

Larry HILLBLOM
vs.
NORTHERN MARIANAS
CABLE TELEVISION
CORPORATION, d/b/a Saipan
Cable TV

Civil Action No. 85-0016
District Court NMI

Decided February 19, 1985

1. Civil Procedure - Rules - Interpretation

The Federal Rules of Civil Procedure are to be read liberally.

2. Civil Procedure - Pleading - Jurisdiction

Under the federal rules, the failure to allege a specific statute under which a district court may take jurisdiction, standing alone, is not fatal; a pleading will not be subject to dismissal so long as it sets forth facts sufficient to vest jurisdiction in the federal court. Fed. R.Civ.P.8.

3. Civil Procedure - Pleading - Jurisdiction

Where plaintiff candidate alleges in his complaint that the defendant cablecaster has failed to meet certain obligations imposed under Federal Communication Commission Regulations, the complaint sufficiently demonstrates that the court has jurisdiction. Fed.R.Civ.P. P.8; 28 U.S.C. §§1331 and 1337.

4. Civil Procedure - Pleading - Supplemental Complaint

An amendment alleging matters which occurred after the filing of the complaint is a supplemental pleading. Fed. R.Civ. P.12, 15.

5. Civil Procedure - Rules - Interpretation

The general purpose of the Federal Rules is to minimize technical obstacles to a determination of the controversy on its merits.

6. Civil Procedure - Pleading - Supplemental Complaint

Where plaintiff filed a pleading erroneously captioned "amended complaint" which alleged events occurring subsequent to the filing of the original complaint, and where no prejudice to the defendant was shown, court would deny motion to dismiss and would grant leave to file supplemental complaint. Fed. R. Civ. P. 15.

7. Statutes - Private Right of Action

The starting point in analyzing questions regarding implicit private statutory remedies is the four factor test: (1) whether the plaintiff is a member of the class for whose special benefit the statute was enacted; (2) whether there is any indication of legislative intent to create or deny a remedy; (3) whether implying a remedy is consistent with the underlying purposes of the legislative scheme; and (4) whether the cause of action is one traditionally the province of state law.

8. Statutes - Private Right of Action

The fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action.

9. Statutes - Private Right of Action

Whether there is a federal cause of action for a statutory violation is not founded in the law of torts but depends solely on

whether Congress intended to create a private right of action.

10. Federal Law - Federal Communications Act

The purpose of the Federal Communications Act was to protect the public interest in communications; no new private rights were created. 47 U.S.C. §§151 et seq.

11. Statutes - Private Right of Action

Generally, the creation of one explicit mode of enforcement is not dispositive of congressional intent with respect to other complementary remedies but the comprehensive character of a remedial scheme strongly evidences a legislative intent not to authorize additional remedies.

12. Statutes - Private Right of Action

Where Congress has authorized criminal penalties, civil actions on behalf of the administrative agency, and administrative sanctions and injunctive authority, it is highly improbable that Congress absent-mindedly forgot to mention an intended private action.

13. Statutes - Private Right of Action

In light of the nature and purpose of the Federal Communications Act of 1934, its language, and its comprehensive enforcement scheme, Congress did not intend to implicitly create a private cause of action for damages by a person injured by a violation of regulations promulgated pursuant to the Act. 47 U.S.C. §§151 et seq.

14. Civil Procedure - Pleading

Pleadings alleging breach of contract should allege at a minimum whether the contract is written, oral, implied in fact,

implied in law or otherwise and where the contract is implied in fact or law, the allegations must show the facts and circumstances from which the agreement or quasi-contract can be inferred.

FILED
Clerk
District Court

FEB 19 1985

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN MARIANA ISLANDS

For The Northern Mariana Islands

By: 

4 LARRY HILLBLOM,)

5 Plaintiff,)

6 vs.)

7 NORTHERN MARIANAS CABLE)
8 TELEVISION CORPORATION d/b/a)
9 SAIPAN CABLE TV,)

Defendant.)

CIVIL ACTION NO. 85-0016

DECISION

11
12 The plaintiff, Larry Hillblom, was a candidate for a
13 seat in the Fifth Commonwealth Legislature the election for which
14 was held on November 3, 1985. On the evening of October 31,
15 1985, roughly 60 hours before the election, the defendant
16 Northern Marianas Cable Television Corporation (Saipan Cable) ran
17 an editorial by its president which discussed Hillblom and his
18 candidacy. The following day, November 1, 1985, Hillblom sought
19 in this Court, and obtained, a preliminary injunction ordering
20 Saipan Cable to allow Hillblom access to the cablecast facilities
21 to rebut the editorial.

