

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA  
(Alexandria Division)

2011 MAY 25 A 10: 22

BASHE ABDI YOUSUF, *et alii*,

Plaintiffs,

versus

MOHAMED ALI SAMANTAR,

Defendant.

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Civil Action No. 04-1360 (LMB/JFA)  
Next event: Initial Pretrial Conference  
on 25 May 2011, at 11:00, A.M.,  
before Magistrate Judge  
Anderson

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

***DEFENDANT SAMANTAR'S ANSWER TO  
PLAINTIFFS' SECOND AMENDED COMPLAINT***

COMES NOW, before this Honorable Court, your defendant in respect of the above-encaptioned cause, *viz.*, MOHAMED ALI SAMANTAR, by and through his undersigned attorney and counsellor, *in praesenti, viz.*, Joseph Peter Drennan, and herewith Answers the Second Amended Complaint hereto filed<sup>1</sup> against him by your plaintiffs by stating unto this Honorable Court as follows, *viz.*:

***SOME INITIAL QUALIFICATIONS***

1. That, from the filing of the instant action, in late 2004, to the present, your defendant has consistently and emphatically asserted, *inter alia*, his immunity from suit under common law;

2. That, upon this Honorable Court's Order of 15 February 2011, striking your defendant's claim of common law immunity, [Document 148], your defendant timely moved for reconsideration of the said 15 February 2011, Order, per his Motion for Reconsideration filed on

<sup>1</sup> On 22 February 2007, your plaintiffs filed and served their Motion for Leave to File the Second Amended Complaint [Document 76], including, as "Exhibit 1" to the said motion their proposed Second Amended Complaint. Thereafter, on 9 March 2007, this Honorable Court granted said motion. However, for whatever reason, the Second Amended Complaint was not assigned a discrete docket entry by the Clerk. Nonetheless, your defendant now Answers said Second Amended Complaint specimen.

15 March 2011 [Document 150] , and, when said motion for reconsideration was denied by this Honorable Court by Order of 1 April 2011 [Document 158], your plaintiff filed a timely Notice of Appeal, to the United States Court of Appeals for the Fourth Circuit, on 29 April 2011 [Document 160], seeking appellate review of the said Order(s) denying your defendant's common law assertion of immunity from suit; thereafter, your defendant did, on 13 May 2011, file a Motion to Stay proceedings in this Honorable Court [Document 162], pending judicial review of this Honorable Court's striking of your defendant's defense of common law immunity, and, on 18 May 2011, this Honorable Court entered an Order, denying said Motion to Stay [Document 168];

3. That, accordingly, your defendant is presently preparing a Motion to Stay this instant proceedings, under the provisions of Federal Rules of Appellate Procedure 8 (a) (2) (A) (ii), and is now Answering the Second Amended Complaint, *without prejudice* to his claim of common law immunity from suit, because this Honorable Court has denied his Motion to Stay, as recounted above;

***AS AND FOR A FIRST AFFIRMATIVE DEFENSE***

4. That the Second Amended Complaint is barred because your defendant is immune from suit at common law, under the doctrines of foreign official act and head of state immunity;

***AS AND FOR A SECOND AFFIRMATIVE DEFENSE***

5. That, in the alternative to, or else in conjunction with the foregoing Affirmative Defense, the Second Amended Complaint fails to state a cause of action upon which relief may be based;

***AS AND FOR A THIRD AFFIRMATIVE DEFENSE***

6. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred because the subject putative claims contained in the Second Amended Complaint constitute non-justiciable political questions beyond this Honorable Court's jurisdiction;

***AS AND FOR A FOURTH AFFIRMATIVE DEFENSE***

7. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred by the applicable statute(s) of limitations;

***AS AND FOR A FIFTH AFFIRMATIVE DEFENSE***

8. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred, in whole or in part, by customary international law, which did not recognize secondary liability at the time of the alleged actions which purport to constitute the factual basis for the Second Amended Complaint;

***AS AND FOR A SIXTH AFFIRMATIVE DEFENSE***

9. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred, in whole or in part, in that, *inter alia*, none of the acts complained of in the Second Amended Complaint constitute violations of binding customary international law as such was recognized at the time of the alleged occurrence of the acts complained of in the Second Amended Complaint;

***AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE***

10. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred, in whole or in part, in that, *inter alia*, any and all actions undertaken by your defendant were authorized by applicable law;

***AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE***

11. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred, in whole or in part, in that, *inter alia*, the acts complained of constitute official duties or acts of state which are not actionable in this Honorable Court;

***AS AND FOR A NINTH AFFIRMATIVE DEFENSE***

12. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred, in whole or in part, in that, *inter alia*, none of the acts complained of are cognizable under the Torture Victims Protection Act of 1991, Pub. L. 102-256, 106 Stat. 73 (1992), as all such alleged acts are said to have occurred prior to the enactment of said Act;

***AS AND FOR A TENTH AFFIRMATIVE DEFENSE***

13. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint fails to allege sufficient facts to support any claim for damages;

***AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE***

14. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred by the equitable doctrine of estoppel by conduct;

***AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE***

15. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred by the equitable doctrine of estoppel by silence;

***AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE***

16. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred by the equitable doctrine of estoppel by conduct;

***AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE***

17. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred by the equitable doctrine of waiver;

***AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE***

18. That, in the alternative to, or else in conjunction with, the foregoing Affirmative Defenses, the Second Amended Complaint is barred by the unavailability of equitable tolling of the applicable statute(s) of limitations, under the law governing the instant cause, and that, in any event, were equitable tolling deemed to be potentially available, your plaintiffs have failed to plead sufficient facts to warrant equitable tolling;

***ANSWERING THE DISCRETE ALLEGATIONS OF FACT CONTAINED IN THE SECOND AMENDED COMPLAINT***

19. That the allegations contained in ¶ 1 of the Second Amended Complaint consist of a purported characterization of the instant action to which your defendant need not plead; however, to the extent that said paragraph contains allegations or insinuations of wrongdoing vis-à-vis

your defendant, all such allegations and or insinuations are denied, *in toto*, and your defendant demands strict proof thereof;

20. That the allegations contained in ¶ 2 of the Second Amended Complaint are denied and your defendant demands strict proof thereof;

21. That, as for the allegations contained in ¶ 3 of the Second Amended Complaint, your defendant denies any and all discrete allegations of fact contained in said paragraph, and, although the remainder of the allegations contained in said paragraph constitute legal conclusions to which your defendant need not plead, your defendant denies any civil liability, denies that any of the averred claims contained in the Second Amended Complaint are cognizable under either the Torture Victim Protection Act or the Alien Tort Statute, and further denies that this Honorable Court may properly exercise jurisdiction over the instant matter;

22. That, with regard to the allegations contained in ¶ 4 of the Second Amended Complaint, your defendant admits that he is a citizen of Somalia and that he resides in Fairfax, Virginia; the remaining allegation contained in said paragraph constitutes a legal conclusion to which your defendant need not plead;

23. That the allegations contained in ¶ 5 of the Second Amended Complaint are admitted;

24. That the allegations contained in ¶ 6 of the Second Amended Complaint are admitted;

25. That the allegations contained in ¶ 7 of the Second Amended Complaint are admitted;

26. That your defendant is without sufficient information to admit or deny the allegations contained in ¶¶ 8 – 12, *seriatim*, of the Second Amended Complaint, and, therefore denies all of such allegations and demands strict proof thereof;

27. That the allegations contained in ¶ 13 of the Second Amended Complaint are denied;

28. That, your defendant takes exception as to the characterization of the events of October 1969, as stated in ¶ 14 of the Second Amended Complaint, and, therefore, denies such allegations;

29. That, as for the multifarious allegations contained in ¶¶ 15 – 24, *seriatim*, of the Second Amended Complaint, your defendant denies all such allegations;

30. That, as for the multifarious allegations contained in ¶¶ 25 – 38, *seriatim*, of the Second Amended Complaint, your defendant lacks sufficient knowledge to admit or deny said allegations, and, therefore denies all such allegations and demands strict proof thereof;

