IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF NEW YORK

CIVIL ACTION NO. 73 C 1529

UNITED STATES OF AMERICA

Plaintiff,

v.

FRED C. TRUMP, DONALD TRUMP
AND TRUMP MANAGEMENT INC.,

Defendants.

MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS, MOTION FOR MORE DEFINITE STATEMENT AND IN SUPPORT OF PLAINTIFF'S MOTION TO DISMISS THE COUNTERCLAIM

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INTRODUCTORY STATEMENT

The United States initiated this action on October 15, 1973, pursuant to 42 U.S.C. 3613 */ alleging racial discrimination in housing. The operative paragraphs of the Complaint allege that:

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*/ 42 U.S.C. 3613 provides that the Attorney General may sue when there has been a "pattern or practice" of discrimination in housing or where he determines that a denial of equal housing opportunity to a group of persons raises an issue of general public importance.

"5. The defendants, through the actions of their agents and employees, have discriminated against persons because of race in the operation of their apartment buildings, among other ways, by:

(a) Refusing to rent dwellings and negotiate for the rental of dwellings with persons because of race and color, in violation of Section 804(a) of the Fair Housing Act of 1968, 42 U.S.C. 3604(a).

(b) Requiring different terms and conditions with respect to the rental of dwellings because of race and color, in violation of Section 804(b) of the Fair Housing Act of 1968, 42 U.S.C. 3604(b).

(c) Making and causing to be made statements with respect to the rental of dwellings which indicate a preference, limitation and discrimination based on race and color in violation of Section 804(c) of the Fair Housing Act of 1968, 42 U.S.C. 3604(c).

(d) Representing to persons because of race and color that dwellings are not available for inspection and rental when such dwellings are in fact so available, in violation of Section 804(d) of the Fair Housing Act of 1968, 42 U.S.C. 3604(d)."

"6. The defendants' conduct described in the preceding paragraph constitutes:

(a) A pattern and practice of resistance by the defendants to the full enjoyment of rights secured by Title VIII of the Fair Housing Act of 1968, 42 U.S.C. 3601 et seq.; and

(b) A denial to groups of persons of rights granted by Title VIII of the Fair Housing Act of 1968, 42 U.S.C. 3601 et seq., which denial raises an issue of general public importance."

The defendants have filed Motions to dismiss and, in the alternative, for a more definite statement, alleging that the Complaint fails to state a cause of action and is too vague to enable them to respond. Defendants have also filed what purports to be a counterclaim which seeks damages from the United States in the amount of 100 million dollars. Defendants' counterclaim is grounded on the proposition that plaintiff having no facts to support its charges and having filed an "amorphous" */ complaint, damaged defendants in the amount of 100 million dollars because of the false and misleading information plaintiff conveyed to the New York Times and the Daily News concerning this lawsuit.

DISCUSSION

I. Motion to Dismiss

Defendants claim that the Complaint in this action does not allege facts to support its general allegations, and that it should therefore be dismissed for failure to state a claim upon which relief can be granted. Plaintiff submits that the Complaint conforms to the requirements of F.R.C.P. 8(a) and is sufficient.

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*/ Affidavit of Roy Cohn, p.4. Ostensibly in support of their motions and counterclaim, defendants have filed extravagant and misleading affidavits by the defendant Donald Trump and by his counsel which accuse the United States, in the most inflammatory rhetoric, of bringing the suit without grounds, of attempting to "bludgeon" a settlement, and of various other nefarious activities. While these affidavits have nothing to do with any of the motions before the Court, Motions to dismiss and for a more definite statement are predicated on pleadings alone. We respond to them briefly in a separate memorandum in order to set the record straight.

Under the Federal Rules of Civil Procedure "[the] federal courts are not hampered by the morass of decisions as to whether a particular allegation is one of fact, evidence or law . . . There is no requirement that the pleading state 'facts," or 'ultimate facts,' or 'facts sufficient to constitute a cause of action.'" 2A Moore's Federal Practice ¶813, pp. 1692, 1694. In Conley v. Gibson, 355 U.S. 41, 47-48 (1957), another case of racial discrimination in which defendants filed a motion identical in principle to that filed here, the Supreme Court sustained the Complaint as follows:

> The respondents also argue that the complaint failed to set forth specific facts to support its general allegations of discrimination and that its dismissal is therefore proper. The decisive answer to this is that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. The illustrative forms appended to the Rules plainly demonstrate this. Such simplified "notice pleading" is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues.

The Complaint in this case alleges that the defendants pursue a racially discriminatory policy in the operation of their apartment

buildings. While omitting evidentiary details such as names, dates, places, etc., it clearly advises the defendants of the nature and basic outline of the charges by alleging, in paragraph 5, in "simple, concise, and direct" */ terms four separate categories of the defendants' noncompliance with the Fair Housing Act. It is identical, in terms of nonpleading of evidentiary matter, to a number of other fair housing complaints by the Attorney General brought pursuant to 42 U.S.C. 3613, with respect to which similar motions to dismiss have been uniformly denied. See e.g., United States v. Luebke, 345 F. Supp. 179 (D. Colo. 1972); United States v. Black Jack, Civil Action No. 71-C-372(1), P.H.E.O.H. Rptr. Para. 13,561 (E.D. Mo. March 30, 1972); United States v. Bob Lawrence Realty, Inc., 313 F. Supp. 870 (N.D. Ga. 1970); rel'd order aff'd 474 F. 2d 115 (5th Cir. 1973), cert. den. _____ U.S. ____, 42 L.W. 3195 (Oct. 9, 1973.); United States v. Northside Realty Associates, 324 F. Supp. 287 (N.D. Ga. 1971). **/

*/ FED. R. CIV. P. 8(e)(1).

**/ The Courts have reached the same result in the following unreported cases: United States v. Raymond, Civil Action No. 73-119-CIV-T-H (M.D. Fla. Sept. 5, 1973); United States v. City of Parma, Civil Action No. C-73-439 (N.D. Ohio Sept. 5, 1973); United States v. Robbins, Civil Action No. 73-848 CIV-JE (S.D. Fla. June 22, 1973); 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. A.B. Smythe, Inc., Civil Action No. C-69-885 (N.D. Ohio Nov. 24, 1970); 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

(continued on next page)

The same result has been reached in numerous employment discrimination cases. United States v. Georgia Power Company, 301 F. Supp. 538, 541 (N.D. Ga. 1969); United States v. International Brotherhood of Electrical Workers, Local No. 683, 270 F. Supp. 233, 235 (S. D. Ohio 1967); United States v. Building and Construction Trades Council of St. Louis, 271 F. Supp. 447, 452 (E. D. Mo. 1966).

In Conley v. Gibson, supra, the Court said:

> " . . . in appraising the sufficiency of the complaint we follow, of course, 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." 355 U.S. at 45-46.

See also 2A Moore's Federal Practice ¶12.08, p. 2271-2274 and

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(continued from previous page)
Beach Listing Bureau, Inc., Civil Action No. 70-379-CIV-CF (S.D. Fla. May 5, 1970); United States v. Miller, Civil Action No. 70-40 (D. Md. April 27, 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).

Copies of the Complaints and Orders in the above cases have been attached to this memorandum.

cases there collected. */ A Rule 12(b)(6) motion has the effect of admitting the validity and existence of the claim as stated, but contests plaintiff's right to recover under the law . . . On motion to dismiss, the complaint is to be construed in the light most favorable to the plaintiff." United States v. Georgia Power Company, supra, 301 F. Supp. at 541. In United States v. City of Parma, Civil Action No. 73-439 (N.D. Ohio Sept. 5, 1973), P.H.E.O.H. Rptr. Para. 13,616 the Court, after summarizing the foregoing authorities, added that:

> "It is especially in civil rights disputes that we ought to be wary of disposing of the case on pretrial motions and courts do in fact have a predilection for allowing civil rights cases to proceed until a comprehensive record is available to either support or negate the facts alleged." Sisters of Prov. of St. Mary of Woods v. City of Evanston, 335 F. Supp. 396, 399 (N.D. Ill. 1971).

Consistent with the allegations of the complaint, plaintiff is authorized to adduce proof that defendants have refused to rent dwellings on the basis of race, have required different terms and conditions with respect to the rental of dwellings on the basis of race, made discriminatory statements relating to the rental of dwellings and have represented on account of race that dwellings were

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*/ The test as to sufficiency laid down by Mr. Justice Holmes in Hart v. B. F. Keith Vaudeville Exchange, 262 U.S. 271 (1923) is whether the claim is wholly frivolous. Radovich v. National Football League 352 U.S. 445 (1957) reh. den. 353 U.S. 931 (1957).

unavailable for rental when such dwellings were in fact so available. Defendants can hardly controvert the proposition that if plaintiff proves its allegations, then the defendants will have been shown to have violated 42 U.S.C. 3604(a) through (d) and plaintiff will be entitled to relief. Conley v. Gibson, supra, Cf. United States v. Georgia Power Company, supra, 301 F. Supp. at 541, 543; United States v. Building and Construction Trades Council of St. Louis, supra, 271 F. Supp. at 452.

The authorities cited by defendants do not even remotely support the proposition that the complaint in this case should be dismissed. While plaintiff's authorities arise out of cases involving complaints and suits virtually identical in principle to those here, defendants' authorities involve entirely different kinds of complaints and issues. Even so, the motions to dismiss in several of defendants' cases were denied, and the propriety of general pleadings which are to be liberally construed was recognized in substantially all of them. In those cases in which the complaints were dismissed, that result rested on considerations demonstrably absent from the instant case.

In Pauling v. McElroy, 278 F. 2d 258 (D.C. Cir. 1955), the Court of Appeals sustained the dismissal of a suit to enjoin nuclear testing on the grounds that the plaintiffs lacked standing. The Court explicitly stated that:

"we need not reach possible questions arising out of the facts, well pleaded or otherwise." Id at 254.

The Court recognized by way of dictum that a motion to dismiss does not admit "sweeping legal conclusions cast in the form of factual allegations." In the present case, however, we allege, among other things, that defendants have refused to rent to blacks on account of race - a statement of fact pertaining to defendants' policies which can hardly be characterized as a "legal conclusion". Conley v. Gibson, supra. */

Defendants claim to rely on Thurston v. Setab Computer Institute, 48 F.R.D. 134 (S.D. N.Y. 1969). That case involved a pro se complaint which alleged fraud by the defendants but failed to allege any injury resulting from that fraud. Since Rule 9(b), F.R.CIV.P. explicitly requires that in such cases, "the circumstances constituting fraud . . . shall be stated with particularity," the Court, was compelled to dismiss the action, even though it recognized the general liberal rules of pleading described in this memorandum.

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*/ The McLeneghan, Stewart, and Atlanta Gas cases purportedly relied on by defendants at pages 4-5 of their brief are apparently cited simply because they contain the same observation about "sweeping legal conclusions" as in Pauling. They are all distinguishable on the same ground as Pauling. In the Blackburn case, the Court declined to "accept as true allegations that are in conflict with facts judicially known to the Court." 443 F. 2d at 123. This is of no help to defendants here, for this Court can hardly take judicial notice without proof that the Trumps do or do not discriminate in their rental practices.

But it is well settled that a civil suit by the Attorney General for racial discrimination is not one for fraud subject to Rule 9(b). As the Court said in United States v. Lynd, 321 F. 2d 26, 27 (5th Cir. 1963), in relying on Conley v. Gibson, supra, to sustain a voting discrimination complaint no more specific than the housing discrimination complaint in this case:

> As to the problem of pleading, we adhere to our former ruling that "it is clear that there was no justification for the Court's requiring the government to amend its complaint in this civil rights action to allege specific details of voter discrimination as if this were an action for fraud or mistake under Rule 9, Federal Rules of Civil Procedure."

