

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STANLEY E. KORNAFEL,	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
UNITED STATES POSTAL SERVICE,	:	NO. 99-6416
UNITED STATES POST OFFICE, and	:	
UNITED STATES OF AMERICA,	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

January 28, 2000

Presently before the Court is Defendants, United States Postal Service, United States Post Office and the United States of America's ("Defendants") Motion to Dismiss the Complaint, and Plaintiff Stanley Kornafel's ("Plaintiff") response thereto. Defendants' Motion to Dismiss is granted for the following reasons.

I. BACKGROUND

On March 11, 1992, Plaintiff was involved in a motor vehicle accident with a postal vehicle in Clifton Heights, Pennsylvania. On or about March 26, 1992, Plaintiff filed an administrative tort claim with the United States Postal Service in which he claimed that the postal vehicle had caused damage to the right front door, the rear door and the rear hub of his 1971 Datsun. Plaintiff's administrative claim was for property damage only in the amount of "\$975.20/\$959.30."

Following Plaintiff's refusal to accept a settlement offer, the United States Postal Service denied his claim. Plaintiff sought reconsideration and on May 11, 1992, the Postal Service denied his request for reconsideration.

On or about August 18, 1992, Plaintiff filed a pro se action against the driver of the postal vehicle in state court. The United States Attorney's Office removed the case to the United States District Court and substituted the United States as the sole proper defendant. On June 4, 1993 the case was dismissed based on Plaintiff's failure to make proper service and on August 5, 1993, the court denied his Motion for Reconsideration.

On February 25, 1994, Plaintiff, while represented by counsel, filed a second complaint in the United States District Court. Counsel for the United States offered to settle the matter by paying the full amount of Plaintiff's administrative claim. On July 13, 1995, the parties reported that the case had been settled and the court dismissed the action with prejudice. Plaintiff never challenged the dismissal of the case and never appealed the Order to the United States Court of Appeals for the Third Circuit.

Plaintiff then proceeded to file yet another pro se complaint in District Court against the United States based on the same accident. In that case, Plaintiff alleged violations of the Pennsylvania Constitution, as well as various other statutes, and sought monetary damages in the amount of \$150,000.

On January 23, 1996, the court dismissed the case upon the representation that the United States stood ready to pay Plaintiff the full amount of the property damage claimed by Plaintiff in his administrative claim. Plaintiff appealed the dismissal of the case to the United

States Court of Appeals for the Third Circuit. By Judgment Order dated June 21, 1996, the Third Circuit affirmed the District Court's decision.

On November 4, 1996, Plaintiff filed an action against the United States Government, the United States of America and the United States Postal Service. The defendants filed a motion to dismiss on various grounds and, on February 26, 1997, the court granted the Motion and dismissed the Complaint.

Again, Plaintiff has filed yet another Complaint, pursuant to the motor vehicle accident which occurred on March 11, 1992.

II. STANDARD

When deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt ... the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McCann v. Catholic Health Initiative, 1998 WL 575259 at *1 (E.D. Pa. Sep. 8, 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom. See, Rocks v. City of Philadelphia, 868 F.2d. 644, 645 (3d. Cir. 1989). However, conclusory allegations that fail to give a defendant notice of the material elements of a claim are insufficient. See Sterling v. SEPTA, 897 F.Supp. 893, 895 (E.D. Pa.1995). The pleader must provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d. Cir. 1993). The Court must determine whether, under any

reasonable reading of the pleadings, the law allows the plaintiff a remedy. See, Nami v. Fauver, 82 F.3d 63, 65 (3d. Cir. 1996).

III. DISCUSSION

Plaintiff claims that Defendants' Motion to Dismiss is an act of fraud and despotism, being contrary to ethics, fairness and insurance norms. Plaintiff continues to attack Defendants' Memorandum of Law in Support of its Motion to Dismiss by enumerating several omissions of fact on Defendants' part. Plaintiff contends that Defendants should be held liable because they:

- (1) were the sole and total cause of the accident;
- (2) broke their own representatives adjustment and agreement;
- (3) acted contrary to ethics, fairness, and insurance norms through entrapment, oppression and coercion;
- (4) enabled the use of the same judge in all actions;
- (5) demonstrated unethical use of power and manipulation of process;
- (6) utilized the court with abuse of process and deceit;
- (7) disobeyed the court Order in violation of Rules 12, 8 and 55.

