In re Dismissal for Failure to State a Claim

FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

[5] "The general rule in appraising the sufficiency of a complaint for failure to state a claim is that a complaint should not be dismissed '***unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' CONLEY VS. GIBSON (1957), 355 U.S. 41, 45, 46, 78 S.Ct. 99, 102, 2LEd 2d 80; SEYMOUR VS. UNION NEWS COMPANY, 7 Cir., 1954, 217 F.2d 168; and see rule 54c, demand for judgment, FEDERAL RULES OF CIVIL PROCEDURE, 28 USCA: "***every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." U.S. V. WHITE COUNTY BRIDGE COMMISSION (1960), 2 Fr Serv 2d 107, 275 F2d 529, 535

"A complaint may not be dismissed on motion if it states some sort of claim, baseless though it may eventually prove to be, and inartistically as the complaint may be drawn. Therefore, under our rules, the plaintiff's allegations that he is suing in 'criminal libel' should not be literally construed. [3] The complaint is hard to understand but this, with nothing more, should not bring about a dismisal of the complaint, particularly is this true where a defendant is not represented by counsel, and in view of rule 8{f} of the rules of civil procedure, 28 U.S.C., which requires that all pleadings shall be construed as to do substantial justice BURT VS. CITY OF NEW YORK, 2Cir., (1946) 156 F.2d 791. Accordingly, the complaint will not be dismissed for insufficiency. [4,5] Since the Federal Courts are courts of limited jurisdiction, a plaintiff must always show in his complaint the grounds upon which that jurisdiction depends." STEIN VS. BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPER HANGERS OF AMERICA, DCCDJ (1950), 11 F.R.D. 153.

"A complaint will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts, it cannot be said that under no circumstances will the party be able to recover." JOHN EDWARD CROCKARD VS. PUBLISHERS, SATURDAY EVENING POST MAGAZINE OF PHILADELPHIA, PA (1956) Fr Serv 29, 19 F.R.D. 511, DCED Pa 19 (1958)

"FRCP 8f: CONSTRUCTION OF pleadings. All pleadings shall be so construed as to do substantial justice." DIOGUARDI VS. DURNING, 2 CIR., (1944) 139 F2d 774

"Counterclaims will not be dismissed for failure to state a claim, even though inartistically drawn and lacking in allegations of essential facts, it cannot be said that under no circumstances will the party be able to recover." LYNN VS VALENTINE VS. LEVY, 23 Fr 46, 19 FDR, DSCDNY (1956)

JUDICIARY ACT OF 1789, suit cannot be dismissed because of errors in service

FRCP 12(b)(6) “Failure to State a Claim for which Relief can be Granted”

21 Oct

For years, I've watched pro se plaintiff after pro se plaintiff have their complaints dismissed by federal courts based on a defendant's pre-trial, Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6) "for failure to state a claim for which relief can be granted." Although the federal courts' repeatedly grant of 12(b)(6) Motions to Dismiss, the meaning of the phrase "failure to state a claim for which relief can be granted" has remained almost as obscure as that of a magical incantation ("*abra cadabra!*"). Everyone has heard the words but no one seems to understand what they really mean.

Over the years, I've speculated on several possible explanations for what "failure to state a claim for which relief can be granted" might truly mean. What follows are several case excerpts plus more of my bracketed speculation. This speculation is somewhat "stream of consciousness" but nevertheless expresses my "theory de jure" as to what that mysterious phrase might really mean. I can't say this current speculation is true, but it's probably my best to date.

"The **general rule** in appraising the sufficiency of a complaint for failure to state a claim is that a **complaint should not be dismissed** '***unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' CONLEY VS. GIBSON (1957), 355 U.S. 41, 45, 46, 78 S.Ct. 99, 102, 2LEd 2d 80; SEYMOUR VS. UNION NEWS COMPANY, 7 Cir., 1954, 217 F.2d 168; and see rule 54c, demand for judgment, FEDERAL RULES OF CIVIL PROCEDURE, 28 USCA: "***every **final judgment shall grant the relief** to which the **party** in whose favor it is rendered is **entitled**, **even if the party has not demanded such relief** in his pleadings." U.S. V. WHITE COUNTY BRIDGE COMMISSION (1960), 2 Fr Serv 2d 107, 275 F2d 529, 535

[The plaintiff must expressly show his "title" to whatever relief is requested. I.e., the plaintiff must show that it's *possible* for him to prove a "set of facts" in court (and probably to a jury) that proves he has "title" to the relief requested.