Accordingly, defendants' analogy to the Thurston decision is unsound.

Finally, defendants cite a group of decisions for the proposition that a general allegation of conspiracy, without more, will not survive a motion to dismiss. */ In the present case, however, no conspiracy is alleged, and it is therefore unnecessary to plead with particularity such items as intentional wrongdoing and overt acts, which are essential to a civil complaint in conspiracy. Huey v. Barloga, supra, 277 F. Supp. at 871-872. The present action alleges housing discrimination, not conspiracy, and it is well established that conduct with a racially discriminatory effect violates the Fair Housing Act, irrespective of motion. **/

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*/ Huey v. Barloga, 277 F. Supp. 864 (N.D. Ill. 1971); Stewart v. Havelone, 283 F. Supp. 842 (D. Neb. 1968).

**/ United States v. Pelzer Realty Co., 484 F. 2d 438 (5th Cir. 1973); United States v. Real Estate Dev. Corp., 347 F. Supp. 776 (N.D. Miss. 1972) and see Griggs v. Duke Power Co., 401 U.S. 424 (1971).

We believe that the foregoing demonstrates that none of the authorities relied on by defendants stands for any proposition at issue in this case. Since complaints such as that in this case have been uniformly sustained in suits by the Attorney General under the Fair Housing Act and similar statutes, the motion to dismiss should be denied.

II. Motion for More Definite Statement

Defendants' Motion for More Definite Statement requests specific facts as to the persons, buildings and dates that were involved in the alleged violations of 42 U.S.C. 3604. Plaintiff submits that such information amounts to evidentiary detail which should be obtained through discovery. Rule 12(e) on which defendants' motion is based, "is designed to strike at unintelligibility rather than want of detail . . .. If the pleading meets the requirements of Rule 8 and fairly notifies the opposing party of the nature of the claim, a motion for a more definite statement will not be granted." 2A Moore's Federal Practice ¶12.18, p. 2389, Della Vecchia v. Fairchild Engine Co., 171 F. 2d 610 (2d Cir. 1968). As the Court of Appeals for this Circuit observed in Michael v. Clark Equipment Co., 380 F. 2d 351, 352 (2d Cir. 1967), motions of this kind ostensibly designed to "get the plaintiff's pleading into better shape," are often a waste of time, especially since evidentiary facts can easily be elicited through discovery and frivolous suits disposed of by a motion for summary judgement.

It is not the function of a Motion for a more definite statement to discover evidence. Nixa v. Hayes, 55 F.R.D. 40 (E.D. Wis. 1972). Accordingly, courts have repeatedly held in cases involving racial discrimination that the complaint need not plead evidence. The Complaint in this action is identical, in terms of non-pleading of evidentiary matter, to a number of other fair housing complaints by the Attorney General brought pursuant to 42 U.S. 3613, with respect to which motions for a more definite statement have been filed on a wide variety of grounds. All of these motions have been denied, the Court holding in each instance that additional clarification or evidentiary allegations were unnecessary. See e.g., United States v. Bob Lawrence Realty, Inc., 313 F. Supp. 870 (N.D. Ga. 1970); United States v. Northside Realty Associates, 324 F. Supp. 287 (N.D. Ga. 1971); United States v. City of Black Jack, Civil Action No. 71-C-372(1), P.H.E.O.H. Rptr. Para. 13,561 (E.D. Mo. March 30, 1972); United States v. City of Parma, P.H.E.O.H. Rptr. para. 13,616 (N.D. Ohio 1973). */ As the Court said in Lawrence, supra:

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*/ The Courts have reached the same result in the following unreported cases: United States v. Mrs. Dean Miles, et al., Civil Action No. CA-3-7243-E (N.D. Tex. Sept. 5, 1973); United States v. Robbins, Civil Action No. 73-848 CIV-JE (S.D. Fla. June 22, 1973); United States v. Jim Tucker Co., Civil Action No. 72-H-993 (S.D. Tex. Sept. 27, 1972); United States v. J.C. Long, Civil Action No. 71-1262 (D. S.C. April 3, 1972); United States v. Exclusive Multiple Exchange, Civil Action No. C-70-969 (N.D. Ohio Nov. 8, 1971); United States v. Margurette Jones, (Continued on next page)

> We conclude further that the complaint, couched as it is in the very language of the statute, provides adequate notice of the claim made by plaintiff and is not subject to a motion for more definite statement. Any additional information to which defendant is entitled may be obtained by use of the discovery procedures provided by the Federal Rules. United States v. Bob Lawrence Realty, Inc., supra, 313 F. Supp. at 873. (emphasis added)

Likewise in employment discrimination cases brought pursuant to 42 U.S.C. 2000e-6, (which has a pattern and practice provision substantially identical to 42 U.S.C. 3613) the courts have denied motions for a more definite statement, holding that the Government's complaints clearly advised the defendants of the nature and basic outline of the charges by alleging categories of noncompliance with the law and not evidentiary details. United States v. Gustin-Bacon Division, 426 F. 2d 539, 543 (10th Cir. 1970), cert. den. 400 U.S. 832 (1970); United States v. Georgia Power Co., supra, 301 F. Supp. at 543-44; United States v. International Brotherhood of Electrical Workers, Local No. 683, 270 F. Supp. 233, 235 (S.D. Ohio 1967);

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Civil Action No. 71-H-279 (S.D. Tex. April 30, 1971); United States v. Chirico, Civil Action No. 70-1851 (E.D. Pa., August 12, 1970); United States v. Gilman, Civil Action No. 70-Civil 1967 (S.D. N.Y. July 28, 1970); United States v. PMC Development Co., Inc., Civil Action No. 13578 (N.D. Ga. July 28, 1970); United States v. Palm Beach Realty Listing Bureau, Inc., Civil Action No. 70-379-CIV-CF (S.D. Fla., May 5, 1970); United States v. Arco Inc., Civil Action No. 70-29 (W.D. Tenn. March 20, 1970).

Copies of the complaints and orders in the above cases have been attached to this memorandum.

United States v. Building and Construction Trades Council of St. Louis, 271 F. Supp. 447, 454 (E.D. Mo. 1966). See also, United States v. Lynd, 321 F. 2d 26, 27 (5th Cir. 1963) (voting discrimination) (district judge abused discretion by granting motion for a more definite statement on theory that voting discrimination case was equivalent to suit for fraud).

It is well settled that "Rule 12(e) does not require the pleader to set out in detail the facts upon which he bases his claim, . . . nor may the Rule be employed as a means of discovery." Michigan Gas & Electric Co. v. American Electric Power Co., 41 F.R.D. 462, 464 (S.D. N.Y. 1966); 4 Moore's Federal Practice §12.18, pp. 2395-96. The test is whether the complaint is "capable of being answered." Acoustica Associates v. Powertron Ultrasonic Corp., 4 F.R. Serv. 2d 12e. 241, case 1 (E.D. N.Y. 1961). Defendants are hardly in a position to claim that a complaint alleging, among other things, that defendants have refused to rent apartments on account of race and have misrepresented their availability on account of race, is incomprehensible to them.

The defendant Donald Trump has denied discrimination in his affidavit. His counsel, Mr. Cohn, has sworn that "it appears certain that they */ will be entitled to no relief" and, further, that:

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*/ Although Mr. Cohn consistently refers to the Government in the plural, we expressly disavow the royal "we".

> " these defendants do not discriminate in the renting of their apartments and that the Government's charges are totally unfounded."

Being so committed under oath, the defendants can surely answer the Complaint, deny the allegations, and put us to our proof, instead of engaging in the "barristerial shadow boxing" to which motions for a more definite statement are prone. Lincoln Laboratories v. Savage Laboratories, 26 F.R.D. 141, 142-143 (D. Del. 1960).

III. Defendants' Counterclaim

Defendants' purported counterclaim, which is rather cryptically pleaded and has apparently been presented to the Court even though defendants seek dismissal of the main action and have not answered, alleges in substance that plaintiff has defamed defendants by causing two New York newspapers to publish false information about the suit, to defendants' pecuniary damage. It seeks damages in the modest amount of $100,000,000. On its face, it appears to be a claim for damages for libel or slander. Read in the most generous way possible, and in conjunction with the Cohn and Trump affidavits, it could conceivably be construed as alleging abuse of process. Either way, the Court has no jurisdiction of the claim, and it should be dismissed as the United States is not subject to suit for damages for libel, slander, or abuse of process. 28 U.S.C. 2680(h).

This Court's jurisdiction to grant relief against the United States "depends wholly upon the extent to which the sovereign has waived its immunity to suit, and such waiver cannot be implied but must be unequivocally expressed." United States v. Sherwood, 312 U.S. 584 (1941); United States v. King, 395 U.S. 1, 4 (1969); United States v. Clark, 8 Peters. 436, 33 U.S. 436 (1834).

Despite the express requirement of Rule 8(a) that a counterclaim contain "a short and plain statement of the grounds upon which the court's jurisdiction depends," defendants' counterclaim contains no such statement. The reason is plain: this Court has no jurisdiction of defendants' claim.

Under the Federal Tort Claims Act, 28 U.S.C. §1346(b) and Ch. 171, this Court does have jurisdiction of actions against the United States "for money damages . . . for injury or loss of property . . . caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his employment . . . ." 28 U.S.C. §1346(b). However, the Tort Claims Act expressly provides that it shall not confer jurisdiction of actions against the United States on "[a]ny claim arising out of . . . abuse of process, . . . libel [or] slander . . . ." 28 U.S.C. §2680(h). In sum, ". . . the United States is not liable for the deliberate torts of its agents of the kind alleged." Wessly v. General Services Administration, 341 F. 2d 275, 276 (2d Cir. 1964). See also, Baca v. United States, 467 F. 2d 1061, 1063 (10th Cir. 1972); Smith v. DiCova, 329 F. Supp. 439 (E.D. N.Y. 1971); DiSilvestro v. United States, 181 F. Supp. 860 (E.D. N.Y. 1960); Teplitsky v. Bureau of Compensation, U.S. Department of Labor, 288 F. Supp. 310, 312 (S.D. N.Y. 1968); and Benjamin v. Ribicoff, 205 F. Supp. 532, 533 (D. Mass. 1962).

That defendants' alleged claim is asserted as a counterclaim here, instead of as an independent action, is immaterial. Rule 13(d) of the Federal Rules of Civil Procedure expressly provides that "[t]hese rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the United States . . . ."

Moreover, even if a claim against the sovereign for damages for defamation or abuse of process were cognizable in this Court, this counterclaim would not be.*/ "With the exception of a compulsory counterclaim which asserts a matter of recoupment and a set-off, neither a permissive nor a compulsory counterclaim may be maintained against the United States unless it has given specific statutory consent." 3 Moore's Federal Practice, 2d ed. 313-28; United States v. Shaw, 309 U.S. 495 (1939); United States v. Northside Realty Associates, 324 F. Supp. 287, 292 (N.D. Ga. 1971). No consent has been given to claims, or counterclaims, such as this.**/

*/ Were such a claim within the Tort Claims Act jurisdiction, it would nonetheless be jurisdictionally defective for want of compliance with the requirements of 28 U.S.C. §2675(a), which bars a tort action against the United States "unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing . . . ."