22 On November 6, 1985, Hillblom filed an "amendment to
23 the complaint" alleging in substance that on November 2, 1985,
24 after allowing Hillblom the opportunity to respond to the
25 editorial, Saipan Cable ran a response again "attacking
26 plaintiff's character and opposing his candidacy" without

1 offering a reasonable opportunity to rebut; for this, Hillblom
2 seeks compensatory and punitive damages.

3 The instant motion was filed on November 6, 1985 and
4 asks that:

- 5 1. the complaint be dismissed for failure
6 to allege the jurisdiction of this
7 Court; or
- 8 2. the amendment to the complaint be
9 stricken as a supplemental pleading
10 filed without leave of court; and/or
- 11 3. the action be dismissed under Federal
12 Rule of Civil Procedure 12(b)(6) for
13 failure to state a claim upon which
14 relief can be granted; or
- 15 4. Hillblom provide a more definite
16 statement regarding the breach of
17 contract claim; or
- 18 5. the malicious breach of contract claim
19 be dismissed under Rule 12(b)(6).

20 For the reasons set forth below, the Court grants the Rule
21 12(b)(6) motion to dismiss for failure to state a claim, grants
22 the motion for a more definite statement and denies the others.

23 1. Failure to Allegé Jurisdiction

24 Rule 8(a) of the Federal Rules of Civil Procedure
25 provides:

26 A pleading which sets forth a claim for
relief... shall contain (1) a short and plain
statement of the grounds upon which the
court's jurisdiction depends[.]

Saipan Cable asks this Court to dismiss the complaint for failure
to plead specific jurisdictional allegations; this suggestion is

1 rejected.

2 [1,2] The Federal Rules of Civil Procedure are to be read
3 liberally. The adoption of the Rules was the culmination of the
4 laborious task of revamping civil procedure to eliminate the
5 hypertechnical pleading provisions which permeated the earlier
6 rules of pleading. See generally C. Wright and A. Miller,
7 Federal Rules and Procedure §§ 1001-1005 (1969). Under the
8 federal rules, the failure to allege a specific statute under
9 which a district court may take jurisdiction, standing alone, is
10 not fatal. A pleading will not be subject to dismissal so long
11 as it sets forth facts sufficient to vest jurisdiction in the
12 federal courts. Rohler v. TRW, Inc., 576 F.2d 1260 (7th Cir.
13 1978).

14 [3] Hillblom has sufficiently alleged such facts.
15 Paragraph 5 of the complaint alleges that Saipan Cable has
16 certain obligations toward Hillblom arising under 47 C.F.R.
17 § 76.209 and further alleges that Saipan Cable has failed to meet
18 these obligations. These allegations sufficiently demonstrate
19 that this Court has jurisdiction under 28 U.S.C. § 1331 (action
20 arises under law of United States) and 28 U.S.C. § 1337 (action
21 arises under law regulating commerce). See Weiss v. Los Angeles
22 Broadcasting Co., 163 F.2d 313, 314 (9th Cir. 1947).

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1 [the plaintiff] to file its supplemental
2 complaint.

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4 Accordingly, the motion to dismiss the
5 supplemental complaint, erroneously labeled
6 "amended complaint" is denied.

7 Broadview Chemical Corp. v. Loctite Corp., 14 Fed.Rules Serv.2d
8 1209, 1210 (D.Conn. 1970). The Broadview approach is reasonable
9 and fair. Therefore, the Court hereby grants Hillblom leave to
10 file his supplemental pleading. The pleading entitled "Amendment
11 to the Complaint" will be treated as a supplemental pleading as
12 if correctly captioned.

13 3. Failure to State a Claim - Rule 12(b)(6)

14 The substantive issue raised by Saipan Cable is the
15 following: whether there is implicitly created under the Federal
16 Communications Act of 1934, 47 U.S.C. §§ 151 et seq., a private
17 right of action against a party acting in violation of the law or
18 of the regulations enacted thereunder. This is an issue to which
19 there is no ready solution, and which consequently requires more
20 considered analysis.

21 Hillblom alleges that Saipan Cable cablecast an
22 editorial on October 31, 1985 without abiding by the regulations
23 set forth by the Federal Communications Commission (Commission)
24 at 47 C.F.R. 76-209(b-d). Those sections provide:

25 (b) When, during origination
26 cablecasting, an attack is made upon the
honesty, character, integrity, or like
personal qualities of an identified person or
group, the cable television system operator

1 shall, within a reasonable time and in no
2 event later than one (1) week after the
3 attack, transmit to the person or group
4 attacked: (1) Notification of the date, time
5 and identification of the cablecast; (2) a
6 script or tape (or an accurate summary if a
7 script or tape is not available) of the
8 attack; and (3) an offer of reasonable
9 opportunity to respond over the system's
10 facilities.