31. That the allegations contained in ¶ 39 of the Second Amended Complaint are denied;

32. That, as for the multifarious allegations contained in ¶¶ 40 – 64, *seriatim*, of the Second Amended Complaint, your defendant lacks sufficient knowledge to admit or deny said allegations, and, therefore denies all such allegations and demands strict proof thereof;

33. That, as for the multifarious allegations contained in ¶¶ 65 – 83, *seriatim*, of the Second Amended Complaint, your defendant denies all such allegations;

34. That, as for the compound allegations contained in ¶ 84 of the Second Amended Complaint, your defendant admits that he has resided in the United States since 1997, but all other allegations *ingravidated* in ¶ 84 of the Second Amended Complaint represent putative legal conclusions to which your defendant need not plead; however, to the extent that your defendant is required to answer said allegations, your defendant denies all such allegations;

35. That the allegations contained in ¶ 85 of the Second Amended Complaint are denied;

36. That, as for the compound and multifarious allegations contained in ¶ 86 of the Second Amended Complaint, while your defendant admits that there was a collapse of the central

government of Somalia in 1991, your defendant denies all other putative characterizations and averments contained in said paragraph;

37. That, as for the multifarious allegations contained in ¶¶ 87 – 91, *seriatim*, of the Second Amended Complaint, your defendant denies all such allegations;

38. That your defendant herewith denies each and every allegation contained in the Second Amended Complaint which is not specifically admitted in this Answer;

39. That your defendant reserves the right to amend, change and/or supplement this Answer upon his discovery of any material information that would warrant such emendation;

***ANSWERING THE PUTATIVE CLAIMS FOR RELIEF SET FORTH IN  
THE SECOND AMENDED COMPLAINT***

40. That, with regard to the allegations contained in ¶ 92 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 91, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;

41. That the manifold allegations contained in ¶¶ 93 – 100, *seriatim*, of the Second Amended Complaint are denied, *in toto*, and your defendant demands strict proof thereof;

42. That, with regard to the allegations contained in ¶ 101 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 100, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;

43. That the manifold allegations contained in ¶¶ 102 – 109, *seriatim*, of the Second Amended Complaint are denied, *in toto*, and your defendant demands strict proof thereof;



44. That, with regard to the allegations contained in ¶ 110 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 109, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;

45. That the manifold allegations contained in ¶¶ 111 – 119, *seriatim*, of the Second Amended Complaint are denied, *in toto*, and your defendant demands strict proof thereof;

46. That, with regard to the allegations contained in ¶ 120 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 119, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;

47. That the manifold allegations contained in ¶¶ 121 – 129, *seriatim*, of the Second Amended Complaint are denied, *in toto*, and your defendant demands strict proof thereof;

48. That, with regard to the allegations contained in ¶ 130 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 129, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;

49. That the manifold allegations contained in ¶¶ 131 – 138, *seriatim*, of the Second Amended Complaint are denied, *in toto*, and your defendant demands strict proof thereof;

50. That, with regard to the allegations contained in ¶ 139 of the Second Amended Complaint, your defendant hereby incorporates by reference, as if set out in full, all aspects of his answer(s) to each and every one of the corresponding answers to the allegations contained in paragraphs ¶¶ 1 – 138, *seriatim*, of the Second Amended Complaint, as set forth hereinbefore;



***CERTIFICATE OF SERVICE***

I, Joseph Peter Drennan, undersigned, hereby and herewith certify that, on 25 May 2011, I caused a true, cyclostyled facsimile of the foregoing to be delivered by hand carriage, enshrouded in a suitable wrapper, unto:

Jonathan P. Robell, Esq.  
Joseph Decker, Esquire  
Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
1333 New Hampshire Avenue, N.W.  
Washington, D.C. 20036; &

Lauren A. Wetzler, Assistant United States Attorney  
2100 Jamieson Avenue  
Alexandria, Virginia 22314.

Respectfully submitted,

Dated: 25 May 2011, at Alexandria, Virginia U.S.A.



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ATTORNEY AND COUNSELOR,  
*IN PRAESENTI*, FOR  
MOHAMED ALI SAMANTAR