

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :  
  
Plaintiff, : 96 Civ. 8307 (DC)  
  
- against - :  
  
JEFFREY E. EPSTEIN, et al., :  
  
Defendants. :

-----X

GOVERNMENT'S MEMORANDUM OF LAW IN  
SUPPORT OF MOTION FOR PARTIAL SUMMARY  
JUDGMENT EJECTING DIANE FISHER d/b/a  
THE FISHER GROUP AND RON SOFFER  
  
FROM THE PREMISES

Preliminary Statement

Plaintiff United States of America (the "Government") respectfully submits this memorandum of law in support of its motion pursuant to Fed. R. Civ. P. 56(a) for partial summary judgment on its second cause of action in the second amended complaint for an order ejecting defendants Diane Fisher a/k/a The Fisher Group ("Ms. Fisher") and Ron Soffer ("Soffer")<sup>1</sup> from the premises known as 34 East 69th Street, New York, New York (the "premises").

<sup>1</sup> On February 2, 1998, the Government requested that the subtenants of defendant Ivan S. Fisher, including Ms. Fisher and Ron Soffer, stipulate to the relief sought in this motion. Apparently, as of this writing, Ms. Fisher's counsel has not been authorized to enter into the stipulation. Soffer apparently declines to agree to the requested relief (see Declaration of Serene K. Nakano ("Nakano Dec.") ¶ 8 & n.2; Exh. G thereto).

## STATEMENT OF FACTS

### A. Government's Protection Of Premises

The premises at issue in this lawsuit were the residence of a diplomat of the government of Iran (Declaration of Richard C. Massey ("Massey Dec."), Exh. A thereto). As such, they were recognized as consular property by the United States Department of State ("State Department"), Office of Foreign Missions ("OFM") (Massey Dec., Exh. A thereto), and enjoyed the protection of the Foreign Missions Act ("FMA"), see 22 U.S.C. §§ 4302(a)(3)-(4), the Vienna Convention on Consular Relations ("VCCR"), a bilateral treaty between the United States and Iran. See 21 U.S.T. 77, 596 U.N.T.S. 261, TIAS 6820, art. 27(a)(a).

Following the severance of diplomatic ties between the United States and Iran, OFM took custody of the premises pursuant to the FMA, the VCCR, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq. ("IEEPA"), authorities thereunder and a license granted to OFM by the Treasury Department, Office of Foreign Assets Control (Massey Dec., Exh. B thereto). OFM is empowered to bring this action to seek equitable relief to protect the premises, see 22 U.S.C. §§ 4301(b)-(c), 4311(a), and to control any "benefit" of a foreign mission, see id. § 4307, and "beneficial use" thereof. See id. § 4302(a)(4).

### B. Prior Proceedings

The Government originally named Jeffrey E. Epstein and Ivan S. Fisher as defendants (the "original defendants"), seeking equitable and monetary relief against them concerning their unpermitted uses of the premises.<sup>2</sup> In its motion served on May 9, 1997, the Government sought, inter alia, an order pursuant to Fed. R. Civ. P.

<sup>2</sup> The original complaint alleged a common law cause of action against Epstein and Fisher. The first amended complaint added claims pursuant to the Foreign Missions Act against these defendants.

56(a) for partial summary judgment ejecting the original defendants from the premises (the "first motion"). (The first motion is sub judice.) In the course of discovery taken on the Government's claims for monetary relief against the original defendants, the Government learned that a number of persons and entities other than the original defendants potentially asserted possessory claims to the Premises as Fisher's subtenants (see Nakano Dec. ¶ 3). The Government then sought leave to amend the complaint pursuant to Fed. R. Civ. P. 15 to name Fisher's subtenants as additional defendants (id. ¶ 4). This Court granted the Government leave to amend its complaint on December 17, 1997 (id.). The Government filed its second amended complaint on December 23, 1997 and has served the additional defendants with process (id.).