11

12 (d) Where a cable television system
13 operator, in an editorial, (1) endorses or
14 (2) opposes a legally qualified candidate or
15 candidates, the system operator shall, within
16 24 hours of the editorial, transmit to
17 respectively (i) the other qualified
18 candidate or candidates for the same office,
19 or (ii) the candidate opposed in the
20 editorial, (a) notification of the date,
21 time, and channel of the editorial; (b) a
22 script or tape of the editorial; and (c) an
23 offer of a reasonable opportunity for a
24 candidate or a spokesman of the candidate to
25 respond over the system's facilities;
26 Provided, however, That where such editorials
are cablecast within 72 hours prior to the
day of the election, the system operator
shall comply with the provisions of this
paragraph sufficiently far in advance of the
broadcast to enable the candidate or
candidates to have a reasonable opportunity
to prepare a response and to present it in a
timely fashion.

20 Saipan Cable, assuming for the purposes of this motion that
21 § 76.209 is applicable, argues that Hillblom's only avenue of
22 complaint is to the Commission; he has no claim for legal or
23 equitable relief before this Court or any court.

24 The question of whether there exists a private cause of
25 action under the 1934 Act is an open one. Different sections of
26 the Act have spawned conflicting court decisions. Section 605 of

1 the Act, prohibiting unauthorized publication or use of
2 communications, has been consistently read to allow private
3 enforcement actions by those persons injured by the proscribed
4 conduct. See Reistmeier v. Reistmeier, 162 F.2d 691 (2nd Cir.
5 1947); Chartwell Communications Group v. Westbrook, 637 F.2d 459
6 (6th Cir. 1980); National Subscription TV v. S&H TV, 644 F.2d 820
7 (9th Cir. 1981). On the other hand, the provision most akin to
8 the regulation in question, § 315(a), the "equal time doctrine,"
9 has been consistently interpreted not to allow for a private
10 remedy. See, e.g., Bellusa v. Turner, 633 F.2d 393 (5th Cir.
11 1980); Lechtner v. Brownyard, 679 F.2d 322 (3rd Cir. 1982); New
12 England Telephone and Telegraph v. Public Utilities, 742 F.2d 1
13 (1st Cir. 1984); Daly v. Columbia Broadcasting System, 309 F.2d
14 83 (7th Cir. 1962). As Hillblom correctly notes, however, 47
15 C.F.R. §§ 76.209 (b-d) are not sub-parts of the "equal time
16 doctrine". Thus, this Court must analyze the provisions in
17 question here under the guidelines established by the Supreme
18 Court to determine whether a private cause of action can be
19 implied.

20 [7] The starting point in modern analysis of questions
21 regarding implicit private statutory remedies is the Supreme
22 Court's decision in Cort v. Ash, 422 U.S. 66, 95 S.Ct. 2080, 45
23 L.Ed.2d 26 (1975). Justice Brennan, writing for the Court, set
24 forth four factors to be considered in determining whether a
25 private remedy is implicit in a statute silent on the matter:
26 (1) whether the plaintiff is a member of the class for whose

1 special benefit the statute was enacted; (2) whether there is any
2 indication of legislative intent to create or deny a remedy; (3)
3 whether implying a remedy is consistent with the underlying
4 purposes of the legislative scheme; and (4) whether the cause of
5 action is one traditionally the province of state law. 95 S.Ct.
6 at 2088. Subsequent cases further elaborate on these four
7 factors.

8 [8.9] Initially, "the fact that a federal statute has been
9 violated and some person harmed does not automatically give rise
10 to a private cause of action." Cannon v. University of Chicago,
11 441 U.S. 677, 688, 99 S.Ct. 1946, 1953, 60 L.Ed.2d 560 (1979).
12 The cause of action is not founded in the law of torts. Rather,
13 the sole question is whether Congress intended to create a
14 private right of action; the Cort factors must be used in this
15 light. Transamerica Mortgage Advisor v. Lewis, 444 U.S. 11,
16 15-16, 100 S.Ct. 242, 245, 62 L.Ed.2d 246 (1979). The question
17 is "not whether this Court thinks that it can improve upon the
18 statutory scheme that Congress enacted" but instead strictly one
19 of statutory interpretation. Touche Ross v. Redington, 442 U.S.
20 560, 578, 99 S.Ct. 2479, 2490, 61 L.Ed.2d 82 (1979).
21 Accordingly, the language, purpose and history of legislation
22 must be examined to determine the underlying intent.

