Melimarang v. Debesol, 7 ROP Intrm. 263 (Tr. Div. 1998)

KLERANG MELIMARANG,
Plaintiff,

v.

MARINO DEBESOL, and DOES 1 TO 100, Inclusive,
Defendants.

CIVIL ACTION NO. 98-304

Supreme Court, Trial Division
Republic of Palau

Decided: October 26, 1998

Counsel for Plaintiff: Mark Doran

Counsel for Defendants: No Appearance

BEFORE: R. BARRIE MICHELSEN, Associate Justice.

Plaintiff in this action has named Marino Debesol as a defendant, along with "Does 1 to 100, inclusive." Plaintiff states: "This action involves the question of who are the strong members of Iblong Lineage, and who has the authority to administer and manage Iblong Lineage lands." Plaintiff proposes to serve the "Does" by publication. While the naming of Doe defendants has become common practice in Palau, it is only a matter of habit. I suspect that the use of fictitious "Doe" defendants is a California import. However, in this jurisdiction, where the rules are derived from United States federal court rules, naming "John Does" as defendants adds nothing of substance.

The difference between civil practice under the federal rules, and practice pursuant to California statutes, is explained in *Bryant v. Ford Motor Co.* , 844 F.2d 602 (9th Cir. 1987). California procedure stands in marked contrast to the federal approach. It provides that a plaintiff may name a defendant using a fictitious name, and may substitute the real name when the identity of the defendant is discovered. Cal.Civ.Pro. Code § 474. The substitution of the real name may occur during the subsequent three years. Cal.Civ.Pro. Code § 581a. But these California statutes obviously only apply to California courts. In United States federal courts, "[t]he Federal Rules of Civil Procedure do not provide for suing fictitious parties. Indeed, the practice is inconsistent with many of the rules and incompatible with federal procedure." *Bryant* at 615 (Kozinski, dissenting on other grounds).

The general rule is that

> parties to a lawsuit must identify themselves in their respective pleadings. *Southern Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe* , 599

> F.2d 707, 712 (5th Cir, 1979). Fed. R. Civ. P. 10(a) requires a complaint to "include the names of all parties." This rule serves more than administrative convenience. It protects the public's legitimate interest in knowing all of the facts involved, including the identities of the parties.

Doe v. Frank, 951 F.2d 320, 322 (11th Cir. 1992).[1] More to the point, "John Doe" practice avails the plaintiff nothing. "It is ⊥264 familiar law that 'John Doe' pleadings cannot be used to circumvent statutes of limitations, [citations omitted], because replacing a 'John Doe' with a named party in effect constitutes a change in the party sued." *Aslanidis v. U.S. Lines. Inc.*, 7 F.3d 1067, 1075 (2nd Cir. 1993). Furthermore, since adding parties to an action must be done pursuant to Rule 15, ROP R.Civ.Pro., the decision to allow an additional defendant will be determined using the standard of Rule 15, and will not depend on whether the earlier inclusion of a "John Doe" defendant saved a spot for the proposed additional defendant. Third, the statutes of Palau do not provide for service by publication to resolve cases concerning lineage strength. Any effort to serve process by publication in such cases is unlikely to survive constitutional scrutiny when challenged. The inexorable conclusion is that the presence of "John Doe" defendants is, at best, surplusage.

> Perhaps these Does have some proper place under California state practice. But it is hard to believe they serve any purpose when they are included superstitiously and without reason. Certainly their phantoms, when Does live not and are accused of nothing, should not divert the course of justice.

Grigg v. Southern Pacific Co., 246 F.2d 613, 620 (9th Cir. 1957).

That being the case, there is only one defendant to date in this case. I therefore conclude there are no defendants to serve by publication. The motion is therefore denied.

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[1] There appears to be an exception allowing for Doe plaintiffs, and possibly Doe defendants, where the case involves sensitive matters implicating a right of privacy. *See*, discussion in *Coe v. District Court*, 676 F.2d 411 (10th Cir. 1982). *See also, Doe v. Doe*, 6 ROP Intrm. 221 (1997). This case does not involve a litigant requesting anonymity. It concerns fictitious defendants.