

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX AT CHRISTIANSTED

RANDY GERMAINE

PLAINTIFF

vs.

NAOMI DOWDYE, VINCENT SARGENT
AND DOREEN SARGENT

DEFENDANTS

CIVIL NO. 745/1982

ACTION FOR DAMAGES

MEMORANDUM OPINION
(November 17, 1982)

FRANK FORD, III, Esq.
No. 1 Strand Street
Frederiksted, St. Croix
--Attorney for Plaintiff

BERTRAM L. CHARLES, ESQ.
38 King Street
Christiansted, St. Croix
--Attorney for Defendants

SILVERLIGHT, Judge

This matter is before the Court on Plaintiff's Motion to Dismiss defendant Naomie Dowdye's counterclaim for failure to state a cause of action pursuant to Fed. R. Civ. P. 12(b)(6).

FACTS

On July 8, 1982 plaintiff Randy Germaine was allegedly involved in an altercation with defendants Naomie Dowdye, Vincent Sargent and Doreen Sargent during which Dowdye allegedly scratched plaintiff's hand and shouted that he was a thief. Plaintiff alleges that as a result of Dowdye's conduct he has suffered embarrassment, anxiety, mental anguish and irreparable damage to his image in the community. Dowdye has counterclaimed alleging in Count I, among other things, the existence of an oral lease agreement between herself and plaintiff. She asserts that plaintiff breached this lease, and thus owes her, Dowdye, the

sum of \$3,300.00 in rent arrears. In Count II of the counterclaim Dowdye alleges that on or about July 1, 1982, having found the leased premises abandoned, she requested that plaintiff surrender the keys. She asserts that plaintiff, however, intentionally, wilfully and maliciously refused to do so and as a result forced plaintiff to use the window to enter and exit the premises. As a result of plaintiff's act, Dowdye alleges mental pain and emotional distress.

DISCUSSION

A Fed. R. Civ. P. 12(b)(6) motion is used to test the formal sufficiency of the statement of the claim for relief. Therefore, this provision must be read in conjunction with Fed. R. Civ. P. 8(a) which sets forth the requirements for pleading a claim.... 5 C. WRIGHT & A. MILLER, Federal Practice & Procedure: Civil §1356, at 590. Rule 8(a) requires that "[a] pleading which sets forth a claim for relief, whether an original claim, counterclaim, or a third-party claim, shall contain...a short and plain statement of the claim showing that the pleader is entitled to relief". FED. R. CIV. P. 8(a). It is only when the pleading fails to meet this liberal standard that it is subject to dismissal under Rule 12(b)(6). See 5 C. WRIGHT & A. MILLER, supra. The motion is available to test the claim for relief in any pleading including a counter-claim. Walker v. Process Equipment, Inc. v. Food Mach. & Chem. Corp. 382 U.S. 172 (1965); FED. R. CIV. P. 12(b)(6).

In deciding a motion to dismiss for failure to state a cause of action the Court construes the allegations in the claim for relief (in this case the counterclaim) in the light most favorable to the pleader. Scheuer v. Rhodes, 416 U.S. 232 (1974); Leone v. Aetna Cas. & Sur. Co., 599 F.2d 566 (3d Cir. 1979); Mortensen v. First Fed. Savings & Loan Association 549 F.2d 884 (3d Cir. 1977). In other words, the question is whether, in the

light most favorable to the pleader, and with every doubt resolved in his behalf, the pleading states any valid claim for relief 5 C. WRIGHT & A. MILLER, supra §1357, at 601. The Court's inquiry is focused specifically on whether the allegations constitute a statement of claim under Rule 8(a). Landy v. F.D.I.C., 486 F.2d 139, 160 (3d Cir.), cert. denied, 416 U.S. 960 (1973). The Court, however, in considering the motion to dismiss is not required to accept as true all well-pleaded facts and allegations.^{1/} Courts are not required to accept legal or unsupported conclusions, or unwarranted inferences or deductions 5 C. WRIGHT & A. MILLER, supra, at 594-96. See also Felix v. Government of the Virgin Islands, 3 V.I. 399, 167 F. Supp. 702 (D.V.I. 1958); Phaire v Merwin, 3 V.I. 320, 167 F. Supp. 710. (D.V.I. 1958). 5 C. WRIGHT & A. MILLER, supra, at 596.

A motion to dismiss for failure to state a claim is viewed with disfavor and rarely granted. Based on the requirements of Rule 8, few complaints fail to meet the outlined standard. Furthermore, in view of the Third Circuit's oft stated view that cases should be disposed of on their substantive merits, this Court is even more reluctant to deny claims based purely on technical grounds.

In the instant case plaintiff attacks Count I of Dowdye's counterclaim stating that Count I contemplates an action arising out of an oral lease agreement which is barred by 28 V.I.C. 242.^{2/}

^{1/} Basically the Court will accept the pleader's description of what occurred along with any conclusion that can be reasonably drawn therefrom. However, the Court will not accept conclusory allegations on the legal effect of the events plaintiff has set out.

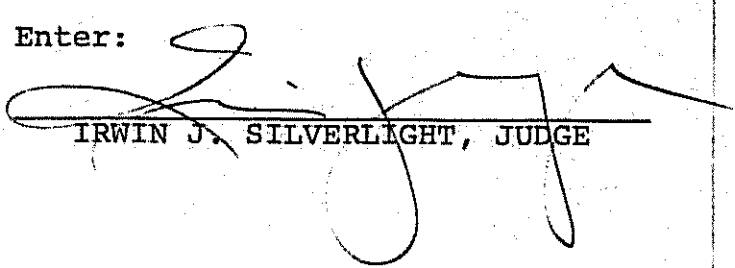
^{2/} The Court is cognizant that under Fed. R. Civ. P. 9 a limited number of particular matters require special pleadings. See also C. WRIGHT & A. MILLER, supra §1221, at 149. However the Court feels Rule 9 is inapplicable in the case at bar..

However, there is no indication that the oral agreement between the parties was for a longer period than one year or that there is a total absence of a contract or some note or memorandum in writing which is signed by the appropriate party.

Furthermore, plaintiff attacks Dowdye's second Count alleging that it is defective because it fails to state that the conduct complained of was "extreme or outrageous" or that the emotional distress suffered by the defendant is "severe". Generally there is no "particular or precise language that must be pleaded in order to give rise to a cause of action." ^{3/} It is sufficient if the adverse party is put on notice of the basis of the suit or the legally cognizable claim against her. United States v. Provident Nat. Bank, 259 F.Supp. 373 (D. Pa.), cert. denied, 385 U.S. 1034 (1968). See also C. WRIGHT & A. MILLER, supra, at 594. It is the Court's conclusion that the pleading in the case at bar accomplishes both of the above. The Supreme Court has held that a Rule 12(b)(6) dismissal should only be allowed where "it appears beyond doubt that the... [pleader] can prove no set of facts in support of his claim which would entitle him to relief". Phillip Evans v. Bank of Nova Scotia, Civ. No. 82-459 slip op. at 4. (Terr. Ct. Div. St. Croix Oct. 1, 1982) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1952)). For the reasons articulated herein, the Court holds that this is not the situation in this case. As a result, Plaintiff's Motion to Dismiss Dowdye's counterclaim will be denied.

Dated: November /7, 1982

Enter:


IRWIN J. SILVERLIGHT, JUDGE

3/

See supra note 2.