The "relief" might be at law, but is probably <u>equitable</u>. If so, the plaintiff must show that he could possibly prove a set of facts that proved he had EQUITABLE TITLE to the "relief" (benefit) requested. This, in turn, implies that the plaintiff must allege 1) facts sufficient to prove the existence of a fiduciary relationship between himself and the defendants wherein he is the beneficiary and the defendants are fiduciaries; and 2) a breach by the defendants of their fiduciary obligations relative to the plaintiff.

The problem for the plaintiff is alleging that government employees owed him a fiduciary obligation. Under the Constitution and de jure government, the government officer has a fiduciary obligation to each of the People. However, under the employer-employee doctrine, an employee has a fiduciary obligation to the employer—but not the "customer". Thus, as gov-co employees (and only "de facto officers"), the government "official" would have no fiduciary obligation to the injured plaintiff and could not be charged with a breach of such non-existent fiduciary obligation.

This implies that the proper defendant would be the <u>employer</u> rather than any of the employees. The employer would presumably have fiduciary obligations (or perhaps even an obligations at law) to the customer.

Of course, if the plaintiff tried to sue a government employer as defendant for breach, that "employer" would claim "sovereign immunity". To prevail, the plaintiff would have to disprove that the governmental "employer" was truly a sovereign entity by proving the governmental employers was 1) an independent corporation with its own EIN; 2) an independent administrative agency that worked for government but was not part of government; 3) conducting its affairs in legal tender so it could not be a State of the Union; 4) acting "within The State" rather than "in this state"; . . . .

Ideally the plaintiff would charge both 1) the governmental employer; and 2) the governmental employees ("officials") in multiple causes of action structured as "double-edged strategies" wherein both sets of defendants can only avoid liability by implicating the other.

I.e., sue the governmental employer for breach based on the allegation that the agency-employer had a fiduciary obligation to the "customer" (plaintiff). But even this might be a stretch if the government employer was an independent administrative agency that was hired (employed) by whatever passes for government. If the independent administrative agency is not part of government, but merely an "employee," then the agency owes its fiduciary duty to its employer—the government—rather than to the "customer". Even so, a cause of action against the independent agency employer must be devised for the purpose of "inviting" that employer to claim "sovereignty".

Then, once the employer claims "sovereign immunity," it employees would be deemed to be "officers" with fiduciary obligations to the People rather than employees with fiduciary obligations only to the employer.

Also, the employees can be charged with breach of fiduciary obligations based on their OATHS OF OFFICE.

But it's important to recognize the "chain" of employment links that cause 1) the "officials" to have fiduciary obligations to their employer (rather than the customer-plaintiff), and 2) that employer (if an independent administrative agency) to have fiduciary obligations only to whatever "governmental" entity hired it (rather than to the customer-plaintiff). There might even be a third employment link if the entity that hired the independent administrative agency was itself an "employee" of The State or of this state.

However, the money issue should be useful to "prove" that the varies "employers" cannot claim sovereign immunity. Insofar as any of the employees, officials and employers are transacting in legal tender, they can't be or represent a State of the Union and therefore can't claim sovereign immunity —*provided* that the plaintiff-customer show that all activities took place "within The State". If the plaintiff admit he was voluntarily acting "in this state," he's probably waived any complaint based on fiduciary obligations of the employees and/or employers.

This is a complex and subtle process that might be implemented somewhat as follows:

First, allege that you are a man.

Second, allege that all acts (and especially injuries) took place on the soil within the actual boundaries of The State.

Third, charge the perpetrators (employees) as "officers" under the Constitution for breach of their fiduciary obligations to the People. If they claim sovereign immunity, defeat that claim with the money issue (or others) and demand a default judgment.

Fourth, charge the perpetrators (employees) as "employees" who nevertheless have fiduciary obligations to the People based on their Oaths of Office.

Fifth, charge the perpetrators (employees) with fraud for masquerading as if they were "officers" of The State and therefore only a pretense of authority when they knew or should've known that they had no authority (this depends on the plaintiff having challenged their authority from the beginning and precluding the de facto officer doctrine immunity.

Sixth, charge the employer for breach of fiduciary obligations to the plaintiff under the Constitution.

