

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

=0=

BUCKLEY STOUT,	:	
	:	
Plaintiff	:	
	:	
vs.	:	CIVIL NO. 234/1982
	:	
GOVERNMENT OF THE VIRGIN ISLANDS	:	
V. I. TAXICAB COMMISSION,	:	
Defendant	:	

STEDMANN HODGE, ESQ.
13-1 Estate Thomas
St. Thomas, Virgin Islands
(Attorney for Plaintiff)

SUSAN BRUCH
Assistant Attorney General
Department of Law, Civil Division
St. Thomas, Virgin Islands
(Attorney for Defendant)

MEMORANDUM OPINION AND ORDER
(October 20, 1982)

FEUERZEIG, J.

Defendant, Government of the Virgin Islands, Virgin Islands Taxicab Commission, has filed a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Alternatively, with regard to paragraphs 6, 7, 11, 12 and 13 of plaintiff's amended complaint, defendant moves for a more definite statement, Fed.R.Civ.P. 12(e), or to have those paragraphs struck, Fed.R.Civ.P. 12(f). Except for the motion to strike as applied to paragraph 13, all the motions will be denied.

Plaintiff contends that despite his failure to have a registered vehicle for the issuance of a taxi medallion, 20 V.I.C. §407 et seq., he was "told by the Department of Public Safety that the submission of a letter describing his plight would be sufficient to preserve his right to a taxi medallion." Amended complaint paragraphs 6 and 7. Plaintiff further contends that Mr. Leonard Bonelli, Sr., Chairman of the Virgin Islands Taxi Commission, "admitt/ed" that plaintiff was eligible for his medallion as of February 14, 1979" Amended complaint paragraph 11. Absent these representations, plaintiff would not be entitled to a medallion to operate an automobile for hire. Since he had no registration for his car, a fortiori he had no "valid set of Virgin Islands license plates issued for an automobile." 20 V.I.C. §407 (Supp. 1981).

On a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), the question before the court is whether, in the light most favorable to the plaintiff, Leone v. Aetna Cas. & Sur. Co., 599 F.2d 566 (3d Cir. 1979), Mortensen v. First Federal Savings & Loan Association, 549 F.2d 884 (3d Cir. 1977), and with every doubt resolved on his behalf, Tunnell v. Wiley, 514 F.2d 971 (3d Cir. 1975), 975 n. 6, quoting 5 C. Wright and L. Miller, Federal Practice and Procedure §1357 (1969), the complaint states a valid claim for relief.

A complaint should not be dismissed merely because the court doubts plaintiff will prevail in the action, 5 C. Wright & A. Miller, supra, and the Supreme Court has said "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 claims which would entitle him to relief." Conley v. Gibson, 355 U.S. 41 (1957).

A review of plaintiff's complaint suggests that it is premised on a theory of estoppel. While there is authority for the proposition that the doctrine of estoppel will not be applied against a governmental commission or board acting in a public capacity, In re Hooper's Estate, 5 V.I. 518, 533, 359 F.2d 569, 578 (3d Cir. 1966); Spencer v. Railroad Retirement Board, 166 F.2d 342, 1 A.L.R. 2d 338 (3d Cir (1948), there also is authority to the contrary. United States v. Jones, 176 F.2d 278 (9th Cir. 1949), David J. Joseph Co. v. United States, 82 F.Supp. 345 (Ct. Cl. 1949); see Heirs of Leon Denena v. Communication, Splicing and Engineering Co. Inc., 9 V.I. 567, 569 (1973) (suggesting that in certain circumstances a government may be estopped).

Here, plaintiff had alleged facts that arguably would establish a cause of action against the defendant if it were a private party.^{1/} Moreover, he directs attention to pertinent language in

^{1/} See Restatement (Second) of Contracts §90 (1981):

"A promise which the promisor should reasonably expect to induce ... forbearance on the part of the promises and which does induce such forbearance is binding if injustice can be avoided only by enforcement of the promise ..."

an act which acknowledges past improprieties on the defendant's part. ^{2/} Under these circumstances we cannot say "it appears beyond doubt that plaintiff can prove no set of facts which would entitle him to relief." Conley, supra.

In regard to paragraphs 6, 7, 11, 12 and 13 in plaintiff's amended complaint, it appears that they are sufficiently intelligible for the court to make out a potentially viable legal theory. 5 C. Wright and A. Miller, supra, §1376. They are not "so vague or ambiguous that the defendant cannot respond, even with a simple denial, in good faith or without prejudice to himself." Id. §1376 at 733. ^{3/}

Finally, with respect to defendant's motion to strike, the reference in paragraph 11 to Mr. Bonelli "arbitrarily and capriciously" refusing to grant plaintiff a medallion is immaterial, as is paragraph 13 in its entirety. Accordingly, it is

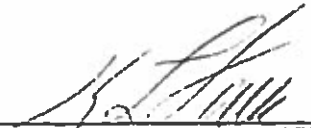
^{2/} 1981 V.I. Acts No. 4646, §10 which provides:

...the V.I. Taxicab Commission shall initiate an investigation into the inequities created by the implementation of the medallion system including, but not limited to, the issuance of conflicting instructions to operators, inefficiencies in implementing the law, and administrative delays caused by inadequate staff of the commission. To the maximum extent practicable, and in accordance with law, the Commission shall take such steps as may be necessary to correct administratively these inequities and rectify any rights violated of persons affected by the medallion system.

^{3/} See United States ex rel Clark v. Georgia Power Co., 301 F.Supp. 538, 544 (D.C. Ga. 1969) ("Rule 12(e) is not designed to frustrate the concept of notice pleading").

ORDERED, ADJUDGED and DECREED that:

1. Defendant's motion to dismiss for failure to state a claim upon which relief can be granted is denied.
2. Defendant's alternative motion for a more definite statement is denied.
3. With respect to the above mentioned part of paragraph 11, and to paragraph 13 in its entirety, the defendant's motion to strike is granted.



HENRY L. FEUERZEIG
Judge of the Territorial Court