**/ The total absence of any foundation in law for defendants' purported counterclaim is compounded by the technical but significant fact that this extraordinary pleading has not been signed "by at least one attorney of record in his individual name," as required by Rule 11,

(footnote continued next page)

* * *

This is not the first time that a large real estate company has sought to strike back flamboyantly against the United States for seeking to bring its housing practices before the courts. In United States v. Northside Realty Associates, Inc., 324 F. Supp. 287 (N.D. Ga. 1971), the defendants made essentially the same baseless motions to dismiss and for a more definite statement here presented by the Trumps, and also sued for damages. More temperate than the Trumps, Northside and its president, Ed Isakson, only sought not less than $100,000 per each defendant, a substantial enough amount but only one tenth of one per cent of what the Trumps would like. Although a similar press release was issued, and received considerable

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F.R.C.P.. That salutary Rule declares, in pertinent part:

> The signature of an attorney constitutes a certificate by him that he has read the pleading; that to his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served.

See American Automobile Ass'n. v. Rothman, 104 F. Supp. 655 (E.D. N.Y. 1952); American Automobile Ass'n. v. Rothman, 101 F. Supp. 193 (E.D. N.Y. 1951); and United States to Use of and for Benefit of Foster Wheeler Corporation v. American Surety Co. of New York, 25 F. Supp. 225 (E.D. N.Y. 1938).

play,*/ Northside's counterclaim contained no count for libel and was limited to abuse of process.**/ After denying defendants' motions addressed to the Complaint, the Court dismissed the counterclaim for reasons comprehensively presented in its opinion, 324 F. Supp. 290-293. Despite the minor technical differences between these two counterclaims, they are two of a kind. For the reasons given by the Court in Northside,***/ as well as the additional grounds related in this brief, we ask the Court to dismiss the counterclaim with prejudice so that the parties can address themselves to the one and only real issue in this case, namely, whether defendants have engaged in a pattern and practice of discrimination in housing or have denied equal housing opportunity to a group of persons. 42 U.S.C. 3613.

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*/ Defendant Isakson was the President of the Georgia Real Estate Commission.

**/ Northside's counterclaim was against the Attorney General and his subordinates, but the Court treated it as a claim against the United States.

***/ The Court held, in sum, that the claim did not qualify as a compulsory counterclaim since it did not arise from the same transaction, nor as a permissive counterclaim because the suit was really one against the United States to which the sovereign had not consented. United States v. Faneca, 332 F. 2d 872, 875 (5th Cir. 1964).

CONCLUSION

For the foregoing reasons, plaintiff respectfully requests that defendants' Motions to Dismiss and for a More Definite Statement be denied and that defendants' counterclaim be dismissed with prejudice.

Plaintiff has prepared a proposed Order which is attached to this Memorandum.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Elyse S. Goldweber, an attorney for the plaintiff, hereby certify that I have served a copy of the attached Notice of Motion of the United States to dismiss defendants' counterclaim, a copy of the attached Memorandum of the United States in Opposition to Defendants' Motion to Dismiss, Motion for More Definite Statement and in Support of Plaintiff's Motion to Dismiss the Counterclaim and a copy of the attached Memorandum of the United States in Response to the Affidavits of Donald Trump and Roy Cohn on the defendants by mailing a copy, postage prepaid, to their attorney at the following address:

Roy M. Cohn, Esq.
Saxe, Bacon, Bolan & Manley
39 East 68th Street
New York, New York 10021

This, the 4th day of January, 1974.

Elyse S. Goldweber

ELYSE S. GOLDWEBER
Attorney, Housing Section
Civil Rights Division
Department of Justice
Washington, D. C. 20530

IN THE UNITED STATES DISTRICT COURT FOR THE

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Plaintiff,

v.

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Defendants.

UNREPORTED ORDERS CITED IN THE MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS, MOTION FOR MORE DEFINITE STATEMENT AND IN SUPPORT OF PLAINTIFF'S MOTION TO DISMISS THE COUNTERCLAIM

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

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

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 73-119-Civ-T-H
	)	
GEORGE N. RAYMOND,	)	
	)	
Defendant.	)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND PRELIMINARY INJUNCTION

The United States of America filed this action on March 14, 1973, pursuant to 42 U.S.C.A. §3613 against the Defendant George N. Raymond seeking relief for alleged violations of Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), 42 U.S.C.A. §3601, et seq. The Complaint alleges that the Defendant made dwellings unavailable to persons because of race and color; imposed different terms, conditions, and privileges of rental of dwellings on persons because of race and color; and made statements with respect to the rental of dwellings which indicate a preference, limitation, and discrimination based on race and color. The Complaint further alleges that the Defendant's conduct constitutes a pattern and practice of resistance to the full enjoyment of rights secured by the Fair Housing Act and a denial to groups of persons of rights granted by the Fair Housing Act, which denial raises an issue of general public importance. The Complaint seeks injunctive and affirmative relief. The United States also moved for a preliminary injunction. On April 12, 1973, the Defendant filed a motion to

dismiss the Complaint, or in the alternative, for a more definite statement. Both of Defendant's motions have been denied.

On July 5, 1973, Plaintiff's Motion for a Preliminary Injunction came on for hearing. The Court has considered the testimony and documentary evidence, and the contentions of counsel for both parties. Pursuant to Rule 52 of the Federal Rules of Civil Procedure the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Defendant George N. Raymond owns and operates approximately 50 apartment rental units in St. Petersburg, Florida. He previously owned and operated approximately 20 additional apartment units in St. Petersburg, including the Florene Apartments.

2. All of Mr. Raymond's tenants have been white persons.

3. During May 1972, the Federal Bureau of Investigation, United States Department of Justice, conducted an investigation of allegations that Mr. Raymond was engaged in racially discriminatory housing practices in violation of the Fair Housing Act of 1968. Mr. Raymond was told of the purpose of this investigation. He consented to being interviewed, and furnished a signed statement which was witnessed by Special Agents James Delk Leland and John V. DeNeale. Mr. Raymond admitted pursuing a racially discriminatory policy in the operation of his apartment buildings, as follows:

> My policy is not to rent my apartments to black people. If I rented to black people I would lose the white tenants in my apartment house. In addition, with my plan to sell this apartment house [located at 516 10th Avenue South,] if I had rented to black people, I feel as it I would have lost 1/3 of my investment in this particular property.

* * * * *

> There are no black tenants in any of these apartments and never has been. If a black person wanted to rent an apartment in one of these apartments I would refuse to rent it inasmuch as I would not "break the color line." (Emphasis added)

4. On July 26, 1971, Mr. Raymond rented apartment #4 at the Florene Apartments, 516 10th Avenue South, to Bradford and Gail Sorenson, a white couple, for a one-year period, August 1, 1971, through July 31, 1972. On May 4, 1972, two black females were visiting the Sorensons at their apartment. Mr. Raymond came to the apartment and asked to speak to Mr. Sorenson outside at the garage. Once outside Mr. Raymond told Mr. Sorenson that he wanted the Sorensons to move out of the apartment as soon as possible. Upon being asked by Mr. Sorenson whether or not having two black guests in the apartment had anything to do with their eviction, Mr. Raymond replied in the affirmative. In his signed statement to the Federal Bureau of Investigation, Mr. Raymond admitted this affirmative response.

Mr. Sorenson returned to his apartment and told his wife they were being evicted because they had black female guests. Mrs. Sorenson left the apartment and met Mr. Raymond in front of the building. Mr. Sorenson joined them shortly thereafter. When Mrs. Sorenson asked Mr. Raymond why he was evicting them, Mr. Raymond told her that it was because they had two blacks in their apartment. Mr. Raymond also said he was in the process of selling the apartment building (Florene Apartments) and that the presence of the black females on the premises would decrease the value of the property. Finally, Mr. Raymond stated that another tenant had complained to him regarding the presence of the black females.

Mr. Raymond subsequently sent the Sorensons an eviction notice and they vacated the apartment at the end of May 1972.

5. On May 4, 1972, a white tenant asked Mr. Raymond if he was going to rent a vacant apartment at the Florene Apartments to "colored people" and subsequently told him that she would leave if "colored people" moved into the apartment. In his signed statement to the Federal Bureau of Investigation, Mr. Raymond admitted telling her that he "was not going to rent to colored people."

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this action under 28 U.S.C. §1345 and 42 U.S.C.A. §3613.

2. The Defendant's apartments are dwellings within the meaning of 42 U.S.C.A. §3602(b).

3. 42 U.S.C.A. §3604 (a) and (b) prohibit discrimination against "any person" because of race or color. Discrimination against white persons because of the race or color of their guests is therefore prohibited. Cf. Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 237 (1969); Walker v. Pointer, 304 F.Supp. 56, 57-61 (N.D. Tex. 1969).

4. To prevail on the merits, the United States must show that the Defendant has either:

(a) engaged in a "pattern or practice" of resistance to the full enjoyment of the right to equal housing opportunity; or

(b) denied the right to equal housing opportunity and "such denial raises an issue of general public importance." 42 U.S.C.A. §3613; U.S. v. Bob Lawrence Realty, Inc., 474 F.2d 115, 122-123 (5th Cir. 1973); U.S. v. Hunter, 459 F.2d 205, 216-218 (4th Cir. 1972).

5. To prove a "pattern or practice" of resistance to the full enjoyment of the right to equal housing opportunity, the United States must show more than "an isolated or accidental instance of conduct violative of the Act, but rather, as the term 'resistance' connotes, an intentional, regular, or repeated violation of the right granted by the Act." U.S. v. Hunter, 459 F.2d 205, 217 (4th Cir. 1972). Extrajudicial admissions of a racially discriminatory policy are evidence of a pattern or practice. Cf. U.S. v. West Peachtree Tenth Corp., 437 F.2d 221, 227 (5th Cir. 1971); U.S. v. Real Estate Development Corp., 347 F.Supp. 776, 783 (N.D. Miss. 1972). The Court finds that the Defendant's extrajudicial admissions of a discriminatory policy (Findings of Fact Nos. 3 and 5) coupled with the eviction of a white tenant pursuant to that policy because they had blac. guests (Finding of Fact No. 4) constitute a pattern or practice of discriminatory conduct. The incident was not accidental due to the Defendant's own deliberate act (however impetuous and regretable); and it was not isolated (due to the admitted policy or attitude, corroborated by the absence of any black tenants in the past).

6. With regard to the remedy, "[e]stablished principles of equity dictate that in considering whether to grant injunctive relief a court should impose upon a defendant no restriction greater than necessary to protect the plaintiff from the injury of which he complains." U.S. v. Hunter, 459 F.2d 205, 219 (4th Cir. 1972). Cf. U.S. v. Bob Lawrence Realty, Inc., 474 F.2d 115, 127 (5th Cir. 1973). In this instance, while the Court has concluded that the evidence is sufficient to establish the Government's claim as alleged in the Complaint, including the element of "pattern or practice," the proof does

not justify a finding or conclusion that Defendant has maliciously and repeatedly denied rights guaranteed by the Act or that his present attitude portends a contumacious adherence to his discriminatory policy. Cf. U.S. v. West Peachtree Tenth Corp., 437 F.2d 221, 223 (5th Cir. 1971). Defendant is the proprietor of a small business with offices in his own home. He is not the corporate owner of a large scale apartment complex with a supporting staff of numerous assistants to help in management. Cf. U.S. v. West Peachtree Tenth Corp., supra; U.S. v. Real Estate Development Corp., 347 F.Supp. 776, 779 (N.D. Miss. 1972). Further, the Court notes Defendant's contrite declaration in his testimony at the hearing that he would freely and willingly rent units to any applicant without regard to race or color as required by the Act. Cf. U.S. v. Bob Lawrence Realty, Inc., supra, at 126. Together these factors dictate moderation in framing the injunctive decree so that it "impose[s] upon the defendant no restriction greater than necessary to protect the plaintiff from the injury of which he complains." U.S. v. Hunter, supra. Accordingly, a preliminary injunction in the form that follows is amply suited to the circumstances of this case as contrasted with the facts in Peachtree which had none of the mitigating features present here. U.S. v. West Peachtree Tenth Corp., supra, at 228-231.

