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Action in Propria Persona

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

RODNEY F. STICH,)
) Civil Action C 80 4526 SAW
Plaintiff,)
)
v.) OPPOSITION TO DEFENDANT'S
) REPLY BRIEF
)
NATIONAL TRANSPORTATION)
SAFETY BOARD, UNITED STATES)
OF AMERICA,)
)
Defendants.)

I ARGUMENT

Plaintiff disagrees with the defendant's Reply Brief filed with the court on April 15, 1981, in which defendant alleges that plaintiff was in default, under Local Rule 220-3, by failing to oppose the motion for Dismissal/Summary Judgment by April 15, 1981. Plaintiff's opposition to Defendant's position is based upon the following facts and arguments:

Plaintiff's initial complaint was filed on December 17, 1980, and served upon defendant December 19, 1980. As per F.R.CivP. 12 (a), the defendant defaulted by not answering within the 20 days allotted for such answer, the default being of major significance, the default was deliberate, and lasted approximately ten weeks. On March 23, 1981--approximately two and a half months into default--plaintiff filed with the court a request under F. R. CivP 55(a) instructing the clerk to enter the default. At that stage the defendant was in a major default and lost their right to submit other pleadings. Plaintiff requested in that motion that the court set a hearing date, as per F. R. CivP 55(b) (2) to determine the specifics of the default judgment. At that point the defendant didn't have any right to submit other pleadings, though they now act as if they had never defaulted. Plaintiff can understand the defendant's plight in failing to answer the complaint. Plaintiff alleged that the National Transportation Safety Board (NTSB) had deliberately covered up for a reported serious air safety problem that, if true, would be a major underlying cause of the September 25, 1978 PSA crash into San Diego. The allegation carries with it the danger of the public becoming aware of other NTSB cover-up acts that corrupted the

accident reports as observed by plaintiff while he was an official air safety investigator for the United States government. And should the NTSB become exposed in such chronic wrongdoings, an exposure of the government agencies that protected the NTSB obstruction of justice--would be a strong possibility. The plaintiff recognizes the defendant's problems in being slow and unsure how to respond, but this is an inadequate basis to "forgive" the defendant's default, allowing them to proceed with this action as if they had not defaulted.

2. F. R. CivP 55 makes it mandatory that the clerk of the court enters this default by the defendants. Being in default, the defendant's filing of a motion for dismissal/Summary Judgment was without merit, and as such, did not need plaintiff's opposition. F. R. CivP 5 states that "No service need be made on parties in default for failure to appear. And it can be argued that since the defendants lost their right to proceed because of their long-standing and deliberate default, an unauthorized motion to Dismiss-Summary Judgment need not be addressed.

3. However, to protect all bases, plaintiff did prepare Opposition to Motion for Dismissal/Summary Judgment, such brief dated April 11, 1981, four days prior to the prescribed target date by the local rules of court. By error, oversight, or mistake, the person that was to mail such pleadings failed to do so, and plaintiff arranged for such pleadings to be mailed on April 18, 1981, resulting in a four-day delay. FRCivP 60(b) pertains to just such an instance, as it refers to "Excusable Neglect", providing for relieving a party "from a final judgment, order, or proceeding" due to oversight. Also, FRCivP 61 refers to "Harmless Error," stating that the "court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." "The merits of the complaint, the extreme gravity of the subject matter, and the continuing harm in the aviation environment are such that it would be virtually obscene for the court to allow any such oversight to deprive the plaintiff and those affected by air safety misconduct to be deprived of the judicial responsibility in this matter. It is not unusual for minor oversights to occur in an action such as this, and where the plaintiff is seeking to correct a major public threat, using his own time and funds, and seeking to circumvent the obstructive actions of such groups as the Department of Justice who morally and legally should be proceeding *with* the plaintiff and not against him.

4. Defendants, represented by the United States Attorney, are relying on local rule 220-3 to have plaintiff's action dismissed. This rule provides not only for written opposition to motions for Dismissal/Summary Judgment, this written opposition submitted to the court at least 14 days prior to the scheduled hearing, but also for submitting a statement of "no opposition" within the same time frame. The probable purpose of this last provision is to insure that justice is not denied to an opposing party merely because of a minor oversight. Even though defendant's motion for Dismissal-Summary Judgment was outlawed by their major default, plaintiff prepared a timely opposition to such motion, dated April 11, 1981, four days prior to the target date for submission. The slight delay went undetected because of the plaintiff's numerous radio appearances in Los Angeles the week of April 13, the talk shows--lasting as long as five hours, discussing this action and other air safety irregularities in the politics of air safety. Upon arriving at his office, plaintiff discovered the oversight and promptly submitted the

opposition brief, such mailing occurring on April 18, three days after the scheduled target date.

