

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. § 1324a Proceeding
) CASE NO. 91100093
ED VALENCIA AND SONS, INC.)
Respondent.)
_____)

ORDER DENYING COMPLAINANT'S MOTION TO
STRIKE AFFIRMATIVE DEFENSES

On September 17, 1991, Complainant, pursuant to 28 C.F.R. §§ 68.8 and 68.9 and Rule 12(f) of the Federal Rules of Civil Procedure, filed a Motion to Strike Respondent's Affirmative Defenses. For the reasons stated below, Complainant's Motion to Strike is denied.

The Respondent lists seven (7) affirmative defenses in its answer to the Complaint. These affirmative defenses are: (1) The Complaint fails to state facts to constitute a cause of action; (2) the Complainant's actions are barred by the statute of limitations; (3) estoppel; (4) that Complainant has engaged in conduct and activities sufficient to constitute a waiver of any alleged improper, unlawful or illegal conduct; (5) that Complaint has failed to exercise reasonable care and diligence to avoid loss and to minimize damages; (6) that by virtue of Complainant's unlawful careless, negligent and other wrongful conduct, Complainant should be barred from recovering against Respondent by the "equitable doctrine of unclean hands;" and (7) that the damages (sic) complained of in the Complaint were proximately caused or contributed to by the acts of others.

28 C.F.R. § 68.8(c)(2) states, inter alia, that "The answer shall include a statement of facts supporting each affirmative defense."

The Federal Rules of Civil Procedure also provide some guidelines to me in how to interpret the requirements of pleading affirmative defenses. Rule 8(c) of the Federal Rules of Civil Procedure requires that a responsive pleading must set forth certain enumerated affirmative defenses and "any other matter constituting an avoidance or affirmative defense."

Commenting on this rule, Wright and Miller state:

The general rules of pleading that are applicable to the statement of a claim also govern the statement of affirmative defenses.(citation omitted) . . . An affirmative defense will be held to be sufficient, and therefore invulnerable to a motion to strike, as long as it gives plaintiff fair notice of the nature of the defense.

See 5 Wright and Miller, Federal Practice and Procedure, Section 1274, p. 323 (1990).

In my view, Respondent has set forth in its Answer facts in support of its affirmative defenses which provide Complainant with sufficient notice of the nature of its' defenses. I do not believe it would be fair to require Respondent to detail all the facts in support of its affirmative defenses at the first pleading stage. It is my further view that the Answer of Respondent should be liberally construed in order to provide the Respondent with every reasonable opportunity to present any and all of its defenses to this cause of action.

I do not, however, believe it is helpful to either party to hold an evidentiary hearing in this case until it is clear that there are material facts in dispute with respect to any one or more of the affirmative defenses. In order to determine whether or not there is any viability or legal basis for Respondent's seven listed affirmative defenses, these matter should be fully explored in pre-trial motions.

These pre-trial motions and responsive pleading should help to determine whether or not there are any material facts in dispute.¹

ACCORDINGLY, it is hereby ordered that:

1. Complainant's Motion to Strike is DENIED; and

¹ Respondent's response to Complainant's Motion for Summary Decision should enable me to determine the viability and need for an evidentiary hearing on a number of its affirmative defenses.

2 OCAHO 387

2. Respondent shall file on or before November 15, 1991, any and all motions or other pleadings with supporting suggestions to determine the viability of its affirmative defenses including a motion to dismiss for failure to state a cause of action.

SO ORDERED, this 5th day of November, 1991, at San Diego, California.

ROBERT B. SCHNEIDER
Administrative Law Judge