

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

MILOS JURICKO

V.

C.A. NO. 06-2099

PAUL ALLISON, in his official  
and personal capacity, SWARTZ  
CAMPBELL, LLC. and  
JAMES HAGGERTY, ESQ.

MEMORANDUM OPINION AND ORDER

GOLDEN, J.

OCTOBER 10, 2006

This is the third action Plaintiff has filed either in Pennsylvania state court or in this Court in a blatant attempt to circumvent an Order of a Judge of the Court of Common Pleas of Lancaster County. Plaintiff has named as defendants the Honorable Paul K. Allison ("Judge Allison"), a Judge of the Court of Common Pleas of Lancaster County, the law firm of Swartz, Campbell LLC. (the "Swartz firm") and one of the firms partners, James C. Haggerty, Esq. ("Haggerty"). The case arises out of a case Plaintiff filed in the Court of Common Pleas of Lancaster County against his automobile

insurance carrier, GEICO Insurance Company ("GEICO"), which was assigned to Judge Allison. The gravamen of Plaintiff's Complaint, like all the other cases Plaintiff has filed, is that Judge Allison's handling of Plaintiff's suit against GEICO violated Plaintiff's rights under the United States and Pennsylvania Constitutions and that the Swartz firm and Haggerty, which represent GEICO, conspired with Judge Allison to violate these rights. Presently before the Court are the motions of the Defendants to dismiss for lack of subject matter jurisdiction and a motion for sanctions. For the reasons which follow, the motion to dismiss is granted and the Court will hold a hearing on the motion for sanctions.

The Swartz firm and Haggerty have filed a joint motion to dismiss in which Judge Allison joins. The motion to dismiss seeks dismissal of the entire suit based on the Rooker-Feldman doctrine<sup>1</sup>, res judicata and collateral estoppel.

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1. Rooker v. Fidelity Trust, 263 U.S. 413, 416 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

As the Rooker-Feldman doctrine bars federal jurisdiction in this case, we need not analyze the other theories asserted by the Defendants.

Since, the motion to dismiss disputes the existence of subject matter jurisdiction in fact, “no presumptive truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.” Mortensen v. First Fed. Sav. & Loan Ass’n, 549 F.2d 884, 891 (3d Cir. 1977). In resolving a factual challenge under Rule 12(b)(1), “the court may consider and weigh evidence outside the pleadings to determine if it has jurisdiction.” Gould Elec., Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000).

We consider the facts from the state court records. As noted above, this action arises from an automobile accident which occurred on February 26, 2002. At the time of the accident, Plaintiff was insured with GEICO .

Following the accident, Plaintiff filed a claim against GEICO, seeking recovery of uninsured motorist benefits. Thereafter, Plaintiff filed a Complaint in the Court of Common Pleas of Lancaster County (the "Lancaster County action") against GEICO and the claims examiner who handled his claim, seeking recovery of uninsured motorist benefits and bad faith damages. The Amended Complaint alleges claims for breach of contract, bad faith, breach of fiduciary duty, and emotional damage and mental anguish.

In response to various motions, Judge Allison issued an Order referring Plaintiff's uninsured motorist claims to arbitration and staying any further proceedings pending completion of the arbitration. (It is this Order which Plaintiff has tried to circumvent by filing numerous suits in other courts.) Despite the stay, Plaintiff continued to file various motions and pleadings. As a result, Judge Allison entered an Order warning Plaintiff that continued disregard of the stay order could result in sanctions.

Plaintiff then filed an action in this Court against Judge Allison, the law firm of Bennett, Bricklin & Saltzburg, LLP. and Howard Ford, Esquire. In that action, Plaintiff claimed that the Defendants were engaged in a conspiracy to deprive him of his civil rights in the Lancaster County action. In an Order and Memorandum dated May 7, 2004, this Court dismissed the action for lack of subject matter jurisdiction based on the Rooker-Feldman doctrine.

On June 25, 2004, Judge Allison issued an Order directing the Plaintiff to show cause why he should not be held in contempt for failing to actively pursue his arbitration remedy and for continuing to file documents in an attempt to circumvent the stay previously imposed.

Undaunted, Plaintiff, on July 1, 2004, filed yet another action, this time in the Court of Common Pleas of Philadelphia County (the "Philadelphia Common Pleas action") against Howard Ford, Esquire, the law firm of Bennett, Bricklin & Saltzburg, the Swartz firm, Haggerty and Judge Allison. The Amended Complaint asserted a litany of

complaints as to the manner in which Judge Allison was handling the Lancaster County action and accused the Swartz firm and Haggerty with conspiring with Judge Allison to deprive Plaintiff of, inter alia, his right to a jury trial. Count One of the Amended Complaint asserted a “violation of 42 U.S.C. section 1983 & conspiracy to defraud Plaintiff of free exercise & enjoyment of his constitutional rights and of equal protection under the constitution and laws. The Amended Complaint also asserted state claims for fraud, civil conspiracy, abuse of process, wrongful use of civil proceedings, and intentional infliction of emotional distress. The Amended Complaint sought certain declaratory relief, including directing Judge Allison to cease from infringing upon Plaintiff’s constitutional rights in the Lancaster County action as well as compensatory and punitive damages.

On July 1, 2004, Judge Allison conducted a contempt hearing at the conclusion of which Judge Allison held Plaintiff in contempt and further ordered Plaintiff to a) arbitrate his uninsured motorist claim; (b) honor the stay

order entered in the Lancaster County proceedings; and (c) withdraw the instant lawsuit filed in the Court of Common Pleas of Philadelphia County. Plaintiff's appeal to the Superior Court was dismissed for lack of jurisdiction.

Meanwhile, in the Court of Common Pleas of Philadelphia County, Defendants filed preliminary objections to Plaintiff's Amended Complaint. On October 18, 2004, the Honorable Arnold L. New entered an Order sustