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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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: UNITED STATES OF AMERICA :
: :
: v. :
: FRED C. TRUMP, DONALD TRUMP :
: and TRUMP MANAGEMENT INC., :
: Defendants. :
-----x

73 C 1529

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DEFENDANTS' REPLY MEMORANDUM
OF LAW IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS COUNTERCLAIM

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16

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PRELIMINARY STATEMENT

The defendants have moved to dismiss the government's complaint for failure to state a cause of action or for a more definite statement, and have filed a compulsory counterclaim. All of these actions were taken in order to prevent a clear abuse of the Federal pleading rules and a trend by the government to exert pressure on defendants to settle with them by unfair publicity.

In the instant case, even before the defendants were served with the summons and complaint, the radio and T.V. newscasters reported the case and the newspapers were carrying banner headlines proclaiming that a "major landlord is accused of anti-black bias in the city" (N.Y. Times, October 16, 1973, p.1), and "U.S. suit against Trump charges bias in renting" (Daily News, October 16, 1973).

The government's memorandum in response to affidavits submitted by defendant and his attorneys attempts to mask the true purpose of these news releases, claiming that their intent was to benefit the public. The practical benefit to the public is extremely doubtful since there are no facts whatever stated in the complaint. It's only real purpose is obviously to pressure the defendants into a premature settlement.

The government's claim that defendants are guilty of some wrong by holding a news conference is utterly hypocritical. The defendants purpose was to alert the citizens of New York, as well as the tenants residing in Trump buildings, that the charges against them were unfounded and unproven and especially that the government had not won the case; but that they had merely filed a complaint.

The complaint in this case contains not one factual allegation and there is no case which permits this. The government has attempted to put the burden on the defendants to supply all of the facts that they lack. The situation is analagous to an indictment in a criminal action which contains but one line charging a defendant with arson and then requiring that defendant to hire investigators to disprove the charge.

The government throughout its memorandum of law cites to unreported cases. An analysis of each opinion shows that not one case supports their argument in opposition to defendants motions. The cases break down into two major groups.

The first are those in which the government supplied facts in their complaint which are totally absent from the complaint in the instant action. The second major group contains decisions in which there is no discussion by the court and so no conclusions may be reached as regards them. There are a few cases which do not fit into either of these groups and they are discussed separately. A case by case analysis as listed in the government's table of contents in the "unreported cases cited. . ." follows:

CASES IN WHICH THE GOVERNMENT'S COMPLAINT CONTAINS
FACTS TO SUBSTANTIATE ITS CHARGES

United States v. Raymond, Civil Action No. 73-119 CIV-T-H (M.D. Fla. Sept. 5, 1973).

United States v. Gilman, Civil Action No. 70-Civil 1967 (S.D. N.Y., July 28, 1970).

United States v. Miller, Civil Action No. 70-40 (D.Md. April 27, 1970).

United States v. Chirico, Civil Action No. 70-1851 (E.D. Pa. August 12, 1970)

United States v. Arco, Inc., Civil Action No. 70-29 (W.D. Tenn., March 20, 1970).

CASES IN WHICH THERE IS NO DISCUSSION IN THE DECISION

United States v. Watson, Civil Action No. 73-97 (M.D. La., May 15, 1973).

United States v. Pelzer Realty Company, Inc., Civil Action No. 3284-N (M.D. Ala. July 16, 1971).

United States v. Davis, Civil Action No. 6451-71 (S.D. Ala. May 18, 1971).

United States v. Goldberg, Civil Action No. 70-1223-CIV-CF (S.D. Fla. Oct. 19, 1970).

United States v. PMC Development Co., Inc., Civil Action No. 13578 (N.D. Ga., July 28, 1970).

United States v. Palm Beach Listing Bureau, Inc., Civil Action No. 70-379-CIV-C (S.D. Fla. May 5, 1970).

United States v. H. G. Smithy, Civil Action No. 21470 (D. Md. April 17, 1970).

United States v. Management Clearing, Inc., Civil Action No. 70-23-PHX (CAM) (D. Ariz. April 8, 1970).

United States v. Margurette Jones, Civil Action No. 71-H-279 (S.D. Tex. April 30, 1971).

United States v. Exclusive Mutual Exchange, Civil Action No. C-70-969 (N.D. Ohio Nov. 8, 1971).

United States v. Mrs. Dean Miles, et al., Civil Action No. C.A.-3-7243-E (N.D. Tex. Sept., 1973).

United States v. J.C. Long, Civil Action No. 71-1262 (D.S.C. April 3, 1972).

MISCELLANEOUS CASES CITED BY THE GOVERNMENT

United States v. City of Parma, Civil Action No. C-73-439 (N.D. Ohio Sept. 5, 1973).

