

FILED
Clerk
District Court

APR 11 2002

For The Northern Mariana Islands
By J (Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JUYEL AHMED, *et al.*,)

Plaintiffs)

v.)

ROBERT GOLDBERG, in his)
personal capacity, *et al.*,)

Defendants)

Civil Action No. 00-0005

ORDER DISMISSING WITH
PREJUDICE ALL CLAIMS
AGAINST DEFENDANT
GOLDBERG and
DISMISSING HIM AS A
PARTY DEFENDANT

_____)
RUI LIANG, *et al.*,)

Plaintiffs)

v.)

ROBERT GOLDBERG, in his)
personal capacity, *et al.*,)

Defendants)
_____)

Civil Action No. 99-0046

1 THIS MATTER was scheduled to come before the court this day,
2
3 Thursday, April 11, 2002, for hearing of defendant Robert Goldberg's motion to
4 dismiss with prejudice all claims against him for the repeated failure of plaintiffs
5 to abide by the court's orders and for failure to state a claim. Plaintiffs'
6 attorney, Bruce L. Jorgensen, telephoned the court at approximately 8:00 a.m.
7
8 this morning to advise the court that he was too ill to appear and argue the
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10 motion. The court contacted Rexford C. Kosack, attorney for defendant
11
12 Goldberg, who agreed to waive oral argument in the absence of Mr. Jorgensen.

13 THE COURT, having considered the written arguments of the parties and
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15 having reviewed the file in its entirety, decides the motion without oral argument
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17 and rules as follows:

18 This now-consolidated lawsuit¹ was initiated on September 2, 1999, with
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20 the filing of Civil Action No. 99-0046, a complaint for injunctive, declaratory,
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22 and other relief. Plaintiffs filed a first amended complaint the next day, on
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24 September 3, 1999.

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26 Civil Action No. 99-0046 and Civil Action No. 00-0005 were consolidated
by court order dated October 19, 2000. Filings in both cases thereafter bore as
the primary docket number, 00-0005.

1 Plaintiffs filed a second amended complaint on June 30, 2000, naming
2 Robert Goldberg for the first time as a party defendant.
3

4 Civil Action No. 00-0005 was filed February 10, 2000. The first amended
5 complaint was filed two weeks later, on February 24, 2000.
6

7 A second amended complaint in No. 00-0005 was filed July 3, 2000,
8 naming Robert Goldberg for the first time as a party defendant.
9

10 By virtue of two amended orders dated November 20, 2000,² the court
11 dismissed with prejudice against defendant Goldberg counts 1, 3, 4, 5, 6, 11, 12,
12 and 13 of the second amended complaint in Civil Action No. 99-0046 and counts
13 1, 3, 4, 5, 6, 7, 12, 13, and 14 of the second amended complaint in Civil Action
14 No. 00-0005. Plaintiffs were given leave to amend counts 2, 7, 8, 9, and 10 against
15 defendant Goldberg in Civil Action No. 99-0046 and counts 2, 8, 9, 10, and 11
16 against defendant Goldberg in Civil Action No. 00-0005.
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20 After consolidation of the two cases, a third amended complaint was filed
21 July 16, 2001.
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25 The court consolidated the two cases while these motions were pending.
26 In an attempt to clarify its rulings for the parties, the court entered two separate
orders, each directed to the motions as they had been filed.

1 By order entered October 26, 2001, the court granted defendant
2 Goldberg's motion to dismiss with prejudice counts 1, 3, 4, 5, 6, and 11 on the
3 ground that they had already been dismissed with prejudice in the court's orders
4 of November 20, 2000. In granting the motion as to these counts, the court
5 stated:
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8 Plaintiffs' attorney is cautioned that any future amended complaint
9 must exclude any mention of potential liability of defendant
10 Goldberg on these causes of action. An award of sanctions against
11 plaintiffs, including dismissal with prejudice of their complaint, may
12 be appropriate if plaintiffs fail to abide by the court's orders.

