

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

=O=

MAUDE H. HODGE and VERNE A. HODGE,
Individually and in the Interest of
TERESA HODGE, a Minor

Plaintiffs

vs.

DR. GARFIELD LESS and GOVERNMENT OF
THE VIRGIN ISLANDS,

Defendants

CIVIL NO. 667/1982

STEDMANN HODGE, ESQ.
P. O. Box 9910
St. Thomas, Virgin Islands
(Attorney for Plaintiffs)

R. ERIC MOORE, ESQ.
No. 55 Company Street
Christiansted
St. Croix, Virgin Islands
(Attorney for Defendants)

MEMORANDUM OPINION AND ORDER
(October 27, 1983)

FEUERZEIG, J.

The court has before it a motion of the plaintiffs to amend their complaint to increase the ad damnum clause and a motion by the defendant to strike the Knud Hansen Memorial Hospital as a party defendant. Both motions will be granted.

Plaintiffs propose to increase the compensatory damage claim of their complaint from \$50,000 to a total of \$100,000, with a claim of \$70,000 for Teresa Hodge, \$15,000 for Maude H. Hodge, and \$15,000 for Verne A. Hodge, and also to

increase the ad damnum clause for punitive damages from \$50,000 to \$100,000 with the same breakdown. Defendants oppose the motion, contending that it is in contravention of Forman v. Davis, 371 U.S. 178 (1962). The language quoted from Davis by the defendants indeed is correct. However, its application to this case clearly is misplaced.

A Rule 15(a) amendment . . . is appropriate for increasing the amount of damages sought or for electing a different remedy than the one originally requested. Technically, these amendments are not necessary since Rule 54(c) provides that regardless of the formal demand for relief, "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled" However, if a party wishes to change his demand for relief, he may do so under Rule 15(a). This may be the safer course to pursue, particularly if he intends to ask for an entirely different form of relief and wants to be certain that the court considers that remedy. Amendment also avoids any possibility that the opposing party will object on the ground of surprise or prejudice.

6 C. Wright & A. Miller, Federal Practice and Procedure, §1474 pp. 385-396 (1971).

Defendants, however, contend that the motion will be prejudicial but state no way in which they would be prejudiced. Moreover, case authority, in addition to Wright & Miller, clearly indicates that the motion at this time, coming three months prior to the scheduled trial date, cannot inure to the defendants' prejudice. In Zatina v. Greyhound Lines, Inc., 442 F.2d 238, 242 (8th Cir. 1971), the plaintiffs were permitted to amend their complaint to increase the prayer for general damages from \$25,000 to \$50,000 following the close of testimony. In Sadowy v. Sony Corp. of America, 93 F.R.D. (S.D.N.Y. 1982), the plaintiff was permitted to amend the complaint to change the amount of damages or loss of earnings claimed from \$500,000 to \$1,500,000. The court stated, "Although it appears at present that this claim may be exaggerated, I will permit the amendment as it will not unduly prejudice the defendant. Plaintiff must still prove these damages at trial."

Defendants also contend that "plaintiffs' request to increase their claim for punitive damages would be futile, as no sufficient grounds for punitive damages has been alleged. Furthermore, there is clearly no authority for an award of punitive damages against the Government under the facts alleged in the complaint. Moreover, plaintiffs have cited no authority for a claim of punitive damages against the Government of the Virgin Islands." Defendants also have cited no authority for the proposition that punitive damages may not be awarded against the Government. Regardless, the claim against the Government is limited by the Tort Claims Act of the Virgin Islands and 33 V.I.C. §3411(c), which provides: "No judgment shall be awarded against the Government of the Virgin Islands in excess of \$25,000." In addition, the complaint does allege a basis for punitive damages, i.e., "That the defendants' actions evidenced a wilful and wanton disregard of plaintiff's health and safety" The issue in granting the amendment is not whether plaintiffs are in fact entitled to punitive damages, but whether a claim is stated.

Insofar as the motion of defendants to strike Knud Hansen Memorial Hospital, the plaintiffs do not oppose the motion. It, of course, is understood, as the motion sets forth, that any acts of the Knud Hansen Memorial Hospital, if wrongful, subject the Government of the Virgin Islands to liability. Accordingly, it is

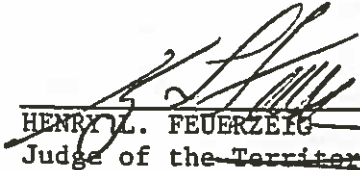
ORDERED that plaintiffs' motion to amend their complaint to increase the ad damnum clause is granted, and it is further

ORDERED that defendants' motion to strike the Knud Hansen Memorial Hospital from the complaint is granted, and it is further

ORDERED that from this day forward the complaint shall be styled "Maude H. Hodge and Verne A. Hodge, Individually and in the Interest of Teresa Hodge, a Minor, Plaintiffs, v. Dr. Garfield Less and Government of the Virgin Islands, Defendants."

DATED: October 25, 1983

ATTEST:


HENRY L. FEUERZEIG
Judge of the Territorial Court

VIOLA E. SMITH
Administrator/Clerk of the Court