Seventh, charge the employer for breach of fiduciary obligations under the EMPLOYER'S CHARTER! DEMAND THEY PRODUCE the corporate charter! If they have no corporate charter, they must be either 1) government or 2) fraudulent. If they are government, they have fiduciary obligations to the People. If they are fraudulent, they are subject to criminal prosecution, RICO, etc.

Eighth, go after the attorney's allegedly representing the independent agency (employer) under a Rule 12 (?) challenge which (according to Fox) requires them to "have the law" with them when they appear at court. "The law" is the corporate charter. If they don't produce the corporate charter, then either the agency is not "independent" and does have fiduciary obligations under the Constitution, or the agency and/or attorney is engaged fraudulent misrepresentation.

Etc.

(Got to create a "double-edged strategy" with the objective of making them admit, heads, they have a fiduciary obligation as officers to the plaintiff or, tails, the employer has a fiduciary obligation to the plaintiff.)

To beat the 12(b)(6) motion, plaintiff must show facts that would prove his "title" to the (equitable?) relief against the defendant fiduciaries.

But there is one other point: If the 12(b)(6) is all about equitable relief, what happens if the plaintiff not only makes a claim under equity, but also alleges a "legal" or "perfect" title AT LAW? Maybe they can dismiss your equitable claim no matter what you say. But if you can create a claim AT COMMON LAW or perhaps IN ADMIRALTY, can 12(b)(6) even be considered?

That's a very good point.

Create claims both in equity (in this state?) and AT LAW ("within The State"?)

The previous court's decision alleges that the plaintiff can proves "no set of facts" sufficient to entitle him. The phrase "no set of facts" implies that there may be several alternative "sets of facts" which might be alleged and possibly proved by the plaintiff. (This is where the "double-edged strategy" applies.) Plaintiff should allege several "sets of facts" (causes? Claims?) under which he might be entitled to "relief". These sets of facts should be carefully devised so the defendants cannot deny one set without confessing another.]

"A **complaint** may **not be dismissed** on motion **if it states some sort of claim**, baseless though it may eventually prove to be, and inartistically as the complaint may be drawn. Therefore, under our rules, the plaintiff's allegations that he is suing in 'criminal libel' should not be literally construed. [3] The complaint is hard to understand but this, with nothing more, should not bring about a dismissal of the complaint, **particularly is this true where a defendant is not represented by counsel**, and in view of rule 8{f} of the rules of civil procedure, 28 U.S.C., which requires that **all pleadings shall be construed as to do substantial justice** BURT VS. CITY OF NEW YORK, 2Cir., (1946) 156 F.2d 791. Accordingly, the complaint will not be dismissed for insufficiency. [4,5] Since the **Federal Courts are courts of limited jurisdiction**, a **plaintiff must always show in his complaint the grounds upon which that jurisdiction depends**." STEIN VS. BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPER HANGERS OF AMERICA, DCCDJ (**1950**), 11 F.R.D. 153.

[First, the court declares that no true "complaint" can be dismissed IF that complaint is supported by a valid "CLAIM" (to equitable or legal right?). This implies that we must learn all of the elements required to create a valid claim and proof of TITLE and ensure that each of those elements is present in each of the plaintiff's claims.

Second, the plaintiff's petition and/or claim should be expressly written for the purpose of seeking "SUBSTANTIAL JUSTICE" (whatever that is) as compared to whatever alternative forms of "justice" might exist. I suspect that "substantial" justice may be AT LAW while the alternatives may be in equity —but this requires research.

Third, plaintiff's complaint (not claim) must show grounds for the federal court's jurisdiction. This requirement (referenced in A.D. 1950) might or might not have been imposed relative to Article III courts. (Needs research) As a precaution, perhaps every CLAIM should also include proof of the federal court's JURISDICTION. If the jurisdiction is in the claim, then the jurisdiction is surely in the complaint . . . ??]

"A complaint will not be dismissed for failure to state a claim, even though **inartistically** drawn and **lacking in allegations of essential facts**, it cannot be said that under no circumstances will the party be able to recover." JOHN EDWARD CROCKARD VS. PUBLISHERS, SATURDAY EVENING POST MAGAZINE OF PHILADELPHIA, PA (1956) Fr Serv 29, 19 F.R.D. 511, DCED Pa 19 (1958)

[First, the reference to "essential facts" is ambiguous in that it might refer to facts "essential" to the "claim" or it might refer to facts "essential" to the complaint. That's two different sets of facts. Close reading suggests that this reference to "facts" concerns those "essential" to the *claim* rather than the complaint.

