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25294

ABO v. CLARK

Apr. 15, 1946

Cons. no. 25294-S

Motions to Strike

178/177

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ORIGINAL
FILED

APR 15 1946

TADAYASU ABO, ET AL.,

Plaintiffs

vs.

TOM C. CLARK, ATTORNEY GENERAL, ET AL.,

Defendants

WILLIAM CLARK, U. S. DIST. COURT
SAN FRANCISCO

CIVIL NO. 25294
CONS. NO. 25294-S

MOTION TO STRIKE

Defendants move to strike from the Complaint and Amendment and Supplement thereto filed herein certain redundant, immaterial and impertinent matter identified below, pursuant to Rule 8(e) and 12(f) of the Federal Rules of Procedure:

I

Exhibit 1 to the Complaint as originally filed and Exhibits 2 and 3 to the "Supplement and Amendment to Complaint * * * " herein, comprise evidentiary matter; are impertinent, immaterial and redundant; and, as a result of their inclusion in it, the allegations of the complaint are not simple, concise, and direct as required by the Federal Rules. For these reasons, the three exhibits described, and all references to or discussions of them, should be stricken from the pleadings.

II

Paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of the "Supplement and Amendment to Complaint * * * " contain allegations evidentiary in character; they and each of them contain matter which is impertinent, immaterial and redundant; and as a result of their inclusion in it the allegations of the complaint are not simple, concise and direct as required by the Federal Rules. For these reasons, all the said paragraphs should be stricken from the pleadings.

*They are
v. clear
and
allegations
of right*

III

Paragraphs III, IV, V, VI, VII, and VIII of the First Cause of Action in the Complaint as originally filed contain allegations evidentiary in nature; they, and each of them, contain matter which is impertinent, immaterial and redundant; and as a result of their inclusion in it the allegations of the Complaint are not simple, concise, and direct as required by the Federal Rules. For these reasons, all of the said paragraphs should be stricken from the pleadings.

IV

Paragraphs I and II of the Second Cause of Action in the Complaint as originally filed incorporate and contain, respectively, allegations evidentiary in nature, and matter which is impertinent, immaterial and redundant. As a result of their inclusion in it, the allegations of the Complaint are not simple, concise and direct as required by the Federal Rules. For these reasons, the said paragraphs should be stricken from the pleadings.

V

By reason of the fact that the objectionable matter referred to in paragraphs I through IV herein is inextricably confused and intermingled with the allegations of essential fact in the Complaint and Supplement and Amendment thereto, the Complaint as originally filed and the Supplement and Amendment thereto are themselves rendered impertinent, immaterial and redundant and fail to meet the standard required by the Federal Rules: that they be simple, concise, and direct. For these reasons, the Complaint as originally filed and the Supplement and Amendment thereto should be, and defendants move that they be, stricken.

Respectfully submitted,

United States Attorney
Attorney for Defendants

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

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TADAYASU ABO, ET AL.,

Plaintiffs

Vs.

TOM C. CLARK, ATTORNEY GENERAL, ET AL.,

Defendants

CIVIL NO. 25294
CONS. NO. 25294-S

WILL COOK, U. S. DIST. CLERK
SAN FRANCISCO

POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO STRIKE

1. Matter evidentiary in character, as opposed to statements of the ultimate facts essential to raising a litigable issue, may be stricken on motion under Federal Rules 8(e) and 12(f).

Southern Pacific Ry. v. Conway, 115 F. (2d) 746.

Satink v. Holland Township, 28 F. Supp. 67 (D.C. N.J. 1939)

Barnsdall Refining Corp. v. Birnamwood Oil Co., 32 F. Supp. 308
(D.C. E.D. Wisc. 1940)

Anchor Rocking Glass Co. v. White Cap. Co., 47 F. Supp. 451
(D.C. Del. 1942)

CF. Pliner v. Neavig, 42 F. Supp. 297 (citing

McAllister v. Kuhn, 96 U. S. 87) (D.C. W.D. Wisc. 1942)

Dellefield v. Blockdel Realty Co., 1 F.R.D. 42 (D.C. S.D.
N.Y. 1939)

Booth Fisheries Corp. v. General Foods Corp., 27 F. Supp. 268
(D.C. Del. 1939)

Bulkley v. Altheimer, 2 F. R. D. 285 (D.C. N.D. Ill. 1942)

Citation? In Contazaritti v. Bianco, #1338, June Term, 1938, the Federal District Court for the Middle District of Pennsylvania, after stating the requirements of Rule 8(e), said:

"Plaintiff's pleading in the present case is neither simple, concise, nor direct, and for that reason it must be stricken off. It contains many allegations which are merely evidence of essential facts; * * *."

Citation? And in Curacao Trading Co. v. Federal Insurance Co., Civil #18-73, Southern District of New York, September 25, 1942, the Court said:

"Legal conclusions and evidentiary facts should not be set out in a complaint which should be simple, concise, and direct."

2. General redundancy and immateriality, likewise, when they are so intermingled with allegations of essential fact as to impair the clarity of the pleading and make answer difficult, form proper grounds for motion to strike:

Blake v. De Vilbiss Co., 118 F. (2d) 346 (C.C.A.6, 1941)

Buckley v. Musical Corp. of America, 1 F.R.D. 602 (D.C.D.Del 1941)

Dellerfield v. Blockdel Realty Co., supra, and other cases cited in point 1.

Respectfully submitted,

Frank J. Kennedy
United States Attorney
Attorney for Defendants.

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WILL CLARK, U. S. DIST. COURT
San Francisco

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

TADAYSU ABO, et. al.,)
Plaintiffs,)
- vs -)
TOM CLARK, Attorney General,)
et. al.,)
Defendants.)
_____)

No. 25,294-S

O R D E R

Defendants motion to strike

(1) Exhibit 1 attached to the original complaint and exhibits 2 and 3 attached to the supplement and amendment to complaint,

(2) Paragraphs (c), (d), (e), (f), (g), (h), (i) and (j) of the supplement and amendment to complaint and paragraphs III, IV, V, VI, VII, and VIII of the first cause of action in the original complaint is granted.

(3) Defendants' motion to dismiss the original complaint and the supplement and amendment thereto is granted with 20 days within which to amend.

A. F. S. S.

United States District Judge

Dated: July 10, 1946.