In sum, Plaintiff claims that in this and every prior action relevant to the March 11, 1992 motor vehicle accident, Defendant "abused process and used deceit and overpowering conduct" resulting in "no fair play" but rather despotism. Plaintiff further contends that "the defendant being the federal government and the judges of the federal court being of the federal government a state of bias or discrimination," through "deceitful, oppressive and coercive actions and perjurious statements" denied him "equal justice and fairness for remedy." For this reason, Plaintiff asserts that the Defendants' Motion to Dismiss be denied.

Defendants respond, stating that Plaintiff's Complaint is without any legal basis and must be dismissed for a number of reasons, including: (1) Plaintiff's claims in this case are

barred by the doctrine of res judicata; (2) Plaintiff cannot state a claim under any state statutes he cites; (3) there is no private right of action under many of the provisions set forth in the Complaint; (4) Plaintiff's claims are barred by the doctrine of sovereign immunity; and (5) any possible claims would be barred by the statute of limitations or plaintiff's failure to file an administrative claim.¹

Res Judicata

In order to determine whether Plaintiff's claims are barred by the doctrine of res judicata, it is necessary to examine the conditions that must be present for the doctrine to prevail. Pennsylvania common law has a four-prong requirement that must be met in order for a second action to be precluded. See e.g., Brame v. Buckingham Township, No. CIV.A. 96-5821, 1997 WL 288673, *6 (E.D. Pa. May 23, 1997). The two actions must share an identity of the "(1) thing sued on; (2) cause of action; (3) persons and parties to the action; and (4) quality or capacity of the parties suing or sued." Id. (citing McNasby, 888 F.2d at 276).

On July 13, 1995, the court entered an order dismissing the action with prejudice after the parties reported that the case had been settled. Plaintiff failed to challenge that Order to the United States Court of Appeals for the Third Circuit, but instead, filed a new cause of action on October 19, 1995. Plaintiff raised several Constitutional and common law claims, all of which arose from the motor vehicle accident that occurred on March 11, 1992. On January 2,

1. While Defendants address each of these arguments in full, I do not find it necessary to do so, in that, Defendants' first three arguments are sufficient to dismiss Plaintiff's claim.

1996, that action was dismissed upon the representation by the government that it will pay Plaintiff the full amount of the property damages claimed in Plaintiff's administrative claim form.

The Order dated July 13, 1995 dismissing that action precludes Plaintiff from bringing the instant action, for the case at bar arises from the same accident and is based on the same underlying facts. Furthermore, Plaintiff has not raised any new claims, nor has he introduced a new party to the action. It is important that Plaintiff never challenged or appealed July 13, 1995 Order. Moreover, the court's subsequent Orders dated January 23, 1996 and February 26, 1997 both dismissed similar claims against Defendants within this action. Therefore, Plaintiff is precluded from bringing this most recent cause of action based on the doctrine of res judicata. The decisions on the merits in these previous cases bars Plaintiff from bringing this action, which is based on the same underlying facts as the previous actions and raises issues which were, or could have been, raised in the previous lawsuits. See Schuylkill Skyport Inn, Inc., et al. v. Rich, et al., 1996 WL 502280 (E.D.Pa. August 21, 1996), *5 ("Both federal and Pennsylvania courts have held that a dismissal with prejudice is considered a judgment on the merits for claim preclusion purposes.")(see also, Gambocz v. Yelencsics, 468 F.2d 837, 841 (3d Cir.1972) ("res judicata bars relitigation of the claims dismissed in the prior suit") (citations omitted)). Pennsylvania law makes it clear that settlements between two parties has a res judicata effect. Keystone Bldg. Corp. v. Lincoln Sav. & Loan Ass'n, 360 A.2d 191, 194 (Pa.1976) ("[I]t is well settled, as a general proposition, that a judgment or decree, though entered by consent or agreement of the parties, is res judicata to the same extent as if entered after contest.") (citation omitted).

Plaintiff Cannot State a Claim Against the Defendants

Plaintiff purports to bring this case against Defendants based on 42 Pa.C.S. § 8371, 42 Pa.C.S. § 8351, 40 Pa.C.S. § 1171.5, 31 Pa. Code §§ 65, 66, and 146, 18 Pa.C.S. § 4902 and various provisions of the Pennsylvania Constitution.

