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No. 25295-S

FURUYA V. CLARK

filed: Nov. 12, 1946

Cons. No. 25294-S

Respondent's points ...

78/177

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

MARY KANAME FURUYA, et al., etc.

Complainants,

-vs-

TOM CLARK, etc., et al.,

Respondents.

No. 25295-S

Cons. No. 25294-S

ORIGINAL  
FILED

NOV 14 1946

RESPONDENTS' POINTS AND AUTHORITIES IN  
OPPOSITION TO COMPLAINANTS' MOTION TO STRIKE

WILLIAMS, U. S. Dist. Court  
San Francisco

Respondents oppose the Motion to Strike filed herein on the grounds that the material pleaded in the Amended Return is not irrelevant, redundant, immaterial, impertinent, evidentiary, sham, frivolous, or evasive; but in truth and in fact comprises responsive replies to matters pleaded and put in issue by complainants' Amended Petition, together with assertions of fact relevant and necessary to such responsive replies.

I

A. Motions to strike are not favored by the courts, and are granted only where the allegations sought to be stricken have or may have no possible relation to the controversy.

Samuel Goldwyn v. United Artists Corp., 35 F.S. 633 (D.C. S.D. N.Y. 1940)

French v. French Paper Co., 1 F. R. D. 177 (D.C. W.D. Mich. S.Div. 1941)

Courteau v. Interlake S.S. Co., 1 F. R. D. 429 (D.C. W.D. Mich. 1940)

Kraus v. General Motors Corp., 27 F. Supp. 537 (D.C. S.D. N.Y. 1939)

Radke Patents Corp. v. Tagliabue Mfg. Co., 51 Fed. Supp. 226, D.C. E.D. N.Y. 1939)

Hansen Packing Co. v. Armour & Co., 16 F. Supp. 784 (D.C.S.D. N.Y. 1939)

Chicago Pneumatic Tool Co. v. Ziegler, 40 F. Supp. 416 (D.C. E.D. Pa. 1941)

CF:

United States v. Johns Manville Co., 1 F. R. D. 543 (D.C. N.D. Ill. 1941)

Brinley v. Lewis, 27 Fed. Supp. 313 (D.C. M.D. Pa. 1939)



B. A corollary of this rule is that where the court is in the slightest degree left in doubt as to the possible relevance of certain allegations to the subject matter of the controversy, the motion to strike will be denied.

French v. French Paper Co. (supra)  
Samuel Goldwyn v. United Artists Corp. (supra)  
Alropa Corp. v. Heyn, 30 Fed. Supp. 668 (D.C. W.D. Pa. 1939)  
Radke Patents Corp. v. Tagliabue Mfg. Co. (supra). (Stating that if under any contingency an issue might be raised, motion denied.)

C. The courts are especially reluctant to entertain motions to strike where the issues are many or the facts complex and hence the determination of immateriality or irrelevancy is more difficult.

United States v. Hyde, 145 Fed. 393 (D.C. D.Nev. 1906)  
Courteau v. Interlake S.S. Co. (supra)

## II

Where allegations in an answer are responsive to assertions in a complaint, they are not subject to motion to strike, regardless of whether they raise a material issue.

Morgan v. Patillo, 1 Fed. (2d) 326 (D.C. S.D. Fla., 1924)  
Women's Catholic Order of Foresters v. Trigg County, 38 F. Supp. 398 (D.C. W.D. Ky. 1941)

CF:

Mercantile Trust Co. v. Missouri, etc. Ry. Co., 84 Fed. 379 (D.C. S.D.N.Y. 1898)

## III

Conclusions of law are not per se subject to motion to strike.

Samuel Goldwyn v. United Artists Corp. (supra)  
French v. French Paper Co. (supra)

## IV

Matter should not be stricken, even where it is not strictly relevant or material, if it will serve to inform the court as to background matters relevant to a question of intent, etc.

Chicago Board of Trade v. United States, 246 U.S. 231, 238.  
or where, since the allegation is one of fraud, bad faith, etc., matter which would otherwise be impertinent may be responsive:

Mercantile Trust Co. v. Missouri etc. Ry. Co. (supra)



V

Even stricter standards are applicable where it is asserted that an allegation is sham or frivolous. In such cases, it must be shown beyond all doubt that the defense is false in fact, and if the question is sufficiently doubtful to require careful inquiry by the court to discover falsity, the motion will be denied.

Hespe v. Corning Glass Wks., Inc. 9 F. Supp. 725  
(D.C. W.D.N.Y. 1935)

VI

Finally, where the effect of a motion to strike is to eliminate an entire pleading or a sufficient part thereof to remove the substance of the cause or defense, there is a very strong preference against granting the motion, and it will not be granted where any part of the pleading contains material allegations.

Jacobs v. Peabody, Wilson Co., 33 F. Supp. 206 (D.C. W.D. La., 1940)

Chicago Pneumatic Tool Co. v. Ziegler (*supra*)

McElwaine v. Wickwire Spencer Steel Co., 1 F. R. D. 177,  
(D.C. W.D.N.Y. 1940)

Myers v. Beckman, 1 F. R. D. 99 (D.C. E.D. Okla. 1940)

IT IS THEREFORE respectfully submitted that Complainants' Motion to Strike filed herein must be denied.

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Frank J. Hennessy  
United States Attorney  
Attorney for Respondents



IN THE SOUTHERN DIVISION  
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RESPONDENTS' POINTS AND AUTHORITIES  
IN OPPOSITION TO COMPLAINANTS'  
MOTION TO STRIKE

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Frank J. Hennessy  
United States Attorney  
Attorney for Respondents  
In Equity



IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT  
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WILLIAM C. GIERA, U. S. DIST. COURT  
SAN FRANCISCO

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TOM CLARK, etc., et al.,

Respondents

RESPONDENTS' POINTS AND AUTHORITIES IN OPPOSITION TO  
COMPLAINANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Respondents oppose the Motion for Judgment on the Pleadings filed herein on the ground that the only issue herein on which such motion may be considered is the following: Complainants assert and Respondents admit that Complainants were in fact subject to detention at the time they petitioned to be permitted to renounce and at times prior and subsequent thereto, including the time that renunciation was approved by the Attorney General. Only in the event that this Court should decide that the fact of such detention standing alone is sufficient to vitiate the act of renunciation, could judgment on the pleadings be granted. Such detention does not warrant such a holding.

I

Since Complainants have filed motions seeking both summary judgment and judgment on the pleadings, the two motions should be considered as raising the same issues of law and be dealt with together on the basis of all the papers filed herein.

United Trust Co. v. Sears, 29 F. Supp. 643, 645 (D. C. Conn.)  
Palmer v. Palmer, D. C. Conn. 3864, Law, Mar. 4, 1940.

SEE:

Pike, "Objections to Pleadings under the New Federal Rules of Civil Procedure", 47 Yale L. J. 50.  
Clark on Code Pleading 371, 372, 373.  
Federal Rule 56(c).



II

Respondents' Points and Authorities in Opposition to Complainants' Motion for Summary Judgment demonstrate the impossibility of holding as a matter of law that Complainants' renunciations are vitiated by duress or otherwise.

IT IS THEREFORE respectfully submitted that Complainants' Motion for Judgment on the Pleadings must be denied.

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Frank J. Hennessy  
United States Attorney  
Attorney for Respondents  
In Equity



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FOR JUDGMENT ON THE PLEADINGS

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