

Lawrence FLEMING
vs.
DEPARTMENT OF PUBLIC
SAFETY, and Commonwealth of
the Northern Mariana Islands

Civil Action No. 84-0006
District Court NMI

Decided April 11, 1985

Vacated in part, District Court
NMI
(June 16, 1985)

1. Jury - Civil Actions

In determining whether a suit is at common law or in equity, for the purpose of determining right to a jury trial, the court must make an historical inquiry to determine if the issue in controversy would have been heard at common law in 1791, the year of the adoption of the Seventh Amendment. U.S. Const., Amend. VII.

2. Jury - Civil Actions

The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law. U.S. Const., Amend. VII.

3. Jury - Civil Actions

Any party has a Seventh Amendment right to a jury trial in an action brought pursuant to federal civil rights statute. Civil Rights Act, 42 U.S.C. §1983; U.S. Const., Amend. VII.

4. Jury - Civil Actions Against Government

The statutory bar to jury trials against the Commonwealth government does not prevent a plaintiff from exercising his or her right to jury trial under the Seventh Amendment in an action under the federal Civil Rights Act. 42 U.S.C. §1983; 7 CMC §3101(b); Covenant, §102; U.S. Const., Amend. VII.

5. Sovereign Immunity - Civil Rights Actions

Sovereign immunity is not a doctrine of federal constitutional dimension and does not bar claims under federal civil rights statutes.

6. Jury - Civil Actions

The 'color of law' language of federal civil rights statute merely requires state action as a condition precedent to a civil rights claim; the right at issue is federal, not local, right to jury trial cannot be limited by provisions of local law. 42 U.S.C. §1983; Covenant §501.

7. Jury - Civil Actions

Where monetary and injunctive claims are to be tried together, and where monetary relief is properly viewed as equitable or as a legal remedy incidental to the equitable claim, there is no right to jury trial. U.S. Const., Amend. VII.

8. Jury - Civil Actions

In employment discrimination action based on unlawful refusal to hire, where plaintiff seeks reinstatement, back pay, and monetary damages for "pain, suffering and humiliation and loss of reputation," the claim for back pay is merely incidental to the equitable claim and the other damages are based on defamation, and for that reason arise under local law not entitling the plaintiff to a jury trial. [Vacated 6/17/85]

FILED
Clerk
District Court

APR 11 1985

IN THE DISTRICT COURT For The Northern Mariana Islands
FOR THE By *Allegre*
NORTHERN MARIANA ISLANDS

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5 LAWRENCE FLEMING,) CIVIL ACTION NO. 84-0006
6 Plaintiff,)
7 vs.)
8 DEPARTMENT OF PUBLIC SAFETY,) DECISION GRANTING MOTION
9 and COMMONWEALTH OF THE) TO STRIKE JURY TRIAL
10 NORTHERN MARIANA ISLANDS,)
11 Defendants.)

12
13 This matter came for hearing on Thursday, April 11,
14 1985 on defendants' motion to strike jury demand. For the
15 reasons stated herein, the Court grants the motion.

16 Plaintiff Lawrence Fleming applied for a position with
17 defendant Department of Public Safety (DPS). After participation
18 in an interview and completion of other requirements, Fleming was
19 found to be academically and physically qualified for the posi-
20 tion of Police Officer I. Fleming alleges that despite his
21 qualifications, he was denied the desired position due to the
22 slanderous and defamatory statements of certain officials of DPS
23 falsely accusing Fleming of participation in the illegal drug
24 trade. On April 24, 1984, Fleming filed this action against DPS
25 and the Commonwealth of the Northern Mariana Islands
26 (Commonwealth) pursuant to 42 U.S.C. § 1983 and § 1984 for

1 violation of his guarantees of due process and equal protection.

2 In his prayer Fleming asks:

- 3 1. That he receive damages for loss
4 of income and job benefits in an
5 amount such as may be proved at
6 trial;
- 7 2. That he receive damages in the
8 sum of \$100,000 for pain,
9 suffering and humiliation and
10 loss of reputation arising out
11 of false and defamatory state-
12 ments uttered by defendant's
13 agents and employees;
- 14 3. That the defendant be subject to
15 mandatory injunction compelling
16 the hiring of plaintiff[.]