42 Pa.C.S. § 8371:

Plaintiff has filed a claim against Defendants under 42 Pa.C.S. § 8371 ("Section 8471") which provides for an action against an insurer acting in bad faith. Although Pennsylvania law allows for a private cause of action under this statute, there exists no applicability to the case at bar. Section 8371 permits the presiding court to award damages and attorney's fees in an action under an insurance policy where the "insurer has acted in bad faith toward the insured." 42 Pa.C.S. § 8371. Clearly, this is not an action under an insurance policy and Defendants are not insurers. There is simply no basis for a Section 8371 claim against Defendants and therefore, the claim will be dismissed.

42 Pa.C.S. § 8351:

42 Pa.C.S. § 8351 ("Section 8351") codifies the common law tort of malicious prosecution. It is well-settled that Plaintiff cannot bring a claim under this section against a party which has simply defended itself. See Paparo v. United Parcel Service, Inc., 43 F.Supp.2d 547 (E.D.Pa. 1999). Plaintiff is also unable to show that the proceedings terminated in his favor. Every single case that Plaintiff has brought regarding the March 11, 1992 motor vehicle accident has been dismissed except one case which was settled by the parties. A settlement does not

constitute a favorable termination for the purposes of this statute.² Electronic Laboratory Supply Co. v. Cullen, 712 A.2d 304, 309-311 (Pa.Super. 1998). Therefore, Plaintiff's Section 8351 claim is not plausible and must be dismissed.

40 Pa.C.S. § 1171.5 and 31 Pa. Code § 146:

Plaintiff cites to provisions of the Unfair Insurance Practices Act, 40 Pa.C.S. § 1171.5 ("Section 1171.5") and the Unfair Claims Settlement Practices Regulations, 31 Pa. Code § 146 ("Section 146")³ as a basis for his claim. Both Sections 1171.5 and 146 deal with insurers and have no applicability to Defendants. Moreover, it is well-settled that there is no private cause of action under the either Section 1171.5 or Section 146. See Smith v. Nationwide Mutual Fire Insurance Co., 935 F.Supp. 616, 619-20 (E.D.Pa. 1996). Plaintiff cannot bring any private action based on these Sections which, in any event, cannot form the basis of a claim against Defendants, and therefore, this claim will be dismissed.

18 Pa.C.S. § 4902:

18 Pa.C.S. § 4902 makes it unlawful to commit perjury. Nothing in the statute expressly provides for a private cause of action, nor is there any indication of legislative intent to create a private cause of action. See Cort v. Ash, 422 U.S. 66, 79-80 (1975)(no civil cause of action where criminal statute does not indicate that civil enforcement was available). Therefore, Plaintiff does not have a private cause of action against Defendants for perjury and his claim is dismissed.

2. Plaintiff's case settled in July, 1995, and any possible claim regarding the March 11, 1992 accident would be time-barred by the applicable statute of limitations.

3. Plaintiff also cites to 31 Pa. Code §§ 65 and 66, however, both of these Sections deal with automobile insurance and have no applicability to this case.

Pennsylvania Constitution:

Plaintiff lists several general provisions of the Pennsylvania Constitution, none of which have any applicability to the case at bar, nor is there any basis for implying a private cause of action for damages against Defendants under these provisions. Therefore, Plaintiff's Pennsylvania Constitution claims are also dismissed.

IV. CONCLUSION

For the reasons set forth above, Defendants' Motion to Dismiss Plaintiff's Complaint is granted and Plaintiff's Complaint is dismissed.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STANLEY E. KORNAFEL,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
UNITED STATES POSTAL SERVICE,	:	NO. 99-6416
UNITED STATES POST OFFICE, and	:	
UNITED STATES OF AMERICA,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 28th day of January, 2000, upon consideration of Defendants United States Postal Service, United States Post Office, and United States of America's Motion to Dismiss, and Plaintiff Stanley E. Kornafel's Response thereto, it is hereby **ORDERED** and **DECREED** that said Defendant's Motion to Dismiss is **GRANTED** with prejudice.

This case shall be marked **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.