex. App. 1991).....	13

Hiland Dairy Inc. v. Kroger Co., 402 F.2d 968 (8th Cir. 1968) 11, 12

Nielsen v. City of Roseville, No. 98-1625, 2001 WL 1640040
(D. Minn. Aug. 27, 2001) 12

Sharp v. Police Jury of Parish of East Baton Rouge, 194 La. 220,
193 So. 594, 597 (1940) 31

Texas-New Mexico Utils. Co. v. State ex rel. Teague,
174 S.W.2d 57 (Tex. App. 1943) 13

United States v. Lanzotti, 205 F.3d 951 (7th Cir. 2000)..... 13

State Statutes and Rules

2006 Minn. Laws ch. 214..... 24

2002 Minn. Laws ch. 390..... 17

Minn. Stat. § 412.321 17

Minn. Stat. § 469.002 17

Minn. Stat. § 469.174 24

Minn. Stat. § 471.656 10, 17, 18, 19

Minn. Stat. § 475.52 passim

Minn. Stat. § 475.58 37

Minn. Stat. § 562.02 39

Minn. Stat. § 562.04 39, 40

Minn. Stat. § 645.08(1) 12

Minn. Stat. § 645.08(3) 16

Minn. Stat. § 645.16 19

Minn. Stat. § 645.17(2) 19

Minn. Stat. §469.002 24

Minn. R. Civ. P. 12.02(3)..... 4, 9

Minn. R. Civ. P. 54.02..... 44, 45

Dictionaries

Black's Law Dictionary 14, 16, 25

Merriam-Webster Collegiate Dictionary..... 14, 15

STATEMENT OF THE ISSUES

1. Whether a statute that, without exception, authorizes “any statutory city” to “issue bonds or other obligations . . . for any utility or other public convenience from which a revenue is or may be derived” precludes the City of Monticello from issuing revenue bonds to create a network of City-owned fiber capable of conveying telephone, cable television and high-speed internet service to every home and business in the City?

The district court answered: no

Relevant Authorities:

Minn. Stat. § 475.52, subd. 1 (2008).

Clark v. Pawlenty, 755 N.W.2d 293 (Minn. 2008).

Orme v. Atlas Gas & Oil Co., 217 Minn. 27, 12 N.W.2d 757 (1944).

Otter Tail Power Co. v. Village of Wheaton, 235 Minn. 123, 49 N.W.2d 804 (1951).

2. After the district court dismissed Bridgewater’s complaint for failure to state a claim upon which relief may be granted, did it abuse its discretion by denying two motions of Bridgewater for leave to amend its complaint, where neither of the amendments would have cured the defects in the original Complaint and would have prejudiced the City?

The district court denied leave to amend under these circumstances.

Relevant Authorities:

Rosenberg v. Heritage Renovations, LLC, 685 N.W.2d 320 (Minn. 2003).

Bebo v. Delander, 632 N.W.2d 732 (Minn. Ct. App. 2001).

Sprangers v. Fundamental Bus. Tech., 412 N.W.2d 47 (Minn. Ct. App. 1987).

Thiele v. Stich, 425 N.W.2d 580 (Minn. 1988).

STATEMENT OF FACTS

On or around May 21, 2008, Appellant Bridgewater Telephone Company, Inc. (“Appellant” or “Bridgewater”), filed and served a Complaint against the City of Monticello (“the City”), a statutory City, challenging the City’s authority to offer \$25,680,000 in revenue bonds in order to construct a “fiber-to-the-premises” (“FTTP”) broadband communications network that would include telephone, internet service, and cable television. Comp. ¶1, Appellant’s Appendix (“A”) 1 (Tab 1).¹ The Complaint, which made few factual allegations, asserted one cause of action – that the revenue bonds the City was about to issue for the FTTP project were not authorized under Minn. Stat. § 475.52, subd. 1 (2008). A1 (Tab 1).

Bridgewater’s Complaint alleged that “[t]he FTTP Project revenue bonds are not authorized by Minnesota law, and the issuance and sale of the bonds by Monticello is not lawful.” A3 (Tab 1). In support of this claim, Bridgewater invoked only Minn. Stat. § 475.52, subd. 1 (2008). That subsection states:

¹ After the lawsuit was commenced, the City issued the bonds on June 19, 2008. The mere pendency of this lawsuit caused the prospective purchasers of the bonds to change their position and to insist upon additional protections, thus creating a delay while market interest rates increased. Respondent’s Appendix (“RA”) 13-14, 16-17. The size of the bond issue increased accordingly beyond the amount stated in the Complaint.