Clearly, 12(b)(6) is all about the validity of the "claim" rather than the complaint.

Therefore, if a "lack of allegations of essential facts" in a "claim" is insufficient to cause a 12(b)(6) dismissal a plaintiff's *complaint*, then the issue of "facts" essential to the validity of the *claim* is not central to 12(b)(6). That tells me that a *claim* sufficient to ensure a complaint will be heard must be based on the relevant LAW rather than the FACTS.

A valid claim must include reference to the valid LAW which entitles the plaintiff to seek "relief". Is that "LAW" the USC, common law, State or federal ORGANIC law, or private law under some private fiduciary relationship between plaintiff and defendant?

The valid claim must be based on and expressly reference (and perhaps even prove) some LAW which can be proven by one or more sets of facts. This suggests that a valid claim should include certified copies of the relevant law under which the claim is made.

More, I am beginning to suspect that the valid claim must be sent to the defendant BEFORE a lawsuit is filed. I.e., first you present a valid CLAIM to the defendants (probably by means of certified or registered mail for evidence). Yes, yes YES! I'll bet that's it! I'll bet we have to implement a standard (administrative?) debt collection process—perhaps with three or more "notices" of "claim" sent to the defendants. I'll bet the mysterious "claim" that the plaintiff has "failed to state" under 12(b)(6) is some sort of collection process or demand letter(s) that must be sent before the lawsuit.

The "claim" is probably not the text that's included within the "complaint". The "claim" is probably a series of notices and/or demands sent to the defendants which inform the defendants of the law and factual basis of the claim. The "claim" is not the text, it's the EXHIBITS of the several Notices and/or Demands that constitute collectively a valid "claim".

The pro se's just sue people without ever making a proper "claim" prior to the lawsuit. I'll bet that's why the pro se suits are routinely dismissed on 12(b)(6). It's not about the quality of the "claim" within the body of the "complaint". It's about the totality of the "claim process" implemented before the suit is filed.

First, the plaintiff must present his "claims" to the defendants. Then, after the total claim process has been implemented by the plaintiff and rejected by the defendants, THEN the plaintiff will have "stated a claim" for which relief can be granted.

The deception is in the term "a claim" as in "failure to state a claim for which relief can be granted." I read the indefinite adjective "a" to imply the existence of a single "claim". Likewise, I read the word "claim" to be singular. I have presumed this singular claim must be the "claim" asserted in the text of the complaint. Maybe that presumption is false. Maybe "a claim" is not a singular claim, but rather the singular *result* of having properly taken all of the several steps required to make a complete administrative claims.

The whole 12(b)(6) process might simply be a variation on "failure to exhaust your administrative remedies". I'll bet I don't have a valid "claim" to take to court until I've first given the defendants several "notices of claim" that conform to the Debt Collection Process laws.

I give them Notice of my claim and thereby create their opportunity for discovery (inquiry). They get to ask questions. If they do anything other than ASK QUESTIONS, they are presumed to have adequate Notice and then I can take them to the "hearing". I can't take the defendants to court (the "hearing") until I've first "stated" (given *notice* of) the claim to the defendants.

The 12(b)(6) motion for dismissal may be a function of the rules of procedural due process—the minimum due process afforded to all: 1) Notice; and 2) Opportunity to be heard (courtroom hearing). I'll bet that "stating a claim" is synonymous with giving them sufficient NOTICE. I can't take them to court until they've had adequate Notice. Failure to "state a claim" means failure to "give adequate Notice" prior to the hearing.

I'm about 90% certain that a "failure to state a claim" is ultimately about "failure to provide adequate notice (and opportunity to inquire) of a claim" to the defendants PRIOR to taking them to court.

If so, then 12(b)(6) "failure to state a claim" (at the federal level and some equivalent at your state level) would be the way to attack any INSUFFICIENT NOTICE—including those sent by the gov-co. I.e., if gov-co sent me a notice and I responded with proper questions, and they refused to answer, I'd have grounds to make a 12(b)(6) motion for "failure to state a claim".

Interesting. You start trying to understand 12(b)(6) motions and wind up understanding (maybe) how to attack gov-co Notices. Without sufficient Notice (*of claim*) we can't take them to court and they can't take us to court.