17 Fleming filed on the same day a Demand for Jury Trial.

18 The Commonwealth now challenges Fleming's jury demand
19 on two grounds. First, the government relies on 7 CMC § 3101(b)
20 which provides:

21 [T]here shall be no right to trial
22 by jury in actions against the
23 Commonwealth... .

24 Second, the government sets forth Section 501(a) of the Covenant
25 to Establish a Commonwealth of the Northern Mariana Islands in
26 Political Union with the United States of America. 48 U.S.C.
1681 note (1976). This section provides in relevant part:

- (a) To the extent that they are
not applicable of their own
force, the following pro-
visions of the Constitution of
the United States will be
applicable within the Northern
Mariana Islands as if the
Northern Mariana Islands were
one of the several States:...

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Amendments 1 through 9, inclusive; ... Amendment 14, Section 1... provided, however, that neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law, except where required by local law.

The Commonwealth argues that § 1983's requirement that the challenged conduct be "under color of any statute, ordinance, regulation, custom or usage of any State or Territory" necessarily renders an action pursuant to § 1983 one "based on local law" triggering the proviso of § 501(a) of the Covenant. Accordingly, the government argues, Fleming has no right to a jury trial in this matter.

[1,2] The Seventh Amendment to the United States Constitution provides:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

In determining whether a suit is at common law or in equity, the court must make a historical inquiry to determine if the issue in controversy would have been heard at common law in 1791, the year of the adoption of the Seventh Amendment. 9 C. Wright and A. Miller, Federal Practice and Procedure § 2302 at p.14. Obvious questions arose regarding the applicability of the Seventh Amendment to claims based on statutory rights. In Curtis v. Loether, 415 U.S. 189, 94 S.Ct. 1005, 39 L.Ed.2d 260 (1974),

1 the Supreme Court laid these questions to rest and found either
2 party entitled to a jury trial in an action brought to enforce a
3 statutory right:

4 Whatever doubt may have existed
5 should now be dispelled. The
6 Seventh Amendment does apply to
7 actions enforcing statutory rights,
8 and requires a jury trial upon
 demand, if the statute creates
 legal rights and remedies, enforce-
 able in an action for damages in
 the ordinary courts of law.

9 39 L.Ed.2d at 266.

10 [3] Although the Supreme Court has not explicitly held that
11 parties to actions under § 1983 are entitled to a jury trial,
12 there is no apparent reason why the holding of Curtis would not
13 extend to legal issues raised under § 1983. See S. Nahmad, Civil
14 Rights and Civil Liberties Litigation § 1.16 (1979)(that both
15 parties in a § 1983 damage action have a right to jury trial "is
16 clear by analogy from the Court's decision in Curtis v.
17 Loether."); C. Antieau, Federal Civil Rights Acts, § 238 (1980)
18 ("Where money damages are sought in § 1983 actions, both plain-
19 tiffs and defendants are entitled to jury trials in federal
20 courts.") Although the Court is not aware of a case where the
21 Ninth Circuit has addressed this issue, the Ninth Circuit has
22 extended the right to jury trial to legal issues raised under
23 § 1981, Williams v. Owens-Illinois, Inc., 665 F.2d 918, 928 (9th
24 Cir. 1982); no apparent difference would distinguish § 1983.
25 Moreover, every circuit court which has addressed the issue has
26 found the right to jury trial preserved as to the legal remedies

1 available under § 1983 and/or § 1981. See, e.g., Walthon v.
2 Eaton Corp., 563 F.2d 66, 84 (2nd Cir. 1977); Laskaris v.
3 Thornburgh, 733 F.2d 260, 263 (3rd Cir. 1984); Patzig v. O'Neil,
4 577 F.2d 841 (3rd Cir. 1978); Burt v. Abel, 585 F.2d 613, 616 n.7
5 (4th Cir. 1978); Carter v. Estelle, 519 F.2d 1136 (5th Cir.
6 1975); Amburgey v. Cassidy, 507 F.2d 728, 730 (6th Cir. 1974);
7 Aldebrand v. Board of Trustees of Michigan State University, 607
8 F.2d 453, 458 (7th Cir. 1980); Setser v. Novak Inv. Co., 638 F.2d
9 1137 (8th Cir. 1981); Dolence v. Flynn, 628 F.2d 1280 (10th Cir.
10 1980). In a § 1983 action then, this Court concludes that any
11 party is entitled to a jury trial of the legal issues raised
12 therein.