23 Employing the guidelines set forth in Cort v. Ash.
24 supra, the first question to be addressed is whether the statute
25 can be reasonably said to have been enacted for the special
26 benefit of an identifiable class of which Hillblom is a member.

1 While there is case law to support the interpretation that 47
2 U.S.C. § 315(a) was enacted to protect a special class of
3 persons^{1/} both parties agree that § 315(a) is not the operative
4 provision here. That section requires broadcasters and
5 cablecasters^{2/} to afford equal facilities access for all political
6 candidates for a particular office when the licensee offers air
7 or cable time to one candidate for that office.

8 [10] Importantly, unlike the equal time doctrine embodied at
9 section 315(a), the "fairness doctrine" and "personal attack
10 rule" are not Congressional enactments, but regulatory rules
11 promulgated by the Commission pursuant to its general statutory
12 authority to carry out the provisions of the Act. See 47 C.F.R.
13 part 76, p.484 (Oct. 1, 1984). As a general matter, the
14 Commission was created to regulate "interstate and foreign
15 commerce in communication by wire and radio so as to make
16 available, to all people of the United States a rapid, efficient,
17 nation-wide, and world-wide wire and radio communication
18 service... ." 47 U.S.C. § 151. The Supreme Court early on found
19 that "[t]he purpose of the Act was to protect the public interest
20 in communications;" no new private rights were created.

21
22 ^{1/}See, e.g., Belluso v. Turner Communications Corp., 633 F.2d
23 393, 396 (5th Cir. 1980) ("the obvious thrust of Section 315(a)
24 is to protect bona fide candidates for public office from
discrimination and unfair advantage in the use of broadcast
facilities.").

25 ^{2/}47 U.S.C. § 152(a) (as amended in 1978) makes the provisions of
26 the Act applicable to cable service.

1 Scripps-Howard Radio v. F.C.C., 316 U.S. 4, 14, 62 S.Ct. 875,
2 882, 82 L.Ed. 1229 (1942). In light of the public nature of the
3 Act and considering that the regulations at issue were not
4 congressionally enacted, the Court concludes that Congress did
5 not draft the Act for the especial benefit of those persons
6 similarly situated to the plaintiff.

7 Additionally, a review of the enforcement scheme
8 established by the Act further convinces the Court that Congress
9 did not intend that a private remedy be available to correct
10 regulatory violations. The Act establishes two apparently
11 alternative procedures by which the provisions are to be
12 enforced. Section 401(a) gives the district courts jurisdiction
13 to issue writs of mandamus "upon application of the Attorney
14 General of the United States at the request of the Commission,
15 alleging a failure to comply with ... any of the provisions" of
16 the Act. There is also established an elaborate administrative
17 enforcement procedure elsewhere in the Act. The Commission is
18 given the authority to establish regulations and to issue orders
19 in pursuing its functions. 47 U.S. §§ 154(i), 303(f). Violations
20 of the Act or of orders or regulations may be sanctioned by the
21 Commission in a license revocation hearing or by a cease and
22 desist order. 47 U.S.C. § 312. A complex procedural mechanism
23 has been established by the Commission and is now found at 47
24 C.F.R. § 1.1 et seq., § 1.80 and § 1.91. Judicial review of
25 Commission orders and decisions is provided at 47 U.S.C. § 402.
26 Additionally, 47 U.S.C. §§ 501 et seq. provide for crimina-

1 penalties for violations of the Act and § 401(c) gives the United
2 States attorney the duty to prosecute all violations of the act
3 at the request of the Commission.

4 [11-13] Generally, "[t]he creation of one explicit mode of
5 enforcement is not dispositive of congressional intent with
6 respect to other complimentary remedies." California v. Sierra
7 Club, 451 U.S. 287, 295 n.6, 101 S.Ct. 1775, 1780 n.6, 68 L.Ed.2d
8 101 (1981). However, the comprehensive character of a remedial
9 scheme strongly evidences an intent not to authorize additional
10 remedies. Northwest Airlines v. Transport Workers Union, 451
11 U.S. 77, 93-94, 101 S.Ct. 1571, 1581-1582, 67 L.Ed.2d 750 (1981).
12 Where Congress has authorized criminal penalties, civil actions
13 on behalf of the administrative agency, and administrative
14 sanctions and injunctive authority, "it is highly improbable that
15 'Congress absentmindedly forgot to mention an intended private
16 action.'" Transamerica Mortgage Advisors, supra, 100 S.Ct. at
17 247 (quoting Cannon v. University of Chicago, supra, 99 S.Ct., at
18 1981). Reinforcing the conclusion that Congress did not intend a
19 private action for damages for the violations herein complained
20 of is 47 U.S.C. § 207 which provides that any person damaged by
21 any common carrier^{3/} "may bring suit for the recovery of the
22 damages." This section demonstrates that "when Congress wished
23
24

25 ^{3/}A cablecaster is not a "common carrier" under the Act. 47
26 U.S.C. § 153.