PRELIMINARY INJUNCTION

Pursuant to the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED AND DECREED by this Court that, pending further Order of the Court, the Defendant, George N.

Raymond, and his agents, employees, successors, and all persons in active concert or participation with him are enjoined from:

1. Failing or refusing to rent an apartment to any person because of race or color and from making an apartment unavailable to any person because of race or color;

2. Discriminating against any person in the terms, conditions, or privileges of rental of an apartment, or in the provision of services or facilities in connection therewith, because of race or color;

3. Making, printing, or publishing, or causing to be made, printed, or published, any notice, statement, or advertisement, with respect to the rental of an apartment, that indicates any preference, limitation, or discrimination based on race or color, or an intention to make such preference, limitation, or discrimination;

4. Representing to any person because of race or color that an apartment is not available for inspection or rental when such apartment is in fact available.

IT IS FURTHER ORDERED that the Defendant shall forthwith adopt and implement the following affirmative program to correct the effects of his past discriminatory practices:

1. Within ten (10) days of this Decree, Defendant shall permanently post a notice, or notices, at places clearly visible to rental applicants, stating that Defendant's apartments will be rented without regard to race or color. At least one such notice shall be posted at each of his several apartment complexes.

2. The Defendant shall forthwith fully instruct all of his employees, if any, with respect to the provisions of this Decree and with respect to their obligations thereunder. Upon

hiring a new employee, Defendant shall explain the contents of this Decree to him and advise him that he is subject to all the requirements contained herein.

3. In the event that a firm, association, company, corporation, or other person is engaged by Defendant to act as a real estate agent, referral agency, or otherwise manage or promote rentals of apartments for the Defendant, such firm association, company, corporation, or person shall be notified by Defendant that apartments are rented without regard to race or color.

IT IS FURTHER ORDERED that ninety (90) days after the entry of this Decree, and at three-month intervals thereafter, for a period of two years following the entry of this Decree, the Defendant shall file with this Court, and serve on counsel for the Plaintiff, a report containing the name, address, and the visually observed race of each person who has, within the preceding ninety (90) days:

(a) made written application for the rental of an apartment; and/or

(b) visited the premises as a prospective tenant for the purpose of inspecting an available apartment.

These reports shall additionally contain:

1. whether or not the rental of an apartment was offered to such person;

2. whether or not the rental of an apartment was accepted by each such person;

3. the dates on which each of the foregoing actions were taken.

For a period of two years following the entry of this decree, the Defendant shall maintain and retain any and all

records which are the source of, or contain, any of the information pertinent to Defendant's obligation to report to the Court. Representatives of the Plaintiff shall be permitted to inspect and copy all pertinent records of the Defendant at any and all reasonable times, provided, however, that the Plaintiff shall endeavor to minimize any inconvenience to the Defendant from the inspection of such records.

The Court retains jurisdiction of this action for all purposes, including particularly the purpose of modification of the terms and requirements of this Decree in the event the same should prove inadequate to facilitate an efficient and objective method of determining Defendant's compliance with the statute and the Decree.

IT IS FURTHER ORDERED that counsel for both parties are directed to notify the Court in writing within ten (10) days from the date hereof whether either wishes to present additional evidence at the trial of this cause, or whether, pursuant to Rule 65(a)(2), Federal Rules of Civil Procedure, the hearing on the application for the preliminary injunction previously held may be treated as a trial of the general issues.

DONE and ORDERED at Tampa, Florida, this 5th day of September, 1973.

United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	NO. C 73-439
v.	)	
	)	
CITY OF PARMA, OHIO,	)	
	)	MEMORANDUM OPINION
Defendant	)	AND ORDER

Battisti, C.J.

This is an action brought by the Attorney General on behalf of the United States of America seeking injunctive relief against alleged violations of the Fair Housing Provisions contained in Title VIII of the Civil Rights Act, 42 USC §3601 et seq., by the City of Parma, a municipal corporation established under Ohio law.

The Government's complaint alleges, in substance, that the defendant, acting in accordance with its purported general policy of substantially excluding blacks from residing within its boundaries, prevented the construction of a federally assisted apartment development (under Section 236 of the National Housing Act, 12 USC §1715z-1) which would have offered accommodations to a fair percentage of black tenants and, further, adopted procedures designed to effectively block any possibility of racially integrated federally assisted housing from being built in the City. The effect of the above-described acts, it is alleged, is to perpetuate the virtually all-white population makeup of the defendant City; deny dwellings to blacks purely on account

race; similarly work to deny dwellings to prospective white residents of racially integrated housing purely for racial motives; and interfere with the right and ability of actual and prospective sponsors of federally assisted housing from assisting persons in the exercise and enjoyment of their rights to fair and non-discriminatory housing opportunities.

The complaint charges that defendant's conduct constitutes a pattern of practice of resistance to the full enjoyment of the rights secured by the Fair Housing Act and by the Thirteenth and Fourteenth Amendments to the United States Constitution.

Defendant has moved to dismiss the Government's complaint, pursuant to Rule 12(b) F.R.Civ.P. on the grounds that this Court lacks jurisdiction and that the Government has failed to state a claim upon which relief can be granted. In the alternative, defendant has filed separate motions to require the Government to strike various allegations in its complaint and make others more definite.

Defendant bottoms its motion to dismiss, first, on the argument that it is not subject to suit by the Attorney General pursuant to 42 USC §3613 for the reason that municipalities or political subdivisions of a state are not "persons" against which such a suit may be brought. 42 USC §3613 provides:

> "Whenever the Attorney General has reasonable cause to believe any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any rights granted by this subchapter, or that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance,

> he may bring a civil action in any appropriate United States District Court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this subchapter."

In support of its position, defendant places great reliance on the holdings of the Supreme Court in Monroe v. Pape, 365 US 167 (1961) and City of Kenoscha v. Bruno, _____ US _____, 41 U.S.L.W. 4819 (June 11, 1973). These cases taken together establish that municipalities are not "persons" within the meaning of 42 USC §1983; and, accordingly, are not amenable to suit under that statute, even if only declaratory or equitable relief is sought.[1] Defendant urges that these two cases resolve the issue here in question. Monroe and City of Kenoscha, however, may not be so broadly viewed. Both cases exclusively involved the statutory construction of Section 1983 and were predicated on explicit legislative history peculiar to that statute. In neither case was there any suggestion that the construction given to Section 1983 in regard to "persons" was to apply to other civil rights statutes, particularly one passed nearly one hundred years after the initial enactment of Section 1983.[2] Monroe and City of Kenoscha, therefore, are not dispositive of whether

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1) While the Court in Monroe v. Pape, supra, at p. 187-192 seemed to have expressly held that municipalities were not amenable to suit under Section 1983, the holding was construed in several subsequent decisions by lower federal courts to disallow suits for damages but not suits seeking only equitable relief. See e.g., Schnell v. City of Chicago, 407 F.2d 1084 (7th Cir. 1969). The recent ruling in City of Kenoscha v. Bruno, supra, dispelled any doubts relating to that [illegible] the Monroe holding by squarely ruling that under no circumstances may municipalities be subject to suit under Section 1983.

2) 42 USC §1983 was originally enacted as Section 1 of the Ku Klux Act of April 20, 1871, 17 Stat. 13.

municipalities are "persons" under Section 3613 of the Fair Housing Act. This Court must resolve that issue by adopting a construction of Section 3613 which properly comports with its own particular context.

In determining the meaning or reach of the word "person" in the context of Section 3613 of the Fair Housing Act, it is the express duty of the courts to construe the language so as to give effect to the intent of Congress. United States v. America Trucking Assoc., 310 US 534, 542 (1940). No legislative history has been cited clearly manifesting one way or the other whether municipalities were meant to be covered by the Fair Housing Act. It is clear, however, that when Congress passed Title VIII of the Civil Rights Act of 1968 its purpose was to enact lesiglation so as to deal broadly with those prevalent discriminatory housing practices which were blocking blacks and other racial and national minorities from enjoying full and fair access to decent and desirable housing. Indeed it is explicitly stated in 42 USC §3601 that the purpose underlying the Fair Housing Act is "to provide, within constitutional limitations, for fair housing throughout the United States."

In light of this expansive purpose, and in light of the established canon of statutory construction that civil rights statutes such as the one here under construction should be read broadly in order to fulfill their purposes, See Griffin v. Breckenridge, 403 US 88 (1971); Daniel v. Paul, 395 US 298 (1969); Mayers v. Ridley, 465 F.2d 630 (D.C. Cir. 1972) (en banc); United States v. Real Estate Develop. Corp., 347 F.Supp. 776 (N.D. Miss. 1972), the word "person" must be

construed in such a manner as to foreclose singular loopholes in the coverage of the Fair Housing Act.

Defendant, however, argues that as the term "person" is expressly defined by 42 USC §3602(d) of the Fair Housing Act and since municipalities are not specifically mentioned within the definition there set forth, Congress must have intended to exclude them. 42 USC §3602(d) provides:

> "'Person' includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries."

The Government argues that the term "corporation" in Section 3602(d) should be read to encompass not only private corporations, but public ones as well. Assuming, arguendo, that the term "corporation" is not to be read so broadly, it is nonetheless clear that the definition of "person" as set forth in Section 3602(d) was not meant to be all-inclusive. If Congress had meant the definition of "person" to be limited to the express enumeration of entities in Section 3602(d), it could easily have so stated. Instead the language of Section 3602(d) indicates only that the term "person" should be construed to "include" what is enumerated therein, and not be limited to such enumeration. "The word 'includes' is usually a term of enlargement, and not a limitation." Argosy v. Hernigan, 404 F.2d 14, 20 (5th Cir. 1968) quoting United States v. Gertz, 249 F.2d 662, 666 (9th Cir. 1957). This is plainly the case here.

Accordingly, it is held that a city or municipality is a "person" within the meaning of 42 USC §3613 and is amenable to suit. See Kerr v. Park Homes Assoc. v. City of

Lackawanna, 318 F.Supp. 669, 694 (W.D. N.Y. 1970), aff'd., 436 F.2d 108 (2d Cir. 1970), cert. den., 401 US 1010 (1971); United States v. City of Black Jack, _____F.Supp._____, P.H.E.O.H. Rptr. Para. 13,561 (E.D. Mo. 1972).

Defendant argues secondly that even if it is subject to suit under 42 USC §3613, the Government's complaint must be dismissed for failure to state a claim for relief under the Fair Housing Act. Defendant urges that since it is not being charged with discrimination in the sale or rental of dwellings, 42 USC §3604, or in the financing of dwellings, 42 USC §3605, or in providing access to opportunities in the real estate brokerage services, 42 USC §3606, it cannot, as a matter of law, be deemed to have violated any prohibition contained in the Fair Housing Act.[3] The Government, on the other hand, maintains that the allegations of its complaint clearly and squarely charge defendant with discriminatory housing practices falling within Section 3604 (a) as well as with violations of Section 3617 of the Act.

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3) In support of this contention, defendant has cited to the Court several remarks by various Government and congressional figures made either in the course of congressional hearings on the Act, or in the course of debate on the floor of Congress immediately prior to the Act's passage. E.g. 114 Cong. Rec. 2275, 2279, 2282-2283, 2529 (Remarks of Senator Mondale, Senator Brooke and Senator Tydings) These remarks may be generally characterized as attempts at setting forth the purposes of the Fair Housing Act and the policies underlying it. They focus, as is natural, on the need to pass legislation proscribing discrimination in the housing sector itself. They do not indicate, however, what the impact of the legislation was to be on municipalities, nor do they seem to contemplate the problems presented by this suit.

