

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION)
OF CRUELTY TO ANIMALS, et al.,)

Plaintiffs,)

v.)

RINGLING BROTHERS AND BARNUM)
& BAILEY CIRCUS, et al.,)

Defendants.)

Civ. No. 03-2006 (EGS/JMF)
Judge: Emmett G. Sullivan

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’
MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT**

Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, Plaintiffs have moved for leave to file a Supplemental Complaint in this action under the Endangered Species Act (“ESA”), 16 U.S.C. § 1531 et seq., for the sole purpose of adding the Animal Protection Institute (“API”) as an additional plaintiff. For the reasons demonstrated below, the motion should be granted.

Relevant Background

In this ESA case, plaintiffs – the American Society for the Prevention of Cruelty to Animals, the Fund for Animals, the Animal Welfare Institute, and Tom Rider – challenge routine, continuing practices of defendants Ringling Brothers and Barnum & Bailey Circus (“Ringling Bros.”) and Feld Entertainment which plaintiffs allege unlawfully “take” endangered Asian elephants in violation of Section 9 of the ESA, 16 U.S.C. § 1538(a), and that statute’s implementing regulations. In particular, plaintiffs allege that Ringling Bros. illegally “takes” the elephants – i.e., harms, harasses, and wounds them, 16 U.S.C. § 1532(19) (definition of “take”) –

by beating and striking the elephants with sharp bullhooks, by keeping them chained for long periods of time, and by forcibly removing baby elephants from their mothers with ropes and chains before they are naturally weaned. Complaint ¶¶ 62-83. Plaintiffs allege that defendants engage in these unlawful actions on a daily basis, throughout the country. Complaint ¶¶ 1, 91.

The Animal Protection Institute is a non-profit membership organization headquartered in Sacramento, California, with a long history of advocating protection of animals used in entertainment, including elephants in circuses. See Proposed Supplemental Complaint ¶ 3; see also www.api4animals.org. On July 22, 2005, pursuant to the notice provisions of the ESA, 16 U.S.C. 1540(g)(2)(A), API sent defendants a notice letter alleging the same unlawful practices that are the subject of this pending litigation. See Letter to Kenneth Feld from Nicole Paquette (July 22, 2005) (attached as Exhibit 1). In that letter, API repeated each of the allegations of defendants' unlawful "take" of Asian elephants that are the subject of the pending lawsuit, and incorporated by reference the notice letters that had previously been sent to defendants on this matter. Id. at 2. In addition, API specified more recent grounds for those allegations, including recent eye-witness accounts by former Ringling Bros. employee Frank Hagan, who was employed by Ringling Bros. for approximately ten years until August 2004, as well as more recent video and photographic evidence. Id. Therefore, now that the sixty days has expired from the date API sent its notice letter to defendants, API seeks to join the pending lawsuit as an additional plaintiff.

Argument

Rule 15(d) provides that "[u]pon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth

transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented.” Here, as explained above, since the Complaint in this case was filed, API has sent Ringling Bros. a notice letter concerning the same continuing unlawful activities under the ESA that are the subject of the pending Complaint, with more recent evidence of such violations. Therefore, rather than have API file a separate lawsuit alleging the same violations of law, plaintiffs wish to have API simply join this lawsuit as an additional plaintiff.

It is well established that, under such circumstances – particularly where supplementation does not change the claims that have been asserted against the defendants – adding a new party to the case by supplementing the Complaint is appropriate. See, e.g., Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 227 (1964); Gomez v. Wilson, 477 F.2d 411, (D.C. Cir. 1973); United Public Workers of America v. Local No. 312, 94 F. Supp. 538, 542 (E.D. Mich. 1950) (Rule 15(d) . . . authorizes the Court to permit a party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading [which] could also include the addition of parties plaintiff”). Indeed, while API could file its own lawsuit against the defendant, and seek to consolidate that case with this one, there is no reason to add another case to this Court’s docket when API can be added as an additional plaintiff simply by supplementing the existing Complaint.

Conclusion

For the foregoing reasons, plaintiffs’ motion to supplement the Complaint in this case should be granted.

Respectfully submitted,

/s/

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