Any statutory city may issue bonds or other obligations for the acquisition or betterment of public buildings, means of garbage disposal, hospitals, nursing homes, homes for the aged, schools, libraries, museums, art galleries, parks, playgrounds, stadia, sewers, sewage disposal plants, subways, streets, sidewalks, warning systems; **for any utility or other public convenience from which a revenue is or may be derived**; for a permanent improvement revolving fund; for changing, controlling or bridging streams and other waterways; for the acquisition and betterment of bridges and roads within two miles of the corporate limits; for the acquisition of development rights in the form of conservation easements under chapter 84C; and for acquisition of equipment for snow removal, street construction and maintenance, or fire fighting. **Without limitation by the foregoing the city may issue bonds to provide money for any authorized corporate purpose except current expenses.**

Minn. Stat. § 475.52, subd. 1 (emphases added). Although the Complaint alleged that the proposed FTTP project “is not a permitted use for revenue bonds authorized by the above-quoted statute” A3 (Tab 1), it pleaded no facts that tend to call into question whether the FTTP project constitutes a “utility or other public convenience from which a revenue is or may be derived.”

The only language in section 475.52, subdivision 1, that is referenced in Bridgewater’s factual allegations is found in paragraph 12 of the Complaint, which alleges that, pursuant to section 475.52, subdivision 1, “proceeds from revenue bonds cannot be used for ‘current expenses.’” A3 (Tab 1). Bridgewater’s claim that the City would be using revenue bonds for current expenses was initially based on its interpretation of the May 5, 2008 Preliminary Official Statement (“POS”), which Bridgewater attached to its Complaint and, thus, incorporated into it for purposes of

Rule 12.02(e).² A2 (Tab 1) (Compl. ¶ 4); A6 (Tab 2) (Ex. 1 to Compl.). The first page of the POS stated in part:

The Bonds are being delivered to provide funds (i) to pay the cost of acquiring, installing, developing and constructing a “fiber-to-the-premises” broadband communications network within the service territory of the City of Monticello, Minnesota (“the City”) to be used for government and community connectivity for educational and other governmental services, along with the provision of certain other broadband communications services to business and residential customers such as cable television services, Internet access and voice services (the “FTTP Project”), (ii) to pay capitalized interest on the Bonds during the construction of the FTTP Project, (iii) to fund the 2008 Reserve Requirement (herein defined) for the Bonds; (iv) to pay start-up costs, and (v) to pay costs of issuance of the Bonds. See “ESTIMATED USES OF PROCEEDS” and “THE FTTP PROJECT” herein.

A7 (Tab 2). The Complaint alleged that the POS “provides that \$1,250,000 of the bond proceeds will be used to establish an ‘Operating Reserve Fund’” and that “[t]he Operating Reserve Fund is established for the purpose of providing funds to operate the FTTP project during the initial start-up period.” A3 (Tab 1). The Complaint then alleged that “the Operating Reserve Fund is intended to be used for current expenses during the period before the FTTP Project generates positive cash flow.” A3 (Tab 1).

On June 6, 2008, the City answered and filed a motion to dismiss Bridgewater’s Complaint. A107 (Tab 3); A111 (Tab 4); A113 (Tab 5). On June 13, 2008, the parties appeared before the district court for a hearing on a motion the City had brought seeking to require Bridgewater to post a surety bond under Minn. Stat. § 562.02 (2008) and to expedite proceedings. A162 (Tab 8). In support of its Motion, the City filed several

² On a Rule 12.02(e) motion, a court “may also consider documents and statements that are incorporated by reference into the pleadings.” *Marchant Inv. & Mgmt. Co. v. St. Anthony West Neighborhood Org., Inc.*, 694 N.W.2d 92, 95 (Minn. Ct. App. 2005).

affidavits that described in detail how the City would be harmed by the mere pendency of this lawsuit. RA1-18. The district court acknowledged the loss or damage that the pendency of the lawsuit might impose on the City and the taxpayers by ordering that Bridgewater post a surety bond in the amount of \$2,500,000. A163 (Tab 8).

The commencement of the lawsuit delayed the issuance of the revenue bonds. RA16 (Fick Aff. at ¶ 3). On or about June 19, 2008, the City entered into an Indenture of Trust, in which the City agreed to place the bonds and their proceeds into escrow until this litigation is brought to a full conclusion. A246-342 (Tab 25); A624-25 (Tab 26). This provision was included in the Indenture to provide the potential bond purchasers adequate security that their interests would not be harmed by this lawsuit. RA13-14 (O'Neill Aff. ¶ 3-4, 6). The result is that the City cannot access the bond proceeds to fund the construction or operation of the FTTP project so long as this suit is pending. *Id.*

As recognized by the district court, this delay of the issuance of the revenue bonds had the potential to harm the City financially. *See* A162 (Tab 8); *see also* RA 1-2, 4-5 (Decl. of Douglas A. Dawson at ¶¶ 3, 5, 10, 12). In an attempt to mitigate some of this damage, the City decided to proceed with construction of a subset of the FTTP project and to pay for construction of that subset out of the City's existing reserves, rather than out of the inaccessible revenue bond proceeds. RA33-44 (VanderWiel Aff., Exs. E, F.) This subset was an 11.19-mile stretch of fiber ("fiber loop") that would provide high-speed Internet only, and no telephone or cable. *Id.* It would have the ability to connect approximately 200 businesses, including the downtown area, much of the City's Industrial Park, and the City Hall, Community Center, and Public Works facilities. *Id.*