While it is true that the allegations of the Government's complaint do not charge defendant specifically with refusing to sell or rent dwellings on racial grounds, the prohibitions contained in Section 3604(a) are clearly not so limited. Section 3604(a) not only makes it unlawful to "refuse to sell or rent. . ." a dwelling for racial reasons, but also makes it unlawful to "otherwise make unavailable or deny a dwelling to any person because of race, color, religion, or national origin." (Emphasis added.) This catch-all phraseology may not be easily discounted or de-emphasized. Indeed it "appears to be as broad as Congress could have made it, and all practices which have the effect of denying dwellings on prohibited grounds are therefore unlawful." United States v. Youritas Constr. Co., _____F.Supp._____ P.H.E.O.H. Rptr. Para. 13,582 (N.D. Calif. 1973).

The Government further invokes 42 USC §3617 in support of its complaint. This section makes it unlawful "to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of . . . or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted by Sections 3603, 3604, 3605, or 3606 of this title." 42 USC §3617, although broadly worded, and seemingly endless in scope, has until now received little treatment by the courts.[4]

The Government's complaint, however, fairly alleges that defendant's conduct in barring the construction of

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4) It would seem, however, that Judge Meredith, in passing on the sufficiency of a complaint comparable to the one here at issue in several respects, relied partially on 42 USC §3617 in sustaining the complaint. See United States v. City of Black Jack, supra.

federally assisted housing interfered with the right of actual and propsective sponsors of federally assisted housing to assist persons in exercising their right to equal housing opportunities. This allegation seems to fall within the ambit of Section 3617.[5]

It is well established that a complaint should not be dismissed for failure to state a claim for relief unless it is clear that the plaintiff can prove no state of facts in support of its allegations that could entitle him to relief. See Conley v. Gibson, 355 US 41, 45-46 (1952); Jenkins v. McKeithen, 395 US 411, 421-422 (1969). Moreover, the material allegations of the complaint are to be taken as admitted for purposes of evaluating the sufficiency of the complaint, and the complaint must be liberally construed and viewed in the light most favorable to the plaintiff. Jenkins v. McKeither, supra, 395 US at p. 421. With these rules in mind, it would be entirely inappropriate for this Court to dismiss this complaint summarily. See Kennedy Park Homes

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5) Noteworthy too is Section 3615 of the Fair Housing Act. This section provides, in pertinent part, that:

> ". . . any law of a state or political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid."

In Park View Heights Corp. v. City of Black Jack, 467 F.2d 1208, 1214 (8th Cir. 1972), an action challenging alleged discriminatory zoning by a municipality was expressly sustained as arising under Section 3615.

Assoc. v. City of Lackawarna, N.Y., supra; United States v. City of Black Jack, supra; Park View Heights Corp. v. City of Black Jack, 467 F.2d 1208, 1214 (8th Cir. 1972); Sisters of Prov. of St. Mary of Woods v. City of Evanston, 335 F. Supp. 396, 399 (N.D. Ill. 1971). In the last-cited case, Judge Marovitz so correctly said, at page 399:

> "It is especially in civil rights disputes that we ought to be wary of disposing of the case on pretrial motions and courts do in fact have a predilection for allowing civil rights cases to proceed until a comprehensive record is available to either support or negate the facts alleged."

Accordingly, defendant's motion to dismiss the Government's complaint is denied. Defendant has, in the alternative, moved to strike in their entirety paragraphs four, five, seven, and ten of the Government's complaint, to strike a portion of paragraph nine, and for a more definite statement as to paragraphs five, six, seven, eight, nine, and ten of the complaint. These motions are without merit, and are denied.

IT IS SO ORDERED.

Frank J. Battisti
Chief Judge

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

MINUTE ENTRY:
MAY 15, 1973
WEST, J.

UNITED STATES OF AMERICA

VERSUS

GILLIE G. WATSON, SR., ET AL

CIVIL ACTION

NUMBER 73-97

* * * * *

This matter is before the Court on defendants' motion for a more definite statement. A review of the record indicates that no oral argument is required on this motion.

Since all of the information which the defendants seek through this motion could more properly be obtained by the defendants through the proper use of discovery procedures, and since the complaint, on its face, is couched in language similar to that of the statute involved, and since the Court concludes that the language of the complaint does, in fact, provide adequate notice of the claim made by the plaintiff:

IT IS ORDERED that defendants' motion for a more definite statement be, and it is hereby DENIED.

(SIGNED) E. GORDON WEST

UNITED STATES DISTRICT JUDGE

Douglas M. Gonzales, Esq.

Gillie G. Watson, Sr.

Sumpter B. Davis, III, Esq.

RE: Civil Action 72-H-993
United States of America vs. The Jim Tucker Company, Inc.

9/22/72: In view of answer having been filed, Defendant's Motion for More Definite Statement is denied. Fed. R. Civ.P. 12(e). Clerk shall notify counsel. COB

FILED

JUL 16 1971

JANE P. GORDON, CLER

BY_____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	CIVIL ACTION NO.3284-N
	)	
PELZER REALTY COMPANY, INC., ET AL,	)	
	)	
	)	
Defendants.	)	

ORDER

The Defendants', Pelzer Realty Company, Inc. and William G. Thames, motions to dismiss, filed herein on May 7, 1971, are now submitted. Upon consideration of the motions and the complaint, it is ORDERED that said motions be, and the same are hereby, denied.

DONE this the 16th day of July, 1971.

RE Varner

United States District Judge

MAY 24 1971

CIVIL RIGHTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
213 U. S. COURT HOUSE & CUSTOM HOUSE
MOBILE, ALABAMA 36602

1-097-155

DATE: MAY 18, 1971

TO: Mr. C. S. White-Spunner, Jr., P. O. Drawer E, Mobile, Ala. 36601
Mr. Henry C. Hagen, Housing Section, Civil Rights Division
U. S. Dept. of Justice, Washington, D. C.
Mr. William L. Irons, 1300 City National Bank Building,
Birmingham, Ala. 35203

RE: CIVIL ACTION NO. 6451-71 ADM. NO. _____ CR. NO. _____

UNITED STATES OF AMERICA VS. H. MELVILLE DAVIS, JR., ET AL.,

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You are advised that on the 18 day of MAY 19 71, the following action was taken in the above-entitled case by Judge PITTMAN:

Motion to dismiss filed by defendants on 2/3/71 and submitted on 4/9/71 is DENIED.

Motion for change of venue filed by defendants on 2/3/71 and submitted on 4/9/71 is DENIED.

175-3-7
DEPT. 3 MAY 21 1971 R.A.O. RECORD
CIV. RIGHTS DIV.

WILLIAM J. O'CONNOR, CLERK,
BY _____
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

A.B. SMYTHE COMPANY, INC., and IRENE MICHAEL, et al.,

Defendants

No. C 69-885

MEMORANDUM OPINION AND ORDER

LAMBROS, DISTRICT JUDGE

This cause of action was instituted by the Government under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq. The defendants, A.B. Smythe Company and Irene Michael, now move to dismiss the complaint. The motion is denied in its entirety.

Two basic issues are raised by the defendants' motion to dismiss. One, whether or not the defendants are exempt from the provisions of the Act for the conduct alleged in the complaint because of the exemption provided to any single family house sold or rented by an owner under 42 U.S.C. §3603(b)(1). Two, whether or not 42 U.S.C. §3604(c) is unconstitutional as a violation of the First Amendment.

The first issue arises since the Act does not have a specific effective date for all its provisions but becomes effective in certain stages. Upon enactment, it is applicable to dwellings[1] which have federal assistance or are

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1. Under the Act, a dwelling is defined as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof." 49 U.S.C. §3602(b).

of federal ownership. 42 U.S.C. §3603(a)(1). After December 31, 1968, it applies to all other dwellings, except for two exemptions. 42 U.S.C. §3603(a)(2). One of these exemptions is for any single-family house sold or rented by an owner. 42 U.S.C. §3603(b)(1). After December 31, 1969, the Act applies to any single-family house sold or rented by an owner "if such house is sold or rented...[with] the use in any manner of the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person ...." 42 U.S.C. §3603(b)(1)(A).

The defendants argue that they come within the exemption accorded to the sale or rental of a single-family house for the year of 1969. Particularly, they contend that for the year of 1969, a real estate broker or agent is included within the exemption for a single-family house. They claim that since the sale or rental of a single-family house with the assistance of a real estate broker or agent is specifically included in the Act for the period of time after December 31, 1969, the sale or rental of such a house with the aid of real estate men is implicitly excluded prior to that time.

The Court need not reach the validity of the defendants' contention. The Government alleges that the defendants engaged in discriminatory conduct in regard to vacant land in the Lake Lucerne subdivision and with respect to all the houses in the subdivision. The Court finds that the exemption accorded to a single-family house for the year of 1969 is not applicable to vacant land nor to a subdivision as an entity.

Thus, notwithstanding the alleged exemption, the Government has still stated a claim for relief against the defendants.

As for the second issue, that is the constitutionality of 42 U.S.C. §3604(c), the Court finds that it is constitutional. The section reads as follows:

> "To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination."

The Court finds that the statute is not void for vagueness. This section is not violative of the First Amendment.

The defendants' other contentions in regard to their motion are also without merit.

Accordingly, the motion to dismiss the complaint is denied in its entirety.

Thomas D. Lambros
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 70-1223-Civ-CF

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ABRAHAM GOLDBERG, d/b/a
ISLE OF VENICE APARTMENTS
and LISA ANN APARTMENTS,

Defendants.

ORDER

The United States of America, plaintiff herein, filed the complaint in this case on August 19, 1970, alleging racial discrimination, in violation of the Fair Housing Act, Title VIII of the Civil Right Act of 1968, 42 U.S.C. 3601 et seq., by the defendant in the operation of two apartment buildings he owns and operates in Hollywood, Florida. The defendant has moved this Court to dismiss the complaint on three grounds:

1. failure to join, as an indispensable party, a Negro who was allegedly a victim of the defendant's racial discrimination;

2. failure to state a claim upon which relief can be granted; and

3. failure to state in the complaint sufficient facts to enable the defendant to frame an answer. Defendant has also moved for Summary Judgment.

This Court, having considered the complaint, the affidavits on file herein, and the briefs and arguments of counsel, hereby denies all of defendant's motions.

Defendant shall have until November 9, 1970 to answer the complaint.

It is so ORDERED

This 19 day of October, 1970.

CHARLES B. FULTON

CHIEF JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	:	
	:	
VERSUS	:	CIVIL ACTION NO. 13,573
	:	
PMC COMPANY, INC. OF GLORGIA, et al	:	

O R D E R

The defendants have motions to dismiss, for a more definite statement, and to strike, pursuant to Rule 12 of the Federal Rules of Civil Procedure, pending before this court.

This is a suit brought by the Attorney General on behalf of the United States under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601, et seq. Jurisdiction exists in this court by virtue of 28 U.S.C. §1345. In paragraph 10 of the complaint it is alleged in part:

> The defendants follow a policy and practice of racial discrimination against Negroes with respect to the sale of lots in the properties described in the preceeding paragraphs.

A reading of the complaint clearly shows that a claim is stated sufficient to pass defendants' motion to dismiss, and that the allegations are clear enough to enable defendants to respond. Conley v. Gibson, 355 U.S. 41 (1957); and United States v. Georgia Power Co., 301 F.Supp. 533 (N.D. Ga. 1969). Further, defendants' alleged pre-Act discrimination is not "redundant, immaterial, impertinent, or scandelous matter" subject to a motion to strike. F.T.C. v. Cement Institute, 333 U.S. 683, 705 (1948). Accordingly, all defendants' motions are denied as without merit.