13 [4.5] The Commonwealth's arguments to the contrary are
14 unconvincing. Of course, the statutory bar to jury trials in
15 actions against the government, 7 CMC 3101(b), is of no force as
16 the Seventh Amendment applied through the Fourteenth Amendment is
17 supreme under Section 102 of the Covenant.^{1/} That the statute is
18 founded on governmental or sovereign immunity is of no assistance
19 as sovereign immunity is not a doctrine of federal constitutional
20 dimension and acts as no bar to claims under federal civil

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23 ^{1/}Section 102 reads:

24 The relations between the Northern Mariana Islands and the
25 United States will be governed by this Covenant which, together
26 with those provisions of the Constitution, treaties and laws of
the United States applicable to the Northern Mariana Islands,
will be the supreme law of the Northern Mariana Islands.

1 rights statutes. Civil Actions Against State Governments § 2-29
2 (Shepard's/McGraw-Hill, 1983).

3 [6] The Commonwealth's efforts to trigger the proviso of
4 Section 501 of the Covenant also fails. That proviso, as noted
5 above, limits the right to a jury trial to that "where required
6 by law" in any civil action "based on local law." The Common-
7 wealth argues that a § 1983 action is "based on local law" in
8 that it requires the challenged action to be under color of state
9 law. The government's attempt to bootstrap itself into the
10 proviso is summarily rejected. The 'color of law' language of
11 § 1983 merely requires state action as a condition precedent to a
12 § 1983 claim; the rights at issue are federal, not local. See
13 Lugar v. Edmondson Oil Co., 457 U.S. 922, 102 S.Ct. 2744, 73
14 L.Ed.2d 482 (1982). See, also, S. Nahmad, supra, at §§ 2.01,
15 2.04.

16 [7.8] While Fleming is entitled to a jury trial of the legal
17 issues under § 1983 raised in his complaint, the Court concludes
18 that his federal civil rights action raises only equitable claims
19 which do not mandate a jury upon demand. Fleming seeks an
20 injunction directing DPS to hire him and as damages he seeks
21 recovery of "loss of income and job benefits." The Ninth Circuit
22 in Williams v. Owens-Illinois, supra, squarely rejected a demand
23 for jury trial in similar circumstances:

24 Thus, the only requested
25 remedy other than injunctive relief
26 which was before the court was back
pay. That relief, however, was
properly viewed as either equitable

1 or as a legal remedy incidental to
2 an equitable cause of action and
3 accordingly not sufficient to
4 create a right to jury trial.

5 665 F.2d at 929. Fleming does seek damages for "pain, suffering
6 and humiliation and loss of reputation arising out of false and
7 defamatory statements uttered by defendant's agents and employ-
8 ees." These damages arise not from the deprivation of federally
9 secured rights, however, but from the alleged defamation.
10 Accordingly, the legal issues regarding the requested damages
11 arise under local law and are subject to the proviso and the
12 statutory prohibition against jury trials in such cases. Since
13 Fleming seeks no legal remedy for the deprivation of his federal
14 constitutional rights, he is not entitled to a jury trial under
15 the reasoning of Williams.

16 In conclusion, while parties are entitled to a jury
17 trial of legal issues raised in a § 1983 complaint, Fleming
18 raises only equitable issues in the federal component of this
19 action disallowing him his jury demand. Fleming's request for
20 damages for defamation arises under local law which prohibits a
21 jury trial.

22 The Commonwealth's motion to strike jury demand is
23 GRANTED.

24 DATED this 11/13 day of April, 1985.

25 
26 JUDGE ALFRED LAURETA