1 to provide a private damages remedy, it knew how to do so and did
2 so expressly." Touche Ross, supra, 99 S.Ct., at 2487. Likewise,
3 this Court concludes that, in light of the nature and purpose of
4 the Federal Communications Act of 1934, its language and its
5 comprehensive enforcement scheme, Congress did not intend to
6 implicitly create a private cause of action for damages by a
7 person injured by a violation of the Act's provisions.^{4/}

8 4. More Definite Statement

9 Federal Rule of Civil Procedure 8(a) provides:

10 A pleading which sets forth a claim for
11 relief . . . shall contain . . . (2) a short
12 and plain statement of the claim showing that
the pleader is entitled to relief. . . .

13 In his amended second cause of action, Hillblom sets
14 forth in part:

15 Defendant's failure to comply with CFR
16 Title 47, Chapter 1, Section 76.209 amounts
to a malicious breach of contract with
17 plaintiff, a subscriber [sic] to Northern
Marianas Cable Television Corp., by failing
18 to live up to its contractual and legal
obligations to allow rebuttal.

19
20 ^{4/}On November 1, 1985, this Court issued a Temporary Restraining
21 Order requiring that Saipan Cable comply with the Act. No
22 decision is made regarding availability of such injunctive
23 relief under the terms of the Act. The Court's decision of
24 this day holds only that a claim for civil damages for the
25 Act's violation is unavailable. Whether the equitable relief
26 previously granted is available is now moot and need not be
reconsidered here. See, e.g., Transamerica Mortgage Advisors,
Inc. v. Lewis, 444 U.S. 11, 18-78, 100 S.Ct. 242, 246-247, 62
L.Ed.2d 146 (1980) (§ 215(a) of the Investment Advisors Act, 15
U.S.C. §§ 80b-1 et seq., implicitly creates limited equitable
remedy but "does not in terms create or alter any civil
liabilities.")

1 Saipan Cable now moves for a more definite statement
2 pursuant to Rule 12(e) which provides:

3 If a pleading to which a responsive
4 pleading is permitted is so vague or
5 ambiguous that a party cannot reasonably be
6 required to frame a responsive pleading, he
7 may move for a more definite statement before
8 interposing his responsive pleading.

9 [14] The Federal Rules are construed liberally. Perhaps
10 this is nowhere more evident than in pleading breach of contract.
11 See, e.g., Forms 3-8, Appendix of Forms to Fed.R.of Civ.Proc.
12 Where an express contract is pleaded, mere conclusory allegations
13 are sufficient. 5 Wright and Miller, Federal Practice and
14 Procedure, § 1235, p.191 (1969). However, the pleadings should
15 allege at a minimum whether the contract is written, oral,
16 implied in fact, implied in law or otherwise. Additionally,
17 where the contract is implied in fact or law, "the allegations
18 must show the facts and circumstances from which the agreement or
19 quasi-contract can be inferred." Wright and Miller, § 1235,
20 p.192.

21 Hillblom's complaint, even read liberally, cannot be
22 fairly said to be of sufficient detail to allow Saipan Cable to
23 frame a responsive pleading. Accordingly, pursuant to Rule
24 12(e), Saipan Cable's motion for a more definite statement will
25 be granted.

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1 5. Malicious Breach of Contract Claim

2 Saipan Cable now moves to dismiss Hillblom's malicious
3 breach of contract claim and punitive damages prayer as punitive
4 damages are not allowed, with the exception of certain
5 circumstances not found here, under contract law. Because the
6 Court has granted Saipan Cable's motion for a more definite
7 statement, the motion to dismiss will be denied without prejudice
8 to it being renewed by Saipan Cable after a more definite
9 statement has been filed.

10 For the reasons stated above, the Court:

- 11 1. DENIES the motion to dismiss the
12 complaint for failure to properly plead
 jurisdiction; and
- 13 2. DENIES the motion to dismiss the
14 "amended complaint"; and
- 15 3. GRANTS the motion to dismiss the claim
16 for damages under the Federal
 Communications Act; and
- 17 4. GRANTS the motion for a more definite
18 statement; and
- 19 5. DENIES, without prejudice, the motion to
 dismiss the malicious breach of contract
 claim.

20
21
22 Feb. 19, 1986

23
24 Date

25 Alfred Laureta

26 JUDGE ALFRED LAURETA