The issues raised by defendants' motion are well-settled and require no discussion beyond that provided in the government's

brief. Following their answer discovery is the proper procedure for defendants to employ in learning more about plaintiff's allegations. Discovery is not to be used to delay further proceedings. Local Rule 10 provides such "procedures shall be commenced promptly, pursued diligently and completed without unnecessary delay and within four months after the answer has been filed...."

So ordered this the 28th day of July, 1970.

/s/ Albert J. Henderson, Jr.
Judge, United States District Court
for the Northern District of Georgia

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 70-379-Civ-CF

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PALM BEACH REALTY LISTING BUREAU, INC.,

Defendant.

ORDER

THIS CAUSE is set for hearing before this Court on Monday, May 11, 1970, at 10:00 A.M. upon motions of the defendant to dismiss the complaint, or in the alternative to strike certain portions thereof, or for more definite statement. In preparation for this hearing the Court has carefully studied the complaint and the motions and has determined that oral argument is unnecessary. Thereupon, it is

ORDERED and ADJUDGED that these motions be and the same are hereby denied. The material sought by the motion for more definite statement are proper subjects for discovery.

DONE and ORDERED at Miami, Florida, this 5th day of May, 1970.

G. CARROLL ATKINS
U. S. DISTRICT JUDGE

cc: U.S. Attorney
Gustave T. Broberg, Jr.

John H. Mitchell, Esquire
Jerris Leonard, Esquire
Frank F. Schreib, Esquire
Walter J. Bennett, Esquire

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, Plaintiff, v. JOSEPH and ROSE MILLER and UNITED INVESTORS MANAGEMENT CORPORATION d/b/a PENNBROOKE TERRACE APARTMENTS, Defendants.	)	CIVIL ACTION NO. 70-40 ORDER

This matter came on for a hearing on April 10, 1970 on the motion of the defendants to dismiss the complaint.

The United States commenced this action under the Fair Housing Act of 1968, 42 U.S.C. 3601 et seq. on January 12, 1970, against the owners and managers of Pennbrooke Terrace, an apartment complex in Suitland, Maryland. The operative portions of the complaint, after allegations of jurisdiction and coverage, read as follows:

> "The defendants follow a policy and practice of racial discrimination against Negroes with respect to the renting of apartments, Pursuant to this racially discriminatory policy; defendants have refused to make apartments available to Negroes and have made statements with respect to the rental

of dwellings that indicate a preference, limitation, or discrimination based on race.

Defendants have rented 1 of the 404 apartment units in the above named building to a Negro tenant, and have retained the one Negro tenant for the purpose of creating a non-discriminatory image.

The conduct described in the preceding paragraphs constitute a pattern and practice of resistance to the full enjoyment of rights secured by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 et seq."

The defendants moved to dismiss the action on the grounds that the complaint does not comply with Section 813 of the Act, 42 U.S.C. 3613. This section provides that the Attorney General, when he has reasonable cause to believe persons to have engaged in a pattern or practice of resistance to the full enjoyment of any rights granted by the Act, may file a complaint "setting forth the facts and requesting such preventive relief . . . as he deems necessary . . . ."

The defendants contended, in addition, that the complaint failed to meet the requirements of Rule 8(a)(2), Federal Rules of Civil Procedure, which provides for a "short and plain statement of the claim," and did not state a claim upon which relief could be granted. Rule 12(b)(6), Fed. R. Civ. P.

Upon due consideration, the Court finds the complaint states a claim upon which relief may be granted, complies with 42 U.S.C. 3613, and is sufficient to resist a motion to dismiss. The factual details underlying the broad allegations of the complaint are available to defendants by means of pretrial discovery, Rules 26-37, Fed. R. Civ. P.

The motion to dismiss is denied.

ORDERED, ADJUDGED AND DECREED this 30th day of April, 1970.

/s/ R. Dorsey Watkins

R. DORSEY WATKINS
United States District Judge

Agreed as to form:

/s/

MIRIAM R. EISENSTEIN
Attorney for Plaintiff

/s/

NELSON DECKELBAUM
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil Action No. 21470
	)	
H. G. SMITHY COMPANY, et al.,	)	
	)	
Defendants	)	

ORDER

This matter came on for a hearing on April 17, 1970, on all defendants' motions to dismiss the action and for summary judgment, and on the motion of the defendants H. G. Smithy Company, Victor and Lydia Carone, and Mrs. Lewis Armstrong for a severance. The motions having been fully briefed, and a full hearing having been held in open court, now therefore it is by the Court this 10th day of APRIL, 1970,

ORDERED that the motion of defendant H. G. Smithy Company to dismiss and in the alternative for summary judgment be and it hereby is denied, and it is

FURTHER ORDERED that the motion of the Chillum Heights corporate defendants and Sidney Rothstein to dismiss or in the alternative for summary judgment be and it hereby is denied, and it is

FURTHER ORDERED that the motions of H. G. Smithy Company, Victor and Lydia Carone, and Mrs. Lewis Armstrong for a severance be and they hereby are denied, and it is

FURTHER ORDERED that the motions of defendants Victor and Lydia Carone and Mrs. Lewis Armstrong to dismiss and

in the alternative for summary judgment be and they hereby are denied without prejudice to said defendants to renew their motions for summary judgment when the plaintiff has completed its discovery, and it is

FURTHER ORDERED that all defendants shall have until May 18, 1970, to answer the complaint.

W. DORSEY WATKINS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff, vs. MANAGEMENT CLEARING, INC., a corporation, Defendant.	NO. CIV. 70-23-PHX. (CAM) O R D E R

The defendant's Motion to Dismiss based on the argument that 42 U.S.C. 3613 is an unconstitutional delegation of legislative authority, that the Court lacks jurisdiction because the complaint fails to allege or show any facts or circumstances under which the Attorney General is authorized to file suit and that the complaint fails to state a claim upon which relief can be granted, having been fully heard in oral argument and the Court being fully advised in the matter,

IT IS HEREBY ORDERED that the Motion to Dismiss is denied.

DATED this 8th day of April, 1970.

/s/ C A. Muecke
United States District Judge

MAY 24 1971

CIVIL RIGHTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
213 U. S. COURT HOUSE & CUSTOM HOUSE
MOBILE, ALABAMA 36602

1-097-155

DATE: MAY 18, 1971

TO: Mr. C. S. White-Spunner, Jr., P. O. Drawer E, Mobile, Ala. 36601
Mr. Henry C. Hagen, Housing Section, Civil Rights Division
U. S. Dept. of Justice, Washington, D. C.
Mr. William L. Irons, 1300 City National Bank Building,
Birmingham, Ala. 35203

RE: CIVIL ACTION NO. 6451-71 ADM. NO. _____ CR. NO. _____

UNITED STATES OF AMERICA VS. H. MELVILLE DAVIS, JR., ET AL.,

****

You are advised that on the 18 day of MAY, 19 71, the following action was taken in the above-entitled case by Judge PITTMAN:

Motion to dismiss filed by defendants on 2/3/71 and submitted on 4/9/71 is DENIED.

Motion for change of venue filed by defendants on 2/3/71 and submitted on 4/9/71 is DENIED.

175-3-7
DEPT.
3 MAY 21 1971
R.A.O.
CIV. RIGHTS DIV.
RECEIVED

WILLIAM J. O'CONNOR, CLERK,
BY _____
Deputy Clerk.

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff,

- v -

70-Civ.1967

ALVIN GILMAN and MITCHELL EISEN,
d/b/a Gilman-Eisen Company,

Defendants.

APPEARANCES:

WHITNEY NORTH SEYMOUR, JR.
UNITED STATES ATTORNEY
Attorney for the United States of America
Southern District of New York
By: MICHAEL C. SILBERBERG, ESQ.
Assistant United States Attorney
Of Counsel

GILBERT & GILBERG, ESQS.
Attorneys for Defendants
22 West First Street
Mount Vernon, N. Y. 10550
By: David C. Gilberg, Esq.
For the Firm

#36987

U.S. DISTRICT COURT
FILED
JUL 28 1970
S.D. OF N.Y.

CROAKE, D. J.

MEMORANDUM

This is an action brought by the Attorney General of the United States, pursuant to Title VIII of the Civil Rights Act of 1968 (82 Stat. 81), 42 U.S.C. § 3601, et seq.,

EXHIBIT 9

which seeks to enjoin a "policy and practice" of racial discrimination by defendants with respect to the rental of apartments in buildings owned and operated by them at 555 McLean Avenue, Yonkers, New York, and 2-4 Windsor Terrace, White Plains, New York. The complaint commencing this action was filed on May 14, 1970 and no answer has yet been filed by the defendants.

Defendants, Alvin Gilman and Mitchell Eisen, bring on this motion, pursuant to Rule 12(e) of the Federal Rules of Civil Procedure, seeking an order for a more definite statement of the complaint on the ground that ". . . fails to comply with the provisions of § 3613 of the Public Health and Welfare Law (being Public Law 90-284, Title VIII, § 813, effective April 11, 1968), and that the complaint in this action fails to set forth any facts as specifically required by such law, but rather, conclusions . . . so vague and ambiguous that the defendants should not reasonably be required to prepare a responsive pleading . . ."

Rule 8(a) of the Federal Rules of Civil Procedure provides that federal pleadings shall contain no more than

a "short and plain statement of the claim showing that the pleader is entitled to relief . . .". A more definite statement of a plaintiff's claim, as requested by defendants in the instant case, is required by Rule 12(e) of the Federal Rules of Civil Procedure only when the pleading to which it is addressed is "so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading . . ."

A reading of the complaint in this case reveals that the allegations contained therein are neither vague nor ambiguous. The action brought by the Government seeks to enjoin a "policy and practice" of racial discrimination by defendants. In paragraph 4 of the complaint such "policy and practice" is alleged to include:

1) Making statements indicating that apartments will not be rented to Negroes;

2) Representing to Negroes that apartments are unavailable for rental when in fact apartments are available; and

3) Discriminating against Negroes in the terms and conditions of rental.

This Court finds that the complaint is plainly in conformity with the requirements of Rules 8(a) and is patently sufficient on its face. It should be further noted that motions for more particular statements are not favored since pleadings in the federal courts are required only to give adequate notice of the claim, which the complaint in the present case clearly satisfies. See Nagler v. Admiral Corp., 248 F.2d 319 (2d Cir. 1957); Fairmont Foods Co. v. Manganello, 301 F. Supp. 832 (S.D.N.Y. 1969); MacDonald v. Astor, 21 F.R.D. 159 (S.D.N.Y. 1957).

Defendants advance the argument, in support of their motion, that the provisions of § 813 of the Civil Rights Act of 1968, 42 U.S.C. § 3613, are in derogation of Rule 8 of the Federal Rules of Civil Procedure and require evidentiary facts to be pleaded. No cases are cited in support of this proposition.

The courts have consistently refused to adopt the argument proposed by defendants and to construe this section as being in derogation of the requirements of Rule 8 that a complaint shall contain no more than a "short and plain statement of the claim showing that the

"pleader is entitled to relief." In three recent cases, other federal district courts have rejected similar arguments and sustained complaints under Title VIII which are nearly identical to the one in this case. See United States v. Bob Lawrence Realty Co., Inc., et al. (N.D.Ga. 1970, civil action # 13468); United States v. Palm Beach Realty Listing Bureau, Inc. (S.D.Fla. 1970, civil action # 70-379); United States v. Joseph and Rose Miller, et al. (D. Md. 1970, civil action # 70-40).

