

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-7545-CIV-ZLOCH

RICHARD COTTONE, as Personal
Representative of the Estate
of PETER ANTHONY COTTONE, JR.,
and PETER COTTONE, SR.,

Plaintiffs,

vs.

ORDER

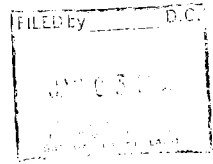
KENNETH C. JENNE, II,
individually and in his
official capacity as Sheriff
of Broward County, Florida,
et al.,

Defendants.

_____/

THIS MATTER is before the Court upon the Defendant, Broward County Board of County Commissioners', Motion To Dismiss And Supporting Memorandum Of Law (DE 14). The Court has carefully reviewed the merits of said Motion and is otherwise fully advised in the premises.

The Court notes that only a generalized statement of facts needs to be set out to comply with the liberal Federal Rules of Pleading. A classic formulation of the test often applied to determine the sufficiency of the Complaint was set out by the United States Supreme Court in Conley v. Gibson, 355 U.S. 41, 45-46 (1957), wherein the Court stated:



. . . In appraising the sufficiency of the Complaint we follow . . . the accepted rule that a Complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

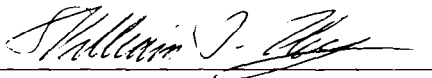
The Court adds that a Complaint may not be dismissed because the plaintiff's claim does not support the legal theory he relies on since the Court must determine if the allegations provide relief on any possible theory. See, Robertson v. Johnston, 376 F.2d 43 (5th Cir. 1967).

The Court further notes that the legal issues raised by the Defendant's aforementioned Motion To Dismiss may be more properly addressed in a Motion For Summary Judgment.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that the Defendant's Motion To Dismiss (DE 14) be and the same is hereby **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 3rd day of January, 2001.



WILLIAM J. ZLOCH
Chief United States District Judge

Copies furnished:
See attached Mailing List

RICHARD COTTONE, as Personal Representative of the Estate of PETER ANTHONY COTTONE, JR., and PETER COTTONE, SR. vs. KENNETH C. JENNE, II, et al.

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