5. FRCivP 56 (c) pertaining to such motions as Summary Judgments, states: "The adverse party prior to the day of hearing may serve opposing affidavits." The scheduled date of the hearing is April 23, 1981, indicating that any time up to April 22, 1981 would be satisfactory. This appears to conflict with local rules of court.

6. The office of the United States Attorney made reference to plaintiff's alleged verbal agreement giving defendants a 90-day extension, until May 20, 1981, to respond to the original complaint. If this statement of the United States Attorney was correct, it would indicate that the plaintiff and assistant United States Attorney George Stoll talked on February 19, 1981. That did not occur. The only conversations that occurred between the plaintiff and the United States Attorney were on March 6 and March 12, 1981, and specifically with assistant United States Attorney George Stoll. It was during the March 12th telephone conversation that plaintiff agreed to have the status conference delayed, but did not agree to waive plaintiff's right to a default judgment, which was not cured by this conversation. The verbal agreement for the delayed status conference was followed that same day with a letter to George Stoll, specifically making reference to the status conference postponement. Defendant's Certificate of Counsel, filed with the court on March 24, 1981, makes reference to this letter and contains a copy of it. The letter shows plaintiff clearly stating; "As to the status conference, I would be agreeable to the extension of time you mentioned during our phone conversation today."

This agreement to delay the status conference did not change the status of the defendant's default, which was already an established fact. The plaintiff had already drafted the notice to enter default, which was then submitted to the court.

Plaintiff agreed to delay the status conference, based upon the statements made by the United States attorney, supporting plaintiff's allegations and request for relief. Some of the statements and assurances made by the United States attorney were:

"It's ridiculous that the NTSB did not investigate further into the reported partying. . . The investigation should be reopened. . . I am going to bring pressure on them [NTSB] through the Department of Justice to see if they won't reopen the investigation. . . the government has responsibility to see to it that its agencies do their jobs. . . I can go ahead and file a motion to dismiss in the next few days, but I'm not satisfied with that because I don't think in this case the government skirts are totally clean, and I don't think its my job to cover up. . . I agree with you that what she said [PSA passenger who overheard, during two separate conversations and locations on board the PSA flight] was far more than an investigator in many cases is reasonably likely to hear. It certainly is pregnant with some very serious implications. . . it is ridiculous [referring to the NTSB obstructive reaction to the reported partying]. "

Plaintiff recognized the sincerity of the assistant United States attorney, but also assumed it would be short-lived, Washington's Department of Justice, not risking the consequences of public reaction to reopening of the PSA crash investigation into the subject of crew partying. The Department of Justice has apparently been protecting the misconduct within the NTSB and Federal Aviation Administration for years, and a decision to reopen this PSA crash investigation could expose a virtual Pandora's Box to the public.

II CONCLUSION

The court is faced with a major scandal that involves many government agencies, and even the judicial branch itself, intertwined with crashes and deaths. Some argue it is best the public never find out, and this may be one of the reasons the cover-up has gone on so long. This court is sophisticated to where plaintiff's briefs are virtually prima facie evidence of serious NTSB misconduct. Plaintiff requests that the defendant's default be recognized, and that defendant's motion for Dismissal/Summary Judgment be recognized as untimely, and that a hearing be set to determine the specifics of the default judgment requested by the plaintiff. Namely, that the National Transportation Safety Board be ordered to reopen the investigation into the PSA San Diego crash, sufficient safeguards provided to minimize the NTSB continuation of the cover-up.

Dated: April 19, 1981.

Rodney F. Stich, plaintiff

AFFIDAVIT

State of California)
County of Solano) ss

I, Rodney F. Stich, being duly sworn, deposes and says:

I am the plaintiff in the above action, known as C 80-4526-SAW, and have personal knowledge of the matters hereinafter referred to, and make this affidavit in support of Opposition to Defendant's Reply Brief. The factual statements made in that brief are true to the best of my knowledge and belief, and included observations I made while an official air safety investigator for the Federal Aviation Administration and observations made outside of government service

Subscribed and sworn to before me on this
20th day of April 1981.

Rodney F. Stich