C. The Present Motion

The second amended complaint named Ellyn Bank, Debra Elisa Cohen, Diane Fisher d/b/a The Fisher Group, Fisher & Soffer a/k/a Fisher & Sophir, Lawrence D. Gerzog, Robert Heilbrun, Suzanne McDermott, Christopher H. Martin, Jessie Siegel a/k/a Jesse Siegel, Siegel, Martin & Heilbrun, Ron Soffer, Carmen Talsig, John Does 1 through 10 and X Corporations 1 through 10 as defendants (collectively, "Fisher's subtenants"). By stipulation and order signed by this Court on March 5, 1998, all of the named subtenants except for Diane Fisher d/b/a The Fisher Group and Ron Soffer (the "present respondents") agreed, inter alia, to be bound by any order by this Court ejecting defendant Ivan S. Fisher from the Premises. Accordingly, this motion seeks an order of ejectment against the present respondents, who, as of this writing, have declined to execute the stipulation and order (see Nakano Dec. ¶ 8 & n.2; Exh. G thereto).

ARGUMENT  
THE PRESENT RESPONDENTS SHOULD  
BE EJECTED FROM THE PREMISES

Under the Foreign Missions Act, "[t]he United States, acting on its own

behalf or on behalf of a foreign mission, has standing to bring ... an action to obtain compliance [with the FMA] including any action for injunctive or other equitable relief." 22 U.S.C. § 4311(a). The Secretary of State (the "Secretary") is empowered under the FMA to determine the treatment to be accorded to a foreign mission in the United States. *Id.* § 4301(c); *see* § 4302(a)(5) (defining "Secretary"). The FMA provides that "a denial by the Secretary involving a benefit of a foreign mission within the jurisdiction of a particular State or local government shall be controlling." *Id.* § 4307.

Research has not disclosed any decision in which the Secretary has had to litigate a party's claimed right to possession of a foreign mission under the FMA. The FMA itself, however, empowers the Secretary to protect the premises, including the benefits of their use. *See* 22 U.S.C. §§ 4301(b)-(c), 4302(a)(4), 4307, 4311(a). Under general principles of federal common law, "[t]he government has, with respect to its own lands, the rights of an ordinary proprietor, to maintain its possession and to prosecute trespassers. It may deal with such lands precisely as a private individual may deal with his property." *United States v. Osterlund*, 505 F. Supp. 165, 167 (D. Colo. 1981), *aff'd*, 671 F.2d 1267 (10th Cir. 1982) (citations omitted). Such a power includes the "power to control their occupancy and use." *Id.*, 505 F. Supp. at 167. Moreover, as proprietor, the Government may seek ejectment of persons who transgress the Government's proprietary or possessory rights. *See United States v. Burnett*, 750 F. Supp. 1029, 1033 (D. Idaho 1990).

In this case, Diane Fisher d/b/a The Fisher Group occupies the premises and apparently uses them to conduct business as a real estate salesperson (*see* Nakano Dec., Exhs. C-D). Moreover, Soffer uses the premises as a business address and has registered the premises as his office with the New York State Office of Court Administration for attorney registration purposes (*see id.*, Exhs. E-F). The Government has not consented to the occupancy of the premises by any of Fisher's subtenants, including the present respondents (Massey Dec. ¶ 2 & n.1). Accordingly, the present

respondents are mere trespassers on the premises and should be ejected. See 22 U.S.C. § 4307 (Secretary's denial of benefit of foreign mission is controlling); see also Jones v. United States, 195 F.2d 707, 709 (9th Cir. 1952); United States v. Gardner, 903 F. Supp. 1394, 1402 (D. Nev. 1995), aff'd, 107 F.3d 1314 (9th Cir.), cert. denied, 118 S. Ct. 264 (1997); Osterlund, 505 F. Supp. at 167.

#### CONCLUSION

The Government respectfully requests that its motion for partial summary judgment pursuant to Fed. R. Civ. P. 56(a) for an order of ejectment against defendants Diane Fisher d/b/a The Fisher Group and Ron Soffer be granted.

Dated: New York, New York  
March 13, 1998

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By: \_\_\_\_\_

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