13 In that same order, the court granted defendant Goldberg's motion to
14 dismiss with prejudice count 2, on the ground that Goldberg as an individual (as
15 opposed to a "state") cannot be found liable under the Alien Tort Claims Act and
16 § 702 of *Restatement (Third) of the Law of the Foreign Relations of the United States*.
17 Defendant Goldberg's motion to dismiss counts 7, 8, and 9 was granted, but leave
18 to amend was given. The court stated:
19

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21 As defendant Goldberg correctly observes, the infirmities identified
22 in the order of November 20, 2000, have not been rectified in these
23 counts in plaintiff's third amended complaint. Plaintiffs are given
24 leave to amend, but are cautioned that failure to abide by the court's
25 orders may result in sanctions, including dismissal with prejudice of
26 their complaint.

1 Upon motion of defendant Goldberg, by order entered January 9, 2002,
2 the court rectified an omission in its October 26, 2001, order and made clear that
3 count 10 against defendant Goldberg had also been dismissed with prejudice.
4

5 The fourth amended complaint was filed January 28, 2002.
6

7 In the instant motion, defendant Goldberg correctly points out that
8 plaintiffs' fourth amended complaint again alleges counts which have already
9 been dismissed with prejudice (counts 2, 3, 6, and 7). The court will not again
10 address those counts.
11

12 As to the conspiracy and concealment claims in the fourth amended
13 complaint (counts 4 and 5, respectively), those counts as they are alleged against
14 defendant Goldberg are now dismissed with prejudice.
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17 The court recognizes and has complied with the directive of Fed.R.Civ.P.
18 15 that leave to amend should be freely given when justice so requires. However,
19 the court also has discretion to *not* allow another attempt to properly plead
20 claims for relief where it concludes there has been undue delay, bad faith or a
21 dilatory motive, that to allow amendment would be futile, that there would be
22 prejudice to the opposing party, or if there has been repeated failure to cure
23 deficiencies by previous amendments. Schwarzer, Tashima, and Wagstaffe
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1 *Federal Civil Procedure Before Trial* ¶ 8:416 (2001), see also e.g. Steckman v. Hart
2 Brewing, 143 F.3d 1293, 1298 (9th Cir. 1998); Sisseton-Wahpeton Sioux Tribe v.
3 United States, 90 F.3d 351, 355 (9th Cir. 1996).

4
5 Plaintiffs have twice been given specific directions by the court on how to
6 cure the infirmities in their complaint as it is pleaded. The court can discern no
7 evidence that plaintiffs made a genuine, good faith (but ultimately unsuccessful)
8 attempt to properly plead those causes of action against defendant Goldberg.
9 Rather, the counts as pleaded contain the same problems previously identified by
10 the court. Here, plaintiffs have twice spurned the opportunity given to them by
11 the court's orders to cure the deficiencies in their complaint. The "requirements
12 of justice" must also apply to defendants. Defendant Goldberg, who has since
13 left the employ of the Commonwealth government, has endured almost two
14 years of uncertainty at the hands of plaintiffs.³ The allegations against him, while
15 appearing to be quite serious, are apparently not of sufficient importance to
16 plaintiffs to prompt them to properly plead them; rather, they seem content to
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24 The court believes that its assessment of bad faith, prejudice, and undue
25 delay may properly be different in the context of a single, individual defendant
26 than it might be, for example, in the case of a corporation, group, or
government entity.

1 embarrass and harass defendant Goldberg, rather than to require him to answer
2 legally for his actions. This leads the court to conclude that to allow plaintiffs yet
3 another opportunity to make out proper causes of action against defendant
4 Goldberg would be futile.
5

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7 Accordingly, the court finds that dismissal with prejudice of counts 4 and 5
8 is appropriate, both as a sanction for repeatedly failing to abide by the court's
9 previous orders and for the continuing failure of plaintiffs to make a good faith
10 effort to amend their complaint to make out viable causes of action against
11 defendant Goldberg. This decision is also buttressed by plaintiffs' opposition to
12 this motion, which blithely concedes almost every point made by defendant
13 Goldberg and thereby acknowledges their repeated failures to address the issues
14 raised in the court's previous orders.
15

16
17 Defendant Goldberg's motion that all claims against him be dismissed with
18 prejudice is granted in all respects and he is hereby dismissed as a party
19 defendant. Future amended complaints, if any, shall contain no reference to
20 defendant Goldberg, other than as may be necessary to make out a claim for
21 relief against any remaining defendant or defendants.
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