

Mixed - Bing

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)

v.)

TREASURE LAKE, INC.)

CIVIL ACTION NO. 70-805

OPINION

ROSENBERG, DISTRICT JUDGE

Presently before me for consideration are the defendant's motion to strike paragraph 9 of the complaint, the defendant's objections to plaintiff's interrogatories, and the plaintiff's motion to strike the defendant's demand for a jury trial.⁽¹⁾

This suit is based upon a complaint filed by the United States charging the defendant with violations of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq. and specifically that the defendant offers vacant land for sale on a racially discriminatory basis.

Title VIII of the Civil Rights Act of 1968 deals with fair housing, and its purpose, as expressed in §801 of the Act, 42 U.S.C. §3601 is ". . . to provide, within constitutional limitations for fair housing throughout the United States." It contains no reference to employment practices, and because of this, the defendant moves to strike paragraph 9 of the complaint which

1 /
1. At the oral argument on defendant's motion to strike and objections to interrogatories, counsel for the United States objected to the defendant's demand for a jury trial, on the grounds that this was solely an equity action. At the argument, the parties were advised to brief the issue (Tr.35). Plaintiff complied with this request, but defendant failed to do so.

alleges that the defendant has employed only white persons in its sales and public contact offices, and also objects to Interrogatory Nos. 1, 5, 6, 7, 20 and 21.

As originally presented, the defendant filed objections to Interrogatory No. 1 because it inquired into the race of employees, directors or officers, on the ground that such matters are irrelevant; to Interrogatory Nos. 5, 6, 7, 20 and 21 on the grounds that they involve employment practices; to Interrogatory No. 3 on the ground that it is vague, and to Interrogatory Nos. 8, 10, 11, 13, 14 and 18 on the ground of privilege. Subsequently, the parties entered into a stipulation withdrawing the objections to Interrogatory Nos. 8, 10, 11, 13, 14 and 18 and providing that such interrogatories be answered and sealed by the Clerk of Court. Thus, there remain for my disposition the defendant's objections to Interrogatory Nos. 1, 3, 5, 6, 7, 20 and 21.

The purpose of discovery under our Rules of Civil Procedure is to provide a means for ascertaining factual matters and avoid long drawn-out trials by narrowing issues. United States v. Ling-Temco Vought, Inc., 49 F.R.D. 150 (W.D.Pa. 1970). Any matter which is not privileged and which is relevant to the subject matter involved in the pending action is properly discoverable. Essex Wire Corp. v. Eastern Electric Sales Co., 48 F.R.D. 308 (E.D.Pa. 1969)

Interrogatories regarding such matters will be allowed whether or not the information sought would be admissible at trial, if it reasonably appears that the interrogatories are calculated to lead to admissible evidence. Caulk v. Baltimore & Ohio Railroad, 306 F.Supp. 1171 (D.C.Md. 1969). However, the use of discovery will not be totally unbridled and unlimited. Hecht v. Pro-Football, Inc., 46 F.R.D. 605 (D.C.D.C. 1969).

In Interrogatory Nos. 5, 6, 7, 20 and 21, the plaintiff seeks information concerning the defendant's employment practices. While it might be that such information is not material and therefore would be inadmissible at trial, it is conceivable that such information might lead to admissible evidence. The plaintiff contends that such information will show that an "all-white" organization will present an "all-white" front to prospective purchasers, and would solicit sales from an "all-white" community. Thus, such information may demonstrate how the defendant's corporate sales structure lead to discriminatory sales practices which in turn result in violations of Title VIII. For this reason the tangential issue of employment practices is properly discoverable, and the defendant will be required to answer Interrogatory Nos. 5, 6, 7, 20 and 21.

Interrogatory No. 1 concerns the race of the officers and directors of the defendant company. For the reasons just cited, such information is likewise relevant and may lead to admissible evidence. Accordingly, the defendant will also be required to answer Interrogatory No. 1.

Interrogatory No. 3 seeks information concerning sales to "minority" groups. In view of the fact that the complaint charges discriminatory sales to individuals based on race and color, it would seem that the interrogatory may not be as vague as it appears to be on its face, nevertheless, in view of the fact that a minority merely indicates "the smaller number"⁽²⁾ there does exist reasonable grounds for misinterpretation. If the plaintiff desires to know the number of contracts involving blacks or any other specific groups, then such a question can be concisely stated. As it stands the question is vague, and the defendant's objection to it will be sustained.

