

IN THE COURT OF COMMON PLEAS, ROSS COUNTY, OHIO

FILED COMMON PLEAS COURT

ATTORNEY GENERAL OF OHIO,

Plaintiff,

MAR 10 9 20 AM '87

Case No. 87 CI 01

vs.

ELSEA, INC., et al.

JOURNAL ENTRY

Defendant.

This matter came on for non-oral hearing before this Court on defendant's, Elsea, Inc., motion for a more definite statement, and Asa J. Elsea, motion to dismiss. Having considered the affidavits, pleadings and memoranda of counsel in support and opposition thereto, this Court finds that defendant's motion for a more definite statement is hereby overruled, and defendant's motion to dismiss the complaint is hereby overruled.

Ohio Civil Rule 8 sets the requirements that need to be pleaded in order to have a valid complaint. Under the civil rule, the pleader need only allege the operative grounds underlying the claim so as to give adequate notice of the nature of the action. Rule 8(A) provides:

"A pleading which sets forth a claim for relief...shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief..."

Rule 8 provides further guidance in subpart E(1):

"Each averment of a pleading shall be simple, concise, and direct. No technical form of a pleading or of motions are required."

In the complaint filed in this matter, the specific

Ohio Revised Code and the Administrative Code Sections the State alleges the defendant has violated or identified along with the time frame for those violations. Therefore, the complaint notifies the defendant as to the nature of the alleged violations. It is clear that a plaintiff is not required to allege the detailed facts which support his claim, but need only make a brief plain statement sufficient to notify the defendant of the theory of his claim and the grounds which support it. Austin vs. House of Vision, Inc., 385 F. 2d 171 (7th Circuit 1967). Therefore, the defendant's motion for a more definite statement is hereby overruled.

The defendant also requests this action be dismissed for improper service, i.e., a failure to attach the complaint with the summons. The defendant further claims that the original complaint named Ace Elsea instead of Asa J. Elsea. The State corrected service in this matter by re-serving the defendant under his proper name, Asa J. Elsea. Therefore, the defendant's motion to dismiss the complaint because of improper service is hereby overruled.

Until further Order of the Court.

N. H. Holmes, Jr. 3/6/87

Nicholas H. Holmes, Jr.
Judge, Common Pleas Court #2
Ross County, Ohio

IN THE COURT OF COMMON PLEAS, ROSS COUNTY, OHIO

STATE OF OHIO, ex rel., et al.,

Plaintiffs

Case No. 87 CI 01

vs.

ELSEA, INC., et al.,

Defendants

JOURNAL ENTRY

This matter came on for non-oral hearing before this Court on the Motion for Reconsideration, filed by the defendants, Elsea, Inc., and Asa Elsea, and having considered the memoranda of counsel in support and opposition thereto, this Court finds that said Motion ought to be and hereby is overruled.

The defendants assert that Asa J. Elsea is not a proper defendant in this lawsuit, because as a corporate officer of the corporation he cannot be held personally liable for corporate activities. However, the Court finds that this argument of the defendant is without merit and is therefore denied. The case of State of Ohio ex rel. Celebrezze v. Northway Services (Cuyahoga App. Court, November, 1986) was a case that dealt with a factual situation similar to the case at hand.

In Northway, the Appellate Court upheld the trial court's finding of individual liability of corporate officers, for violations committed by the corporation. To support this finding, the statute in that case prohibited violations by persons. Secondly, the corporate officer's ability to control the corporate acts to avoid the violations of law justified the piercing of the corporate veil.

The public water supply laws alleged to have been violated by the defendant prohibited violations by persons, which is similar to the type of violations that were found in Northway. Ohio Administrative Code 3745-91-02 and Ohio Revised Code 6109.33. It is obvious that Asa Elsea is a person, and is therefore accountable for his violations of the law. Therefore, the defendant Asa Elsea's Motion for Reconsideration of this Court's original Order overruling the defendants' Motion to Dismiss is hereby overruled.

Exceptions to all parties adversely affected.

Until further Order of the Court.

NH Holmes Jr. 4/14/87
NICHOLAS H. HOLMES, JR.
JUDGE, Common Pleas Court #2
Ross County, Ohio