

No. 17-CV-1221

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

FEB 12 2018

Dawn Delebreau,
Plaintiff,

v.

Cristina Danforth, Larry Barton, Melinda
Danforth, Jay Fuss, and Geraldine Danforth,
Defendants.

**BRIEF OPPOSING DEFENDANT'S
MOTION TO DISMISS**

Dawn Delebreau, *pro se*

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INTRODUCTION

The plaintiff seeks punitive damages and other awards as deemed appropriate by the Court for the racketeering influence of the Defendant's violations of Enhanced Whistleblower Protection 41 U.S.C. § 4712 *inter alia* as reprisal for disclosing gross mismanagement, waste, fraud, and abuse of federal HUD funding and materials theft at the Oneida Housing Authority (OHA) *see U.S.A. v Jay L. Fuss* (17-cr-92-WCG) held in this Court such that the Defendant's patterns of behavior, racketeering activities, and incompetence resulted in prohibited federal whistleblower discrimination because the Plaintiff was demoted, discharged, received threats of harm and Plaintiff's son was physically harmed.

The Defendant's request this case be dismissed on two grounds, under R. Civ. P. 12(b)(1) and (6). The former the District Court of the United States has jurisdiction under 41 U.S.C. § 4712 inferring Article III of the United States Constitution gives this Court the judicial

power arising under the laws of the United States i.e. 41 U.S.C. § 4712 and 18 U.S.C. §§ 1961–1968. In the latter, 41 U.S.C. § 4712 states reprisal as documented by the Federal Bureau of Investigation (FBI) and provided as evidence in *U.S.A. v Jay L. Fuss* are not only factual but more than sufficient to establish a cause of action under 41 U.S.C. § 4712 and 18 U.S.C. §§ 1961–1968.

In addition, the Defendant's request this case be dismissed under the doctrine of sovereign immunity. However, Defendant's are sued as individuals and therefore the doctrine of sovereign immunity does not apply see *Lewis et al., v. Clarke*, Cert. to S.Ct. of Connecticut (April 25, 2017).

Thus, R. Civ. P. 12(b)(1) and (6), tolling, sovereign immunity doctrine, and equal protections *infra*.

STATEMENT OF JURISDICTION

This Court has jurisdiction per U.S. Constitution Article III, Section 2 such that this Court's judicial power extends to all cases, in

law and equity, arising under the Constitution, and the laws of the United States. For example, 41 U.S.C. § 4712 Enhanced Whistleblower Protection is within this Court's jurisdiction to adjudicate and thus subject matter jurisdiction. The analysis of this suggests the intent of Congress is to protect employees who protect federal funds such as the Plaintiff from reprisal for whistleblowing activities in connection with fraud see *United States v. Jay L. Fuss*, 17-cr-92-WCG held in this Court. The Enhanced Whistleblower Protection applies to *all* employees where there is a connection to a federal grant or contract and whistleblower protections cannot be waived. Whistleblower protections were federally-triggered when the Plaintiff disclosed federal HUD waste, fraud, and abuse to the HUD grantee, FBI, and the HUD Office of Inspector General.

In United States law, federal question jurisdiction is the subject-matter jurisdiction of the United States federal courts to hear a civil case because the Plaintiff alleges the Defendants violated federal laws under 41 U.S.C. § 4712 and 18 U.S.C. §§ 1961–1968. Thus,

Plaintiff states this Court has subject matter jurisdiction.

STATEMENT OF CLAIM

As determined by and hereby alleged by the Plaintiff in the whistleblower case of *United States v. Jay L. Fuss*, held in this Court, that the FBI, HUD Office of Inspector General, and the U.S. District Attorney have documented that the HUD grantee discharged, demoted, or otherwise discriminated against Plaintiff see 41 U.S.C. § 4712 Subpart 3.903 also see *Conley v. Gibson*, 355 U.S. 41 (1957), *Bell Atlantic Corp v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) such that when this Court uses the strictest “Plausibility Standard” that the FBI, HUD OIG, and the U.S. District Attorney have enough facts in *United States v. Jay L. Fuss* to raise a reasonable expectation that discovery will reveal evidence of illegal agreement see *Bell Atlantic Corp v. Twombly*.