Recently, the Tenth Circuit Court of Appeals in United States v. Gustin-Bacon Division, et al., _____ F.2d _____ 10th Cir. 1970, No. 71369) construing a similar provision in Title VII of the Civil Rights Act of 1964, governing discrimination in employment, held that it did not require the Attorney General to plead evidentiary matter. As stated by the Court:

> "By construing Section 2000(e)(6)(a) as a trial court interpreted, is to reinstate a type of fact pleading which was eradicated by the current federal rules. Rule 8 of the Federal Rules of Civil Procedure was originally designed to circumvent the morass caused by the Code pleading requirement of pleading facts, constituting a cause of action. As Professor Moore points out, the requirement that facts be pleaded is illusory, and unsound; and results in a battle over

"'the form of pleading that does not advance the action to an adjudication on the merits.' 2(a) MOORE'S FEDERAL PRACTICE § 8.12 at 1092. To reinstate this type of pleading even in the limited circumstances here involved is to directly contradict the spirit of Rule 8(a) and the general concept of modern federal pleadings. We find no suggestion in the Civil Rights Act of enactment which supports appellees' contention that Congress intended to require the Attorney General to revert to a detailed pleading of evidentiary matters."

Accordingly, defendants' motion is denied in its entirety.

SO ORDERED.

Dated: New York, N. Y.
July 28, 1970

Thomas F. Croake

THOMAS F. CROAKE
U. S. D. J.

SOUTHERN DISTRICT OF TEXAS
OFFICE OF THE CLERK

V. BAILEY THOMAS
CLERK

Houston, Texas
May 4, 1971

Re: CA 71-H-279 United States vs Margurette Jones, et al

Mr. Anthony J. P. Farris
United States Attorney
Houston, Texas

Messrs. Vinson, Elkins, Searls & Smith
First City National Bank Bldg
Houston , Texas 77002

Gentlemen:

Judge Carl O. Bue, Jr. has entered the following order in the above case:

"4-30-71: Defendants motion for more definite statement is denied since plaintiff's complaint is sufficient pursuant to Rule 8, F.R.C.P. The information defendant seeks can be more adequately secured by ordinary discovery methods. Clerk will notify counsel.

COB"

Yours very truly,

V. Bailey Thomas, Clerk

By Albert E. Anderson, Deputy
Albert E. Anderson

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, Plaintiff	:	CIVIL ACTION
v.	:	
IGNATIUS J. CHIRICO, doing business as SIDDALL REAL ESTATE COMPANY,	:	
Defendant	:	NO. 70-1851

MEMORANDUM AND ORDER

FULLAM, J. August 12, 1970

This is a suit brought under the Civil Rights Act of 1968, 42 U.S.C. §3601, et seq., by the United States of America to enjoin racial discrimination in the rental and sale of housing. The complaint states that defendant follows a policy of furthering segregation in housing and has refused to make available dwellings and negotiate for the sale or rental of housing to Negroes on account of their race. It also alleges that defendant has made statements to the effect that he would not make dwellings available to Negroes in at least one white residential area. Defendant has moved for a more definite statement under Fed.R.Civ.P. 12(e) requesting that the persons with whom he has failed to negotiate and to whom he made statements of racial preference be named, and the specific occasions when such discriminatory acts occurred, and the properties involved be identified.

granted unless the complaint is so unintelligible that the defendant cannot frame a responsive pleading to it. As long as the complaint gives notice of the nature of the claims, it is sufficient. See Schaedler v. Reading Eagle Publication, Inc., 370 F.2d 795 (3rd Cir. 1967). Complaints based on statutes which prohibit discrimination against a general class of citizens need only allege that such a pattern of discrimination has been followed by the defendant and the general way in which he has fostered such discrimination. United States v. Building and Construction Trades Council of St. Louis, 271 F.Supp. 447 (E.D.Mo. 1966); United States v. International Brotherhood of Electrical Workers, 270 F.Supp. 233 (S.D. Ohio 1967) (discrimination in employment under 42 U.S.C. §2000, et seq.); see United States v. Gray, 39 U.S.L.W. 2057 (D.C.R.I. filed July 14, 1970). Specific instances of discrimination relied on by the government may be determined through discovery.

ORDER

AND NOW, this 12th day of August, 1970, it is ORDERED that defendant's motion for more definite statement is DENIED.

John P. Fullam
J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff	)	No. C 70-969
v.	)	
EXCLUSIVE MULTIPLE EXCHANGE, et al., Defendants	)	O R D E R

LAMBROS, DISTRICT JUDGE

Upon consideration, the motion of the defendants for a more definite statement is denied. As stated by the Court in the case of United States v. Bob Lawrence Realty, Inc., 313 F.Supp. 870 (N.D.Ga. 1970) with respect to a similar motion:

> "[T]he complaint, couched as it is in the very language of the statute, provides adequate notice of the claim made by plaintiff and is not subject to a motion for more definite statement. Any additional information to which defendant is entitled may be obtained by use of the discovery procedures provided by the Federal Rules." Id. at 873; see also United States v. Chirico, Case No. 70-1851 (E.D.Pa. Aug. 12, 1970)

IT IS SO ORDERED.

Thomas D. Lambros
United States District Judge

DATED: 12/1/70

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA)
)
Plaintiff)
)
v.) CIVIL ACTION
)
ARCO, INC., et al) NO. C-70-29
)
Defendants)

44

DOCKETED
MAR 2 1970
CIVIL RIGHTS

ORDER

In this action brought by the United States pursuant to Title VIII of the Civil Rights Act of 1968, 42 United States Code, §3601, et seq., defendants Robert F. Baird, d/b/a Bair's Realty Company, Edward Davis, d/b/a Edward Davis Realty Company, and Cornette Realty, Inc. have moved for a more definite statement of the allegations of plaintiff's Complaint, pursuant to Rule 12(e) of the Federal Rules of Civil Procedure.

The relevant paragraph of the Complaint alleges:

> Pursuant to a policy and practice, the defendants have for profit induced and attempted to induce the owners of certain dwellings, occupied by white persons, located in the Cherokee Heights subdivision in Memphis, Tennessee, to sell those dwellings by representations regarding the entry and prospective entry of Negroes into the neighborhood. This conduct of the defendants is in violation of Section 804(e) of the Civil Rights Act of 1968, 42 U.S.C., §3604(e).

In the present Motions, defendants seek a more definite statement indicating the dates, places, and particular circumstances of the alleged acts and the names and addresses of the persons whom defendants allegedly induced or attempted to induce to sell their dwellings.

The Motions came on for hearing on March 13, 1970, and the Court, after full consideration of the issues, orders as follows:

The Motions of defendants Robert F. Baird, d/b/a Bair's Realty Company, Edward Davis, d/b/a Edward Davis Realty Company, and Cornette Realty, Inc., for a more definite statement are overruled. Defendants shall file answers to the Complaint on or before March 30, 1970.

So ORDERED this 20 day of March, 1970.

[signature]
United States District Judge

A TRUE COPY.
ATTEST:
W. LLOYD JOHNSON, Clerk
By [signature] D.C.

IN THE U TED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SEP 7 1973
JOSEPH M. McELROY, JR., CLERK
By [illegible] Deputy

UNITED STATES OF AMERICA

VS.

MRS. DEAN MILES, d/b/a
DEAN MILES REALTY, et al.

CIVIL ACTION NO. CA 3-7243-E

ORDER

This matter is before the Court upon defendants' motions for a more definite statement. The pleading in question is the Complaint plaintiff filed under the 1968 Civil Rights Act, 42 U.S.C. 3601 et seq., alleging discrimination in housing.

After reviewing the Complaint and the authorities cited by both parties in support of their respective positions, the Court concludes as follows:

With respect to the motions for a more definite statement, the plaintiff has provided sufficient notice to the defendants of the Government's claims to enable them to frame a responsive pleading. The Complaint, paraphrasing the language of the statute itself, meets the requirements of the Federal Rules of Civil Procedure and is not subject to a motion for more definite statement. United States v. Bob Lawrence Realty, Inc., 313 F.Supp. 870, 873 (N.D. Ga. 1970). The Federal Rules provide ample opportunity for the defendant to discover the facts of plaintiff's case following joinder of the issue.

In consequence of this Court's conclusions, above, defendants' motions for a more definite statement is denied.

Entered this 7 day of September, 1973.

Halbert B. Woodward
UNITED STATES DISTRICT JUDGE

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

Civil Action No. 71-1262

FILED

APR 6 1972

MILLER C. FOSTER, JR., CLERK

UNITED STATES OF AMERICA,

Plaintiff,

-versus-

J. C. LONG, individually and as Executor for the ESTATE OF FRANK J. SOTTILE, and THE WORTH AGENCY, a partnership,

Defendants.

ORDER

This matter is before the court upon defendants' Motion for a More Definite Statement. The pleading in question is the within Complaint plaintiff filed under Title VIII of the Civil Rights Act of 1968, alleging discrimination in housing.

After reviewing the Complaint and the authorities cited by both parties in support of their respective positions, it is concluded that plaintiff provided sufficient notice to the defendants of the Government's claims to enable them to frame a responsive pleading. Although plaintiff's Complaint is couched in general terms, and in part follows the language of the statute, it does acquaint the defendants with the character of the violations charged. Such a pleading meets both the requirements of the Federal Rules of Civil Procedure, Burris v. Texaco, Inc., 361 F.2d 169, 175 (4th Cir. 1966); United States v. Bruce, 353 F.2d 474 (5th Cir. 1965), and 42 U.S.C.A. § 3613, the statute under which

it was filed.[1] See, Conley v. Gibson, 355 U.S. 41 (1957). United States v. Gustin Bacon, 426 F.2d 539 (10th Cir. 1970); United States v. Lynd, 301 F.2d 818 (5th Cir. 1962). Moreover, since the Federal Rules of Civil Procedure provide ample opportunity for the defendants to discover the facts of plaintiff's case following the joinder of issue and because the defendants have already secured two extensions of time in which to frame their responsive pleading it is concluded that the defendants should respond to the Complaint in this case within fifteen days of the entry of this Order.

AND IT IS SO ORDERED.

Charles E. Simons, Jr.
UNITED STATES DISTRICT JUDGE

#2.

Aiken, South Carolina

March 31, 1972.

---

[1] The only ruling that was found which might support a different conclusion is contained in the case of United States v. Gustin-Bacon, 302 F.Supp. 759 (D.Kan. 1969); but that ruling by the District Court was reversed on appeal. 426 F.2d 539 (10th Cir. 1970).

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
V.	)	CIVIL ACTION NO. 72-H-993
THE JIM TUCKER COMPANY, INC., Defendant.	)	

O R D E R

Summary judgment is not a favored resolution of legal conflicts, and where there are genuine issues as to material facts, viewing the inferences in the light most favorable to the party opposing a motion, a motion for summary judgment must be denied. See, e.g., United States v. Diebold, 369 U.S. 654, 8 L.Ed.2d 176, 82 S.Ct. 993 (1962); Poller v. Columbia Broadcasting System, 368 U.S. 464, 7 L.Ed.2d 458, 82 S.Ct. 486 (1962); Harvey v. Great Atlantic and Pacific Tea Co., 388 F.2d 123 (5th Cir. 1968). The record is clear that the defendant's position is that it has not violated the law in the past by engaging in a pattern or practice of discrimination. Since implementing an Equal Opportunity Program in mid 1972, alleges the defendant, non-discriminatory practices will be even more vigorous in the future with severe actions being taken against non-complying employee-agents. On this record, concludes the defendant, there is no showing of a substantial threat of recurrent future violations which is the prerequisite to an injunction. United States v. W. T. Grant Co., 345 U.S. 629, 633 (1953); United States v. Oregon State

Medical Society, 343 U.S. 326, 333 (1952); United States v. Hunter, 459 F.2d 205 (4th Cir. 1972).