The motions in this case were based on the defendant's argument that municipalities or political subdivisions are not persons against whom a suit may be brought and in addition, facts are apparently presented in the complaint.

United States v. Robbins, Civil Action No. 73-848 CIV-JE (S.D. Fla., June 22, 1973).

A copy of the decision was not included in the Orders given to the defendants.

United States v. A.B. Smythe, Inc., Civil Action No. C-69-885 (N.D. Ohio Nov. 24, 1970).

The motion to dismiss was based on exemptions and the unconstitutionality of the statute alleged to have been violated.

United States v. Jim Tucker Co., Civil Action No. 72-H-993 (S.D. Tex. Sept. 27, 1972).

This was a motion for summary judgment not for a motion to dismiss or for a more definite statement.

IN SUMMARY

In the decisions in which there is some discussion, it is seen that the government supplied facts in the complaint in addition to a mere recitation of the statutes as they have done in the instant case.

POINT I

GOVERNMENT'S COMPLAINT
SHOULD BE DISMISSED

The government's complaint should be dismissed. In opposition to this, the government has cited Conly v. Gibson, 355 U.S.41(1957), the decision, especially that portion quoted in the government's memorandum, could well have been cited by defendants in support of their motions.

In Conly, supra, the court said that they would not require a claimant to set out in detail the facts upon which he bases his claim, but that it would require "fair notice of what the plaintiff's claim is and the grounds upon which it rests," (47-48) [emphasis supplied].

The government has entirely failed to give defendants fair notice of the grounds although they attempt to get around the court's direction by claiming it is alright if what is lacking is "evidentiary details such as names, dates, places, etc." The government must conclude that every fact is evidentiary detail since they have totally failed to state any facts whatsoever.

In a recent case, Coopersmith v. Supreme Court State of Colorado, (10 Cir. 1972) 465 F.2d 993, the court said citing to Conly,

"allegations of conclusions or of opinions are not sufficient when no facts are alleged by way of the statement of the claim." 994(emphasis supplied).

In Burak v. Sprague (E.D. Pa. 1971) 335 F. Supp. 347, the complaint was dismissed, the court stating:

The complaint fails to state a claim on which relief can be granted; it fails to set forth facts; it sets forth only a series of conclusionary charges devoid of factual content lacking legal significance. The complaint is dismissed."

A complaint in a case like this must set forth some facts, and to merely state vague and conclusionary allegations are not enough. Nishiyama v. North America Rockwell (C.D. Calif. 1970), 49 FRD 288. Shemtob v. Shearson Hammill & Co. (C.A.2d, 1971) 448 F.2d 442, Israel v. City Rent & Rehabilitation Administration of City of New York (S.D.N.Y.1965) 28 F.Supp. 908.

Even in civil rights cases where a claim is nothing more than plaintiff's conclusions, unsupported by any factual statement, a motion to dismiss will be granted. Scott v. Larson, (E.D. Wis.1973) 58 FRD 131), Jones v. Bales(N.D.Ga. 1972) 58 FRD 453, aff'd (C.A.5th,1973)480 F.2d 805.

In Sisters of Providence of Saint Mary of the Woods v. City of Evanston, 335 F.Supp.396, the court noted that it is important to balance the infringed right against police power, the determination of which is based on facts presented. The government has not presented any facts to support these allegations and so the very real possibility

of abuse has become a reality. The complaint lacks facts to substantiate it, and as if in an attempt gave it substance, newspaper reports are released, this is the exact abuse the court in Sisters of Providence sought to provide protection against.

POINT II

DEFENDANTS' MOTION FOR A MORE
DEFINITE STATEMENT SHOULD
BE GRANTED

The defendants are entitled to sufficient information around which they can frame a responsive pleading. The government has failed to supply this, and thus, if defendants' motion dismissing the complaint is not granted, then a more definite statement is required. Jenn Air Products Co., v. Penn Ventilator, Inc., E.D.Pa.1968, 283 F.Supp.591.

The cases cited by the government in opposition to this motion all involve situations where the courts found sufficient facts not where they found no facts.

POINT III

DEFENDANTS' COUNTERCLAIM
SHOULD NOT BE DISMISSED

The government has severely damaged the defendant by releasing to the press statements which it knew to be untrue before they served the defendant. Rule 13(a) of the Federal Rules of Civil Procedure requires a pleading to state as a counterclaim any claim which the pleader has against the opposing party. Defendants counterclaim. The government,

by the institution of this action, has subjected itself to defendants' compulsory counterclaims, as it admits on page 18 of the government's memorandum.

CONCLUSION

The government complaint should be dismissed because of their failure to state any facts in their complaint and a more definite statement should be required. The unreported cases cited by the government completely fail to support their argument. It is mere evidentiary detail that the defendants are requesting.

Respectfully submitted,

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