If the essence of a valid claim is the LAW rather than the FACTS, then that's what must be inquired about in response to notice. This is consistent with court determinations that an adequate notice need not provide a full litany of FACTS. Instead, the sufficient notice must only give sufficient information to put the recipient "on inquiry". I have presumed (until now) that the proper inquiry would be to discover all of the relevant or material FACTS. I'm beginning to suspect that primary inquiry is not about FACTS, but about the LAW underlying the CLAIM.

This conclusion may be mistaken but, for now and for me, it makes almost perfect sense.

The first opportunity provided by the Notice is the recipient's opportunity to inquire into and then deny the LAW on which the ENTITLEMENT to make the CLAIM is based. In essence the primary question in response to a Notice of Claim is "Under what LAW do you make this claim?" The second question would probably be, "Under what authority do you deem me to be subject to said LAW?" Third, "Under what FACTS do you deem me to subject to said LAW?" Fourth, "In what PLACE (The State or this state) do you deem me subject to this LAW?" Fifth, "If the alleged LAW is private in nature, what facts exist to show that I consented to be bound by this law?" "Is this private law based on contract or trust?" "If so, where is my signature voluntarily agreeing to be bound by such private

law?" "If there is no signature, what are all the specific instances of my personal conduct which you believe gives rise to your TITLE under PRIVATE LAW to make claim against me?" "Is this claim against me—a living man made in God's image and endowed by his Creator with certain unalienable Rights and properly named "Alfred Adask?" "Is this claim made against an entity named "ALFRED ADASK" which might be a fictional entity, person or capacity <u>other than</u> the living man named 'Alfred Adask'?" "Are the names "Alfred Adask" and "ALFRED ADASK" synonymous?" "Do the names "Alfred Adask" and "ALFRED ADASK" both signify a man made in God's image and endowed by his Creator with certain unalienable Rights?" "If your claim is based on PUBLIC law, do you represent the government "The State of Texas"—a member-State of the perpetual Union styled "The United States of America"?" "If your claim is based on PUBLIC law, are you an officer under "The Constitution of The State of Texas"—"The State of Texas" being a member-State of the perpetual Union styled "The United States of America"? "If your claim is based on title under PUBLIC law of The State, why isn't your claim denominated in lawful money (gold and silver coin as required by Article 1 Section 10 Clause 1 of The Constitution of the United States adopted on or about A.D. 1789?" "What is your authority to make a claim in terms of legal tender on the soil within the boundaries if The State of Texas—a member-State of the perpetual Union styled "The United States of America"?"

"Are you cognizant of the fact that the minimum due process available to all defendants is "procedural due process"?" "Are you cognizant of the fact that "procedural due process" consists of 1) Notice and 2) Opportunity to be heard?" "Are you cognizant of the fact that Notice creates a right and sometimes duty of inquiry for the Notice recipient and/or agent or fiduciary acting on behalf of the Notice recipient?" "Are you aware that the Notice recipient's right to make inquiry entitles the Notice recipient to claim answers from the Notice author?" Are you cognizant of the fact that no Notice is complete so long as reasonable and relevant inquiry by the Notice recipient remain unanswered?" "Are you cognizant of the fact that without sufficient Notice, plaintiff cannot lawfully proceed to a hearing?" "Are you cognizant of the fact that a refusal to fully answer questions posed by a Notice recipient is grounds to have a case dismissed for failure to state a claim for which relief can be granted?" ADD AUTHORITIES.

Etc., etc.

"FRCP 8f: CONSTRUCTION OF pleadings. All pleadings shall be so construed as to do **substantial** justice." DIOGUARDI VS. DURNING, 2 CIR., (1944) 139 F2d 774

[Again, the concept of "substantial justice" is crucial. What exactly does it mean or imply?]

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[This implies that while an original plaintiff's suit can be dismissed for "failure to state a claim," that option does not exist for a counter-claim. If the foregoing analysis and conclusions are roughly correct, then there is no requirement to provide NOTICE of Claim to the Plaintiff as prerequisite for the COUNTER-Claim. A valid lawsuit filed by a plaintiff creates opportunity for inquiry for both the plaintiff

and the defendant. Therefore, there is no reason for the defendant to create further right of inquiry by filing his NOTICE of Claim as 1) the first step in procedural due process; and 2) condition prerequisite for proceeding to the hearing.]

JUDICIARY ACT OF 1789, suit cannot be dismissed because of errors in service