In other words, federal prohibited whistleblower retaliation and reprisal such as discharging and demoting the Plaintiff is well

documented by federal agencies because the Plaintiff disclosed information relating to a substantial violation of federal law relating to federal HUD funds that resulted in a conviction in the *United States v. Jay L. Fuss* held in this Court. Therefore, this Court is acutely aware, that it is a highly reasonable expectation, that discovery will reveal evidence of illegal agreement see *Bell Atlantic Corp v. Twombly*.

DISCOVERY TO TOLL

Discovery ought to reveal an identity of tolling because it is unknown when tolling might have or ought to have begun and especially considering the Court Dependency Rule which suggests tolling begins on January 3, 2018, as determined by the *United States v. Jay L. Fuss* case nonetheless, a tolling rule or time has not be established. This Court should take note that the Defendants have not stated a tolling rule nor can the Defendants legally point to a specific tolling time as evidenced in the Defendants failure to mark tolling in their Motion to Dismiss. In other words, the tolling rule and time can

only be established through the discovery process as inferred by the Defendants failure to mark time in their Motion to Dismiss.

SOVEREIGN IMMUNITY

The sovereign immunity argument is null because Plaintiff brings suit against Defendants in their individual capacity, therefore, the individual and not the tribe is the real party of interest thus the tribe's sovereign immunity defenses cannot be implicated see *Lewis et al., v. Clarke*. The Court should take note that the office is not held in the suit but the individual that held the office is i.e. is the first test in *Lewis et al., v. Clarke*.

EQUAL PROTECTIONS

The Plaintiff alleges Fifth Amendment violations because the Oneida Nation is party to this action inferring government inference with Plaintiff's right to due process because the Oneida Nation is using unlimited resources to silence Plaintiff. In other words, an unconstitutional line has been drawn between the indigent Plaintiff

and the rich and powerful Oneida Nation who is backed by casino profits see *Douglas v. California*, 372 U.S. 353 (1963).

The Plaintiff alleges 14th Amendment violations because the legal playing field is not leveled such that the Defendant's defense is funded by the rich and powerful Oneida Nation i.e. an unconstitutional line has been drawn in favor of the rich and powerful against the indigent pro se.

Furthermore, the 14th Amendment violations continue to occur as evidenced in Doc.#46 such that the Defendants, defense lawyers now appear for Dennis Nelson, a person who is not a Defendant in this case, subsequently a Motion to Quash Subpoena is filed without Notice of Appearance for Dennis Nelson. This infers the Oneida Nation is not just paying for the defense of the Defendant's but is now, for a lack of a better term "defending" those who are in the purview of the discovery process. This is nothing more than a David v. Goliath SLAPP and is an attempt to silence the Plaintiff.

SUMMARY OF THE ARGUMENTS

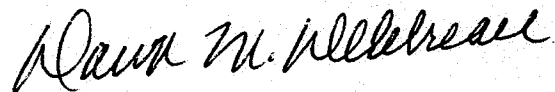
The Plaintiff argues,

1. because of a federal question, this Court has subject matter jurisdiction.
2. because of the *United States v. Jay L. Fuss* this Court know it is according to the Plausible Standard that it is a highly reasonable expectation that discovery will reveal evidence of illegal agreement see *Bell Atlantic Corp v. Twombly*.
3. tolling is unknown inferring discovery ought to reveal a tolling time.
4. sovereign immunity is null because individuals and not the office is being sued, see *Lewis et al., v. Clarke*.
5. that Plaintiff's 5th and 14th Amendments have been violated such that an unconstitutional line has been drawn between rich and poor see *Douglas v. California*.

CONCLUSION

The Plaintiff hereby requests and as the Defendants have stated (Doc.#39, p. 6), this Court ought to look favorably upon pro se affirmations and thus **Deny the Defendants Motion to Dismiss.**

Respectfully submitted,

A handwritten signature in cursive script, reading "Dawn M. Delebreau".

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