The cost of the fiber-loop project was estimated to be approximately \$1,150,000. *Id.* It was planned that the fiber loop eventually would be incorporated into the FTTP project once the lawsuit concluded. *Id.*

On or around July 14, Bridgewater served a memorandum in support of a motion for leave to file an amended complaint. A259 (Tab 18), A261 (Tab 19). The proposed Amended Complaint, which has over twice as many pages as the Complaint, alleged numerous facts that had not been alleged in the original Complaint. A261 (Tab 19). It also attached a copy of the June 1, 2008 Indenture of Trust, by which the bonds and their proceeds were placed into escrow by the City. A268 (Tab 19); A246 (Tab 25). However, none of the new facts alleged changed the relief Bridgewater was seeking or its ability to prove that it was entitled to such relief. A268-70 (Tab 19).

In its reply memorandum in support of this Motion for Leave to File Amended Complaint, Bridgewater served on the City a proposed *Revised* Amended Complaint. A642 (Tab 28); A658 (Tab 31). In addition to the amendments included in the proposed Amended Complaint, the proposed Revised Amended Complaint included numerous allegations regarding the City's contractual relationship with a third party, Hiawatha Broadband Corporation ("Hiawatha"), an entity that the City had retained to provide management services for the FTTP project, including training of personnel, on behalf of the City. A718-19 (Tab 38).³

³ The full list of Hiawatha's responsibilities is set forth in the Management Agreement, which was attached as an Exhibit to Bridgewater's proposed Second Amended Complaint. A718-21 (Tab 38).

On August 5, 2008, Bridgewater filed and served a motion for leave to file yet another amended complaint. A693 (Tab 34). This proposed Second Amended Complaint included all the prior amendments, as well as a new count alleging that the City's use of existing reserves, as opposed to funds from the revenue bonds, to construct the fiber loop would be an unlawful expenditure of public funds and would violate the City's cable franchise ordinance. A713-14 (Tab 37).

In an Order filed October 8, 2008, the district court granted the City's Motion to Dismiss, holding that the City "has express authority under Minn. Stat. § 475.52, subd. 1[,] to issue bonds to fund the FTTP project as an 'other public convenience'" and that nothing in section 475.52, subdivision 1, precluded the City from using revenue derived from the revenue bonds to fund current expenses. A253-54 (Tab 16).⁴

⁴ Bridgewater's brief twists the district court's holding regarding current expenses in at least one important respect. It claims that "the District Court held that the City *had the inherent authority* to use revenue bond proceeds to fund current expenses of the Fiber Project as 'start-up costs.'" App. Br. 6 (emphasis added). The district court's decision includes no recognition of any "inherent authority" of the City. At most, the district court concluded that, even if it were to construe the last clause in the second sentence of Minn. Stat. § 475.52, subd. 1, to limit the preceding sentence, "the City is permitted to use funds allocated to the Operating Reserve Fund as an implied power to be used in carrying out an expressly authorized power." A254 (Tab 16) (citing Minnesota Supreme Court's statement in *Otter Tail Power Co. v. Village of Wheaton*, 235 Minn. 123, 131, 49 N.W.2d 804, 810 (1951), that "authority so granted must include every essential step in the process by which a building once begun – and however it may have begun – can be carried to completion where its public use becomes an accomplished fact"). *Id.* The Supreme Court has recognized on multiple occasions that a city possesses powers that "can reasonably be implied" from more explicit provisions. *See, e.g., Naegele Outdoor Advertising Co. v. Village of Minnetonka*, 281 Minn. 492, 503-04, 162 N.W.2d 206, 215 (1968); *In re Bd. of County Comm'rs of Cook County*, 146 Minn. 103, 106, 177 N.W. 1013, 1014 (1920).

The following day, October 9, 2008, the district court issued an Order denying Bridgewater leave to file its First Amended Complaint, including the revisions in the Revised Amended Complaint, holding that the proposed amendment would serve no useful purpose because the new factual allegations made by Bridgewater in the Amended Complaint “merely question the political process by which the City undertook to . . . issue [the] bonds,” and thus they “do not change the Court’s analysis of the underlying issue of the litigation – whether or not the City is statutorily authorized to issue revenue bonds for the FTTP projects.” A690-92 (Tab 33).

Finally, on October 10, 2008, the district court issued an Order denying Bridgewater leave to file its Second Amended Complaint, holding that the new claim regarding the fiber loop is unrelated to the initial causes of action and that permitting Bridgewater to amend its Complaint to include this new, unrelated claim would “significantly delay this matter,” in which “[t]ime is of the essence,” and “potentially [would] harm the public body.” A784-87 (Tab 42).

Bridgewater now appeals from the district court’s orders granting the City’s Motion to Dismiss and denying Bridgewater leave to amend its Complaint.

SUMMARY OF LEGAL ARGUMENT

The suit of Bridgewater against the City is based on a misreading of a Minnesota statute, which the district court appropriately detected early in the case. Even when the well-pleaded factual allegations in the Complaint were taken as true, this misreading of the statute caused the Complaint to fail to state a claim upon which relief may be granted.

