

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

UNITED STATES EX REL DAVON	:	CIVIL ACTION
COLLINS,	:	
Plaintiff	:	
	:	
v.	:	
	:	
CURRENT C.E.O./PRESIDENT,	:	
SINGER ASSET FINANCE COMPANY,	:	
ET AL.	:	No. 05-0821

MEMORANDUM

Pratter, J.

June 9, 2005

Plaintiff, Davon Collins, a state prisoner, has filed a pro se 42 U.S.C. § 1983 civil rights complaint in which he alleges that Merrick Bank Corporation fraudulently and deceptively “coerced [him] into contracting with them for a loan” that was secured by a structured settlement to which the Plaintiff was entitled. The loan, on which Plaintiff claims he “was inadvertently forced to default,” was sold to Singer Asset Finance Company, L.L.C., which Plaintiff assumes to be a “sister company” of Merrick Bank Corporation. Plaintiff asserts that the loan is legally invalid, and that the actions of the Defendants in issuing the loan and in taking legal action to collect the unpaid loan balance violate his constitutional rights. Plaintiff also attempts to sue the Honorable James A. Smyth of Montgomery County Court of Common Pleas and the Honorable Peter J. O’Brien of the Monroe Court of Common Pleas, for their roles in the enforcement of the loan contract.¹ As relief, Mr. Collins seeks an order (1) revoking the seizure

¹ On June 7, 2005, Mr. Collins filed a “Motion for Removal/Amendment of Caption, Mandamus Action for Service Upon Respondents”, in which he (1) seeks to amend the “caption and docket in question” by removing the names of Peter J. O’Brien and James A. Smyth, and (2)

of his structured settlement; (2) granting monetary relief; (3) revoking the law licenses of Judge Smyth and Judge O'Brien; (4) compelling the production of requested documents; and (5) granting other relief deemed appropriate.

With his complaint, Plaintiff filed a request for leave to file in forma pauperis. As it appears he is unable to pay the cost of commencing this action, leave to proceed in forma pauperis is granted. However, the complaint will be dismissed as legally frivolous for the reasons which follow.

I. DISCUSSION

A. Standard of Review

Pursuant to 28 U.S.C. § 1915(e)(2) “[n]otwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . (B) the action or appeal – (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.”

B. Corporate Defendants

In order to bring a § 1983 suit, a plaintiff must allege that a person acting under color of state law deprived him of his constitutional rights. Kost v. Kozakiewicz, 1 F.3d 176, 185 (3d Cir. 1993). Nothing in Mr. Collins’s complaint suggests that Merrick Bank Corporation, Singer Asset Finance Company, L.L.C., or the employees of these companies who are named as

demands that the complaint be served upon the Defendants. Although it appears that by this new motion Mr. Collins is withdrawing his claims against Judge Smyth and Judge O'Brien, the Court includes reference to these Defendants in this discussion to be clear as to why the claims against them were not properly brought.

defendants, are state actors. Therefore, Plaintiff's claims against these defendants fail to state a cognizable violation of § 1983 and they will be dismissed.

C. **Judicial Defendants**

Judges have absolute immunity from § 1983 actions seeking money damages for actions performed in a judicial capacity. Stump v. Sparkman, 435 U.S. 349 (1978); Mireles v. Waco, 502 U.S. 9 (1991). Judicial immunity is an immunity from suit, and may not be overcome by allegations of bad faith or malice. Mireles, 502 U.S. at 11. An assertion of judicial immunity, however, can be overcome if (1) a judge is alleged to have taken actions outside of the judge's judicial capacity, or (2) judicial action were taken in "the complete absence of all jurisdiction." Id. at 11-12.

Although the Plaintiff makes no allegations that either of the judicial defendants acted outside of his respective judicial capacity, there does appear to be an allegation that the judges acted outside of their courts' subject matter jurisdiction. Complaint at 5, ¶ 3. Mr. Collins specifically asserts that the judges acted "on a matter strictly outside of a specific judge's subject matter jurisdiction, such as the negotiable instruments in question, which fall under the exclusive jurisdiction of Securities Exchange Act of 1934 and 15 U.S.C.A. § 78(aa)." Despite this assertion of deficient subject matter jurisdiction, however, the claim may still be dismissed for failure to state a claim upon which relief may be granted because civil actions with respect to negotiable instruments are generally asserted pursuant to the relevant state's commercial code. In this case, a state court would have jurisdiction over matters related to negotiable instruments, given that these types of instruments are governed by Pennsylvania's Commercial Code. See 13 Pa. C.S.A. § 3104. Thus, the allegation that the state court judges acted outside of their subject

matter jurisdiction is not correct. There are no other allegations that either Judge James A. Smyth or Judge Peter J. O'Brien acted outside of his judicial capacity. Therefore, the allegations against them with respect to monetary damages will be dismissed.

Judges are not immune from § 1983 actions for declaratory or injunctive, rather than monetary, relief. Pulliam v. Allen, 466 U.S. 522 (1984). However, Mr. Collins can only obtain the equitable relief he requests in the case if he demonstrates: (1) an inadequate remedy at law; and (2) irreparable injury which is “both great and immediate.” Pulliam, 466 U.S. at 537 n.17 (quoting Younger v. Harris, 401 U.S. 37, 46 (1971)). The Court need not concern itself here with whether Mr. Collins has suffered irreparable injury because his ability to seek legal redress in state court provides him an adequate remedy. See Pulliam, 466 U.S. at 542, n.22 (finding that it is appropriate to consider whether plaintiff has an adequate remedy under state law).

II. CONCLUSION

Pursuant to 28 U.S.C. § 1915(e)(2), a court may dismiss “at any time” a civil action brought by a prisoner in forma pauperis. Because Mr. Collins has failed to advance any actionable violation of his constitutional rights, dismissal of his complaint is appropriate at this time. An appropriate Order follows.

June 9, 2005

/s/ _____
Gene E.K. Pratter,
United States District Judge

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SINGER ASSET FINANCE COMPANY,	:	
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ORDER

AND NOW, this 9th day of June, 2005, in accordance with the accompanying Memorandum, IT IS ORDERED that:

1. Leave to proceed in forma pauperis is GRANTED pursuant to 28 U.S.C. § 1915(b);
2. The Complaint is DISMISSED as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2); and
3. The Motion for Removal/Amendment of Caption, Mandamus Action for Service Upon Respondents (Docket No. 7) is DENIED as moot.

BY THE COURT:

/S/

GENE E.K. PRATTER
United States District Judge