

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

ROBERT G. FRANKE and  
SARA FRANKE BOWLING

PLAINTIFFS

V.

CASE NO. 4:09-CV-341 GTE

PARKSTONE LIVING CENTER, INC.,  
d/b/a FOX RIDGE AT NORTH LITTLE ROCK

DEFENDANT

**FOX RIDGE'S MOTION TO DISMISS**

Parkstone Living Center, Inc., d/b/a Fox Ridge at North Little Rock ("Fox Ridge") moves to dismiss and, in support, states:

1. According to the complaint, Fox Ridge provides assisted-living services to elderly persons. Compl. ¶ 8.

2. Plaintiffs Robert G. Franke and Sara Franke Bowling allege that Fox Ridge refused admission to Dr. Franke because he has human immunodeficiency virus ("HIV"). Compl. ¶¶ 9, 30.

3. Arkansas law did not allow Fox Ridge to admit Dr. Franke, however, and Fox Ridge's compliance with Arkansas law cannot expose Fox Ridge to liability.

4. Plaintiffs fail to state a claim upon which relief can be granted, and this Court should dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

5. A true and correct copy of Section 309.1(g) of Arkansas's Residential Long Term Care Rules is attached hereto as Exhibit 1 and incorporated by reference.

6. A true and correct copy of Section V of the Arkansas State Board of Health Rules and Regulations Pertaining to Communicable Diseases is attached as Exhibit 2 and incorporated by reference.

7. A true and correct copy of *Burlage v. Summerville Senior Living Inc.*, Case No. 1:07cv352, slip op. (E.D. Va. Apr. 18, 2008), is attached as Exhibit 3 and incorporated by reference.

8. Fox Ridge reserves the right to assert additional affirmative defenses, including but not limited to all affirmative defenses available under Fed. R. Civ. P. 8(c).

WHEREFORE, Parkstone Living Center, Inc., d/b/a Fox Ridge at North Little Rock prays that this Court dismiss plaintiffs' complaint and award to Parkstone Living Center, Inc., d/b/a Fox Ridge at North Little Rock its costs, attorneys' fees, and all other just and appropriate relief.

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*Attorneys for Parkstone Living Center, Inc., d/b/a  
Fox Ridge at North Little Rock*

**CERTIFICATE OF SERVICE**

I certify that on this 9th day of July, 2009, I electronically filed with the Clerk of the Court the foregoing using the CM/ECF system, which shall send notification of such filing to the following:

- **Scott A. Schoettes, Esq.**  
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/s/ E. B. Chiles IV

E. B. Chiles IV

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