

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF

FILED

IN CLERK'S OFFICE

U. S. DISTRICT COURT E.D. N.Y.

NEW YORK

SEP 24 1974

TIME A.M. P.M.

CIVIL ACTION NO. 73 C 1529

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

FRED C. TRUMP, ET AL.,)

Defendants.)

APPLICATION OF THE UNITED STATES THAT DEFENDANTS' MOTION FOR SANCTIONS BE HEARD, DENIED WITH PREJUDICE AND STRICKEN AFTER HEARING

SIRS

PLEASE TAKE NOTICE that plaintiff, United States of America, will move this Court, before the Honorable Edward R. Neaher, District Judge at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York in Courtroom 9, on the 21st day of October, 1974 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an Order denying with prejudice defendants' motion for sanctions, filed on July 26, 1974, on the grounds that the matters contained therein are unsupported by fact and are sham and false.

(51)

The grounds for this Application are set forth with particularity in plaintiff's supporting memorandum and in the attached affidavit of Frank E. Schwelb. Plaintiff further prays for such other further relief that this Court deems just and proper.

Respectfully submitted,

JAMES PORTER, Chief
HENRY A. BRACHTL, Attorney
United States Attorney's
Office for the Eastern
District
Civil Division

Frank E Schwelb
FRANK E. SCHWELB, Chief
NORMAN P. GOLDBERG, Attorney
Housing Section
Civil Rights Division
Department of Justice
Washington, D. C.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF
NEW YORK

UNITED STATES OF AMERICA,)
)
 Plaintiff,) CIVIL ACTION NO. 73 C 1529
)
 v.)
) AFFIDAVIT
 FRED C. TRUMP, ET AL.,)
)
 Defendants.)
 _____)

WASHINGTON)
) ss
 DISTRICT OF COLUMBIA)

FRANK E. SCHWELB, being duly sworn, deposes and says:

1. I am the Chief of the Housing Section of the Civil Rights Division, Department of Justice, and in supervisory charge of the above-styled litigation on behalf of the United States. I make this affidavit in support of our request that an early hearing be had on defendants' motion for sanctions against the United States and Ms. Donna Goldstein, that after a hearing an Order be entered denying said motion, that the motion and supporting affidavits be stricken, and that the Court impose such sanctions as may be appropriate for any abuse of its processes.

2. On or about July 26, 1974, defendants filed with this Court a Notice of Motion praying that Donna Goldstein, one of plaintiff's counsel in this action, be adjudged in

contempt of this Court for alleged coercion and threats against prospective witnesses, and that the United States be ordered to cease and desist from such alleged unlawful conduct. The Notice of Motion was purportedly supported by the affidavits of Carol R. Falcone and Thomas Miranda, former employees of defendants, and by the signed but unsworn statements of two former employees, Paul and Paula Ziselman. Also attached to the motion is an affidavit by defense counsel, in which he purports to describe a number of events at which, to the best of my knowledge, he was not present, and which did not occur in the manner described by him.

3. On or about August 5, 1974, plaintiff filed a response, together with affidavits, denying each and every allegation of misconduct and requesting expedited discovery and an early hearing on the motion.

4. On August 8, 1974, this Court directed that expedited discovery be conducted in preparation for a hearing to resolve defendants' charges. This Court also directed that Magistrate Catoggio supervise the taking of certain discovery depositions.

5. On August 8, 1974, in accordance with the Court's direction, counsel met informally with Magistrate Catoggio for the purpose of scheduling the taking of the proposed depositions. At that meeting, defense counsel withdrew his

request for a hearing on his motion but refused to withdraw the motion and the attached affidavits in which, among other things, Ms. Goldstein is accused of unprofessional conduct. As a result of this action, the charges against Ms. Goldstein remain on file, subject to being revived at any time at defense counsel's caprice.

6. Subsequently, plaintiff noticed the taking of depositions of Mr. Miranda and Ms. Falcone for August 28, 1974. In view of the serious nature of the charges against Ms. Goldstein, and my conviction that they are completely false, I had planned to take the depositions of her principal accusers personally. Without notice to plaintiff, defense counsel produced Mr. Miranda for deposition two days ahead of schedule. I was not in New York on August 26, since more routine depositions had been scheduled for that day and were scheduled to be taken by younger attorneys assigned to this case. As a result, the deposition of Mr. Miranda was taken outside my presence. I did take the deposition of Ms. Falcone on August 28, 1974.

7. For reasons set forth in our attached memorandum, I am satisfied that the allegations against Ms. Goldstein are false, and that they were filed, at least, with reckless disregard of the facts, which facts were readily available to defense counsel. I have full confidence in the integrity and professionalism of Ms. Goldstein and of the propriety of her conduct in this case.

8. I believe that defense counsel's action in declining to withdraw these charges leaves them unfairly hanging over Ms. Goldstein's head, as a possible permanent cloud on her professional reputation. In addition, I believe that the continued pendency of such charges can only have the effect of making it more difficult for Ms. Goldstein to carry out her professional responsibilities in connection with this case. Accordingly, the charges should either be withdrawn, with prejudice, or evaluated by this Court based on the evidence. Even though a hearing on this matter would necessarily be unpleasant for Ms. Goldstein, since she has in my view done nothing to warrant any challenge to her integrity, it is preferable to the prospect of allowing charges I believe to be false and scurrilous to hang over her professional career indefinitely.

9. For reasons set forth in our memorandum I believe that defendants have used disingenuous tactics in this case to a degree which warrants a strong adverse inference against them on the merits of the case. Accordingly, and in order to facilitate Ms. Goldstein's participation in the trial, we request that this matter be scheduled for hearing in advance of the trial of the main case.

10. No previous application has been made for the relief here requested.

Frank E. Schwelb

FRANK E. SCHWELB

Donald W. Hadden

Sworn to before me this 20th
day of September, 1974.

My Commission Expires August 14, 1977