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Action in Propria Persona

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

RODNEY F. STICH,
Plaintiff,

v.

NATIONAL TRANSPORTATION
SAFETY BOARD, UNITED STATES
OF AMERICA,
Defendants,

Civil Action C 80 4526 SAW
OPPOSITION TO DEFENDANT'S
REPLY BRIEF

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:

1. Plaintiff's initial complaint was filed on December 17, 1980, and served upon defendants December 19, 1980. As per F.R.CivP. 12 (a), the defendants 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 defendants were 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

1 that point the defendants didn't have any rights to submit other pleadings,
2 though they now act as if they had never defaulted. Plaintiff can understand
3 the defendant's plight in failing to answer the complaint. Plaintiff alleged
4 that the National Transportation Safety Board (NTSB) had deliberately covered
5 up for a reported serious air safety problem that, if true, would be a major
6 underlying cause of the September 25, 1978 PSA crash into San Diego. The
7 allegation carries with it the danger of the public becoming aware of other
8 NTSB coverup acts that corrupted the accident reports, as observed by plain-
9 tiff while he was an official air safety investigator for the United States govern-
10 ment. And should the NTSB become exposed in such chronic wrongdoings, an
11 exposure of the government agencies that protected the NTSB--obstruction of
12 justice--would be a strong possibility. The plaintiff recognizes the defendant's
13 problems in being slow and unsure how to respond, but this is an inadequate
14 basis to "forgive" the defendant's default, allowing them to proceed with this
15 action as if they had not defaulted.

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

24 3. However, to protect all bases, plaintiff did prepare Opposition to
25 Motion for Dismissal/Summary Judgment, such brief dated April 11, 1981,
26 four days prior to the prescribed target date by the local rules of court. By
27 error, oversight, or mistake, the person that was to mail such pleadings
28 failed to do so, and plaintiff arranged for such pleadings to be mailed on
29 April 18, 1981, resulting in a four day delay. FRCivP 60(b) pertains to just
30 such an instance, as it refers to "Excusable Neglect", providing for relieving
31 a party "from a final judgment, order, or proceeding" due to oversight. Also,
32 FRCivP 61 refers to "Harmless Error," stating that the "court at every stage

1 of the proceeding must disregard any error or defect in the proceeding which
2 does not affect the substantial rights of the parties." The merits of the com-
3 plaint, the extreme gravity of the subject matter, and the continuing harm in
4 the aviation environment are such that it would be virtually obscene for the
5 court to allow any such oversight to deprive the plaintiff and those affected by
6 air safety misconduct to be deprived of the judicial responsibility in this
7 matter. It is not unusual for minor oversights to occur in an action such as
8 this, and where the plaintiff is seeking to correct a major public threat, using
9 his own time and funds, and seeking to circumvent the obstructive actions of
10 such groups as the Department of Justice who morally and legally should be
11 proceeding with the plaintiff and not against him, it must be tolerated.

12 4. Defendants, represented by the United States Attorney, are relying
13 on local rule 220-3 to have plaintiff's action dismissed. This rule provides not
14 only for written opposition to motions for Dismissal/Summary Judgment, this
15 written opposition submitted to the court at least 14 days prior to the schedu-
16 led hearing, but also for submitting a statement of "no opposition" within the
17 same time frame. The probable purpose of this last provision is to insure
18 that justice is not denied to an opposing party merely because of a minor
19 oversight. Even though defendant's motion for Dismissal/Summary Judgment
20 was outlawed by their major default, plaintiff prepared a timely opposition
21 to such motion, dated April 11, 1981, four days prior to the target date for
22 submission. The slight delay went undetected because of the plaintiff's numer-
23 ous radio appearances in Los Angeles the week of April 13, the talk shows--
24 lasting as long as five hours, discussing this action and other air safety irre-
25 gularities in the politics of air safety. Upon arriving at his office, plaintiff
26 discovered the oversight and promptly submitting the opposition brief, such
27 mailing occurring on April 18, three days after the scheduled target date.

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

1 6. The office of the United States Attorney made reference to plaintiff's
2 alleged verbal agreement giving defendants a 90 day extension, until May
3 20, 1981, to respond to the original complaint. IF this statement of the
4 United States Attorney was correct, it would indicate that the plaintiff and
5 assistant United States Attorney George Stoll talked on February 19, 1981.
6 That did not occur. The only conversations that occurred between the plaintiff
7 and the United States Attorney were on March 6 and March 12, 1981, and
8 specifically with assistant United States Attorney George Stoll. It was during
9 the March 12th telephone conversation that plaintiff agreed to have the status
10 conference delayed, but did not agree to waive plaintiff's right to a default
11 judgment, which was not cured by this conversation. The verbal agreement
12 for the delayed status conference was followed that same day with a letter
13 to George Stoll, specifically making reference to the status conference post-
14 ponement. Defendant's Certificate of Counsel, filed with the court on March
15 24, 1981, makes reference to this letter and contains a copy of it. The letter
16 shows plaintiff clearly stating: "As to the status conference, I would be agree-
17 able to the extension of time you mentioned during our phone conversation to-
18 day."

19 This agreement to delay the status conference did not change the status
20 of the defendant's default, which was already an established fact. The plain-
21 tiff had already drafted the notice to enter default, which was then submitted
22 to the court.

23 Plaintiff agreed to delay the status conference, based upon the statements
24 made by the United States attorney, supporting plaintiff's allegations and re-
25 quest for relief. Some of the statements and assurances made by the United
26 States attorney were:

27 "It's ridiculous that the NTSB did not investigate further into the
28 reported partying... The investigation should be reopened... I am
29 going to bring pressure on them NTSB through the Department
30 of Justice to see if they won't reopen the investigation... the government
31 has responsibility to see to it that its agencies do their jobs... I can
32 go ahead and file a motion to dismiss in the next few days, but I'm

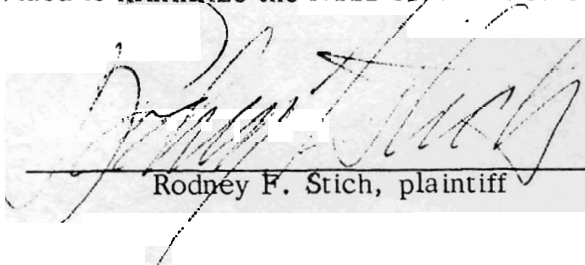
1 not satisfied with that because I don't think in this case the government
2 skirts are totally clean, and I don't think its my job to cover up...
3 I agree with you that what she said /PSA passenger who overheard,
4 during two separate conversations and locations on board the PSA
5 flight/ was far more than an investigator in many cases is reasonably
6 likely to hear. It certainly is pregnant with some very serious impli-
7 cations... it is ridiculous / referring to the NTSB obstructive reaction
8 to the reported partying/."

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

16 II CONCLUSION

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

29 Dated: April 19, 1981.

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31 _____
32 Rodney F. Stich, plaintiff