Accepting, but not deciding, the defendant's proposition of law, it is clear that the "burden is a heavy one" upon the defendant to show that there is no such reasonable expectation. W. T. Grant Co., supra, 345 U.S. at 633, 97 L.Ed. at 1309. The plaintiff disputes the defendant's position with respect to both past violations and contends that an injunction is necessary, not only to ensure that Mr. Tucker obeys the law, but also to ensure that his agents do so. The affidavits and materials submitted support inferences favorable to the plaintiff, and it appears to this Court that genuine issues do exist as to facts material to alleged past practices as well as to the need for injunctive relief. For these reasons, defendant's Motion for Summary Judgment is denied.

There being no prejudice to the defendant demonstrated by the plaintiff's somewhat tardy filing (a couple of days) of three affidavits, defendant's Motion to Strike Affidavits is denied.

In light of the plaintiff's assurances that interviews with agents still associated with the defendant will not be conducted unless the defendant grants permission to conduct such interviews, plaintiff's motion to compel answers to Interrogatory 6 is granted. The answers to Interrogatories 7, 8, 16 and 17 appearing to this Court to be relevant to the subject matter of this action, plaintiff's Motion to Compel Answers is granted. For the same reason, plaintiff's Motion to Produce Documents is granted. Clerk will notify counsel.

DONE at Houston, Texas, this 27th day of July, 1973.

Carl O. Bue, Jr.
United States District Judge

NOTICE OF _____ C. Form No. 18 (Rev. Sept. 1953)

United States District Court

FOR THE

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

THE JIM TUCKER COMPANY, INC.

No. 72-H-993

TAKE NOTICE that the above-entitled case has been set for pre-trial at 11 a.m., on August 31, 19 73, at Houston, Texas before United States Magistrate Ronald J. Blask, room 12628, 515 Rusk, Houston, Texas

Date August 2, 19 73

V. BAILEY THOMAS, Clerk.

By Rona O'Quinn, Deputy Clerk.

Rona O'Quinn

To Mr. Norman P. Goldberg
Mr. James R. Gough
Mr. John A. Bailey

1. All motions, cross claims, amendments, and impleading of parties will be filed on or before _____.

2. All discovery will be completed on or before _____.

3. Jury is___ is not___ requested.

4. Estimated duration of trial: _____.

5. Other instructions:

6. Pre-Trial Order, Memoranda of Law and other pretrial material as specified in Judge Bue's Procedures are to be filed with the clerk not less than 3 business days before trial.

7. The case is set for Docket Call and Trial before Judge Bue at _____ o'clock on _____. The position of this case on the docket can be ascertained by contacting the Deputy Clerk.

* * * * *

Settlement negotiations are___ are not___ presently in progress. If the case is settled, and such announcement is made prior to trial, settlement papers will be submitted to Judge Bue before the trial date, OR counsel will appear in court on the date of trial to dictate the terms of the settlement into the record and the case will be dismissed at that time, the court retaining jurisdiction for the sole purpose of enforcing settlement. A NOTIFICATION OF SETTLEMENT BY TELEPHONE WILL NOT obviate the necessity of appearance on the scheduled trial date.

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A COPY OF "PROCEDURES TO BE FOLLOWED BY COUNSEL IN PREPARATION OF CASE FOR TRIAL FOLLOWING PRETRIAL HEARING" IS ENCLOSED. BRING THIS FORM WITH YOU TO THE PRETRIAL CONFERENCE.

Pretrial conference held _____

_____
H. Lingo Platter, U. S. Magistrate

We agree to and acknowledge the dates set out above, and acknowledge we have received a copy of Judge Bue's Procedures.

_____
Attorney for Plaintiff

_____
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

JUDGE CARL O. BUE, JR.

PROCEDURES TO BE FOLLOWED BY COUNSEL IN PREPARATION OF CASE FOR TRIAL FOLLOWING PRE-TRIAL CONFERENCE

I.

IN GENERAL

The paramount goal in the trial of a case is to accomplish a just result. The following guidelines are designed to assist in achieving such a result. If one or more of these procedures create a problem for counsel in any case, they will be discussed with the court and opposing counsel well in advance of the trial date.

Well prepared trials bring about the fairest and most expeditious verdicts. Well prepared counsel present the evidence most fully and clearly and create the most complete record for appeal, if one becomes necessary. The courts and lawyers must conserve the time and minimize the expense of juries, witnesses and the parties. They owe a duty to advance the administration of justice by making the trial an efficient and clear exposition of the real issues. The procedures set forth below are designed to expedite the reaching of a just result without impeding in any way the ability of a lawyer, as an advocate, to present his client's case fully, fairly and effectively:

II.

PROCEDURES TO BE ACCOMPLISHED

1. In this court detailed memoranda of law in support of each party's position must be filed with the clerk at least three business days before the trial, unless some other time is fixed by the court. This rule must be strictly complied with so that the court and the law clerks can be fully acquainted with the case which is to be tried. Such memoranda will dovetail with and support the issues raised by the parties in the Pre-Trial Order. In non-jury cases, counsel should be prepared to argue the case upon conclusion of the evidence, if the court feels it would be helpful in clarifying the issues.

2. The Pre-Trial Order will be filed with the clerk along with the memorarda of law at least three business days before trial. It should narrow the issues for the benefit of the court. Points of evidence reasonably anticipated to arise during the trial should also be set out along with supporting legal authorities. The court will review and rule on such questions of admissibility of evidence and objections before the trial commences. The Pre-Trial Order should generally contain the following matters, although the Order should be tailored to the requirements of the individual case:

(a) Nature of the case.

(b) Specification of issues.

(c) Facts stipulated.

(d) Facts in dispute.

(e) Agreed applicable propositions of law.

(f) Disputed propositions of law.

(g) Such other information or data as the attorneys may deem pertinent and helpful.

(h) List of witnesses (except rebuttal witnesses) and a concise but complete summary of the substance of each witness' testimony.

(i) List of exhibits.

(j) Estimate of time required for trial.

3. In non-jury cases each counsel will prepare and file with the clerk Proposed Findings of Fact and Conclusions of Law concurrently with the Pre-Trial Order and a Memorandum of Law. These Findings and Conclusions can be amended, if the proof adduced at the trial requires it. The legal authorities supporting each Proposed Conclusion of Law, where appropriate, should be set out directly under each Conclusion for ready reference by the court.

In jury cases each counsel will prepare and file with the clerk concurrently with the Pre-Trial Order and a Memorandum of Law any Proposed Charge including instructions or definitions to the jury along with supporting authorities, where applicable. Proposed Interrogatories to the Jury should be included by counsel so as to cover all ultimate fact issues to be resolved by the jury.

This court has a duty to insure that a proper jury charge is formulated and submitted to the jury. Counsel have a duty to this court to insure that Proposed Findings and Conclusions in non-jury cases and jury charges in jury cases are as thoroughly and professionally prepared as possible based on the applicable law and the evidence in the case. Such proposals of counsel will be regularly made a part of the record in the case after the jury has been charged and objections to the charge have been heard and ruled upon by the court.

4. The court is regularly available for conferences with counsel at a mutually convenient time prior to the trial date, if such a conference is necessary or advantageous to the parties. Normally, there will be no contact with counsel in the case initiated by the court between the pre-trial conference and the docket call of the case. All settlement discussions should be fully exhausted before the date of trial in order to minimize the expense and conserve the time and effort of the court, the parties and their counsel and the jury.

5. Counsel should notify doctors and expert witnesses well ahead of time of the date of the trial so that their depositions can be taken if they will not be available.

6. All exhibits, including sketches, models, diagrams or objects must be numbered and marked before the trial starts. All such exhibits will be offered and received in evidence as the first item of business at the trial. At least three business days before the trial starts, those exhibits to which objections are made will be numbered, marked and tendered, and the court will be notified of the objections in writing accompanied by supporting legal authorities, where appropriate. The court will rule on the admissibility of such exhibits before the trial commences, and objections of counsel will be preserved in the record. It is the obligation of any party who wishes to offer exhibits to comply with this procedure by tendering such exhibits to the other party or parties for examination and approval or objections as indicated above. In the absence of unusual circumstances, the court will deny the introduction of exhibits which are not presented pursuant to these guidelines.

7. If a portion of any deposition is to be read or summarized, counsel will notify opposing counsel and the court of his intention, (citing pages and lines inclusively) at least three business days before the trial starts (unless the necessity for using a deposition develops unavoidably thereafter). Opposing counsel will note his objections promptly to such portion or portions of the deposition (citing pages and lines inclusively) with supporting authority before the day of trial, and the court will rule on the objections before the trial commences.

8. All trials will commence at 10:00 a.m. unless counsel are notified to the contrary. The noon recess will normally run from 12:30 p.m. to 2:00 p.m. In a multi-day trial, the court will normally recess about 4:45 p.m. Counsel should bear in mind these hours of court, notify parties to be on time and arrange for witnesses accordingly. The court will not recess to permit counsel to call a missing witness, unless he has been subpoenaed and has failed to appear. In that case, the matter will be handled as the interests of justice require including the issuance of a bench warrant, where appropriate.

9. This court conducts the voir dire examination in jury cases. Counsel may submit proposed questions in writing to be propounded to the jury panel. These will be submitted three business days prior to the commencement of the trial for consideration by the court and, where appropriate, the court will make every effort to ask such questions of the prospective jurors as are thought to be relevant.

10. Counsel shall be in a position when the trial starts to move their respective portions of the case promptly. Every effort should be made by counsel to elicit from the witnesses only information which is relevant to the issues in the case and to avoid cumulative testimony. If counsel wish the Marshal or Bailiff to summon the witnesses from the witness room as needed, they should supply a list of witnesses to the courtroom clerk before the trial, setting forth the order in which they will be called.

11. If counsel will require a blackboard, viewbox or other equipment in the presentation of the case to the court or jury, the courtroom clerk should be advised before the trial commences so that proper arrangements can be made to obtain such equipment in advance, wherever possible.

12. Administrative and procedural handling of a case, once it is activated and a pre-trial hearing is held, will frequently require the Deputy Clerk and the law clerks at the request of the Court to be in contact with counsel. As arms of the court such personnel will be extended every courtesy and complete cooperation by the attorneys who will immediately return all telephone calls and promptly answer all written communications relative to their case, once they are received.

13. If any other matters arise which are not covered in the above procedures, counsel for the parties will confer with the court well in advance of the trial date.

Carl O. Bue, Jr.,
United States District Judge

CERTIFICATE OF SERVICE

I, Elyse S. Goldweber, an attorney for the plaintiff, hereby certify that I have served a copy of the attached Notice of Motion of the United States to dismiss defendants' counterclaim, a copy of the attached Memorandum of the United States in Opposition to Defendants' Motion to Dismiss, Motion for More Definite Statement and in Support of Plaintiff's Motion to Dismiss the Counterclaim and a copy of the attached Memorandum of the United States in Response to the Affidavits of Donald Trump and Roy Cohn on the defendants by mailing a copy, postage prepaid, to their attorney at the following address:

Roy M. Cohn, Esq.
Saxe, Bacon, Bolan & Manley
39 East 68th Street
New York, New York 10021

This, the 4th day of January, 1974.

Elyse S. Goldweber

ELYSE S. GOLDWEBER
Attorney, Housing Section
Civil Rights Division
Department of Justice
Washington, D. C. 20530