The defendant's motion to strike paragraph 9 of the complaint is on the basis that that paragraph concerns employment practice discrimination, while Title VIII under which this suit is brought, concerns housing discrimination. In its prayer for relief, the plaintiff also seeks, inter alia, injunctive relief from the defendant's allegedly discriminatory employment practices. It is

² Webster's New International Dictionary, Unabridged, 2nd Edition.

provided in Rule 8(a) of the Federal Rules of Civil Procedure that a pleading contain a statement of the court's jurisdiction which warrants the relief sought. "Although federal courts are liberal in their pleading practices, it is still the rule that a general allegation of jurisdiction must be borne out by a well-pleaded claim." Jewell v. City of Covington, 425 F.2d 459, 460, C.A. 5, 1970, cert. den. 400 U.S. 929 (1970); See also Chasis v. Progress Manufacturing Company, 382 F.2d 773, C.A. 3, 1967. The complaint alleges jurisdiction under 28 U.S.C. §1345 and 42 U.S.C. §3613. Under 28 U.S.C. §1345 original jurisdiction of proceedings commenced by the United States is vested in the district courts. Accordingly, if paragraph 9 is to be jurisdictionally sustained, it must be sustained under 42 U.S.C. §3613. However, this latter section vests jurisdiction in the district courts in all actions commenced to enforce the ". . . rights granted by this subchapter . . .", i.e. Title VIII. Thus, no jurisdictional averment has been made which would enable me to consider employment discrimination and grant such relief. While this jurisdictional defect may be remedied, paragraph 9 and the relief sought thereunder is irrelevant to the basis for this action. It should accordingly be stricken.

The final matter for my disposition is the plaintiff's oral motion to strike defendant's request for a jury trial. At the argument on the defendant's two motions, the plaintiff contended that this suit involved purely equitable matters and that therefore defendant's demand for a jury trial was improper. Counsel for both parties were invited to brief the issue, and while the plaintiff supplied some authority for its position, the defendant failed to do so.

The complaint alleges violations of Title VIII of the Civil Rights Act of 1968 and seeks injunctive relief against the defendant, its employees, agents and successors for failing to make dwellings or vacant land available to any person; prohibitions against discriminating against any person in the sale of vacant land or dwellings, and the taking of affirmative steps to remedy past discriminatory practices including, but not limited to the solicitation of prospective black purchasers.

In regard to this final demand that solicitation be sought from minority groups, fairness and common sense demand that we look at such a request in view of the economic realities. Where property is being sold at relatively high prices, it would be ridiculous and unrealistic to expect a company to devote a considerable portion of their advertising campaign to soliciting from economically

impoverished groups. Counsel for the Government has indicated that he would not be satisfied with requiring future advertising to be made only through newspapers of general circulation, such as the Pittsburgh Press or the Post Gazette, and through the major television networks, but seeks affirmative efforts to solicit through media expressly designed to reach the "underprivileged" segment of our population.

If the defendant has discriminated against the black population, it is fair to assume that the characteristic make-up and bias and prejudice would also include persons of other races and religions. These persons likewise should be protected. Counsel for the Government contends that the defendant has sinned in the past in not directing solicitation towards these groups, and that any expiation for this sin must be specific. Therefore, the plaintiff seeks to compel a high priority of advertising in media designed to reach these groups.

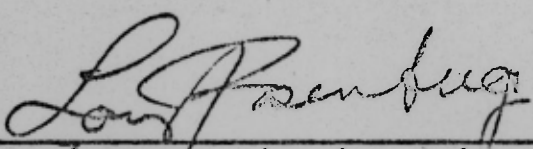
I can see no resolution to the argument of counsel by either a single insertion or by prolonged corrective advertising in the future in newspapers designed to reach a special group only, but I do see, as I suggested to counsel, a fair resolution to the problem the plaintiff presents by passing knowledge and information

to all people alike through advertising in newspapers of general circulation or by radio or television which reach all people, and where possibly the insertion of a phrase that no restrictions are imposed on any would-be purchaser, other than ability to meet the necessary financial requisites, would serve the plaintiff's purpose.

This matter, like the other matters sought as relief are historically matters of equity where trial by jury is not the rule. "The Seventh Amendment preserves to litigants the right to jury trial in suits at common law." Ross v. Bernhard, 396 U.S. 531, 533 (1970). And, while the distinction between law and equity has been essentially eliminated by the Federal Rules of Civil Procedure, in a suit for injunctive relief, exclusively, a party is not entitled to a jury trial. United States v. Louisiana, 339 U.S. 699 (1950). Accordingly, the plaintiff's motion to strike the defendant's demand for a jury trial will be granted.

ORDER

AND NOW, TO-wit, this 2nd ^{April} day of ~~March~~ 1971, for the reasons set forth in the foregoing Opinion, the defendant's objections to the plaintiff interrogatories will be sustained as to Interrogatory No. 3, and denied as to Interrogatory Nos. 1, 5, 6, 7, 20 and 21, and the defendant will be directed to answer these latter Interrogatories within twenty (20) days of the date of this Order; IT IS FURTHER ORDERED that the defendant's motion to strike paragraph 9 of the complaint be granted, and paragraph 9 of the complaint is hereby stricken; AND IT IS FURTHER ORDERED that the plaintiff's motion to strike the defendant's demand for a jury trial be granted, and the defendant's demand for a jury trial is hereby stricken.


United States District Judge

cc: Carl W. Gabel, Esq.
Frank E. Schwelb, Esq.
Department of Justice
Washington, D.C. 20530
Richard L. Thornburgh, United States Attorney
James D. Morton, Esq.
James R. Sweeney, Esq.
1800 Oliver Bldg.