

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :  
 :  
 -against- : Civ. Action File  
 : No. 73 C 1529  
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 FRED C. TRUMP, DONALD TRUMP, :  
 and TRUMP MANAGEMENT, INC., :  
 :  
 Defendants. :  
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MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS  
GOVERNMENT'S COMPLAINT FOR FAILURE  
TO STATE A CLAIM OR FOR A MORE  
DEFINITE STATEMENT PURSUANT TO  
FRCP RULE 12

Preliminary Statement

The Government on or about October 15, 1973, served a summons and complaint upon the defendants. No answer has yet been made. The complaint, which contains six paragraphs, asks for an injunction pursuant to the Fair Housing Act of 1968, but states absolutely no facts upon which the injunction might be granted. There is simply a recitation of the statutes alleged to have been violated. Nowhere in the complaint is there one date, not even a year, nor one address where the alleged violations occurred, not one employee's name who is alleged to have committed the violations. It is for these reasons that no answer can be given and that the defendants are

making this motion to dismiss the complaint. The Government is obviously seeking to have the defendants sign a consent decree by harassing them through unfair and undue publicity. In fact, even before the summons and complaint were served upon defendants, the media publicized nationally news of the charges against defendants. (See affidavit of Donald Trump.) They have even sent to defendants' attorneys a sample consent decree. It is extremely questionable how the Government can enter into any agreement with the defendants when it is apparent that they do not know upon what facts the alleged violations occurred.

The defendants are a large management company and operate buildings in many areas of the city, especially Brooklyn and Queens. The buildings are filled with tenants of many races and nationalities. No attempt whatever to screen prospective tenants according to any racial or religious lines is made. The buildings as a rule are filled with roughly the same percentages of races and religions as the communities in which these buildings are located.

An examination of the complaint immediately discloses that the Government has no facts and knows of no facts to support their complaint. It is completely void of any information which would enable the defendants

to supply an answer or to properly respond.

Issues

There are two issues presented to this Court.

(1) Whether the Government's complaint should be dismissed for failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)-(6) because of action upon which relief might be granted, and (2) whether a more definite statement should be required pursuant to Federal Rules of Civil Procedure Rule 12(e).

## POINT I.

MOTION TO DISMISS COMPLAINT FOR FAILURE  
TO STATE A CLAIM SHOULD BE GRANTED

The Government has failed to state a claim upon which a judgment might be rendered and therefore the complaint should be dismissed. Pursuant to Federal Rules of Civil Procedure, Rule 12(b)(6), where the claim has not been adequately stated in the complaint it should be dismissed. In the Government's complaint there are no facts and the allegations are nothing more than "sweeping legal conclusions."

In Pauling v. McElroy, C.A. 1960, 278 F.2d 252, 107 U.S. App. D.C. 372, cert. denied 81 S. Ct. 61, 364 U.S. 835, 5 L. Ed. 2d 60, the Court held that they would not accept "sweeping legal conclusions in the form of factual allegations." In the instant case the Government has not even attempted to make these factual allegations but has relied upon restating the sections of the Fair Housing Law alleged to have been violated. The principal was adopted in McCleneghan v. Union Stock Yards Co. of Omaha (8 Cir. 1962), 298 F.2d 659:

"For the purpose of the motions to dismiss we are to regard as admitted the well pleaded facts of the complaint.... This admission 'does not, of course, embrace sweeping legal conclusions cast in the form of factual allegations.' ... Furthermore, a general allegation of conspiracy without a statement of facts constituting that conspiracy, is only an allegation of a legal conclusion and is insufficient to constitute a cause of action. . ."

See also Stewart v. Havelone, D.C. Neb. 1968, 283 F. Supp. 842, Blackburn v. Fish University, C.A. 6th 1971, 443 F.2d 121; Atlanta Gas Co. v. Southern Natural Gas Co., D.C. Ga. 1972, 338 F. Supp. 1039.

The Government's failure to state even one fact in support of their allegations is really a bald statement that they may have some type of valid claim against defendants and this the courts have held is insufficient. When the complaint contains nothing but a series of broad conclusory statements the complaint should be dismissed. Thurston v. Setab Computer Institute, D.C.N.Y. 1969, 48 F.R.D. 134, Jackson v. Nelson, C.A. 9th 1968, 405 F.2d 872.

In Huey v. Barloga, D.C. Ill. 1967, 277 F. Supp. 864, 871, the Court held that a complaint failed to state a civil rights claim, stating that "although pleadings are given a liberal construction in the federal courts, the rules contemplate some factual statement in support of the claim. General allegations of this kind unsupported by any factual statements have usually been rejected as insufficient. Huey v. Barloga, supra. In Stewart v. Havelone, supra, the Court similarly held that a general allegation of conspiracy without a statement of the facts constituting that conspiracy is only an allegation of a legal conclusion and is insufficient to constitute a claim for relief.

We are presented here with no facts to support the Government's allegations and therefore the complaint should be dismissed.

POINT II.

A MORE DEFINITE STATEMENT IS REQUIRED

The courts have consistently held that Rule 12(e) motions for a more definite statement should be granted when the broad allegations of plaintiff's complaint will permit the Government to conduct a fishing expedition among defendant's records for evidence of misconduct. Cope v. Fuyn Engineering Co., D.C. Pa. 1949, 8 F.R.D. 620.

The allegations herein are extremely vague and sketchy and there is no way in which defendant in responding to the complaint can help formulate the issues in the action at the pleading stage and thereby limit the scope of plaintiff's discovery.

The Government's complaint is so general that it does not even include dates of the alleged violations.

CONCLUSION

In summary, the statute and case law is clear. The complaint should be dismissed for failure to state a claim. The Government has provided no facts whatsoever to support its complaint.

If the Government has these facts, then at the very least, defendants' motion for a more definite statement pursuant to Federal Rules of Civil Procedure 12(e) should be imposed. It is impossible to require the defendants to reply to a complaint couched in vague allegations when no facts are stated.

WHEREFORE, the Government's complaint should be dismissed or a more definite statement required.

Respectfully submitted,

SAXE, BACON, BOLAN & MANLEY  
Attorneys for Defendants

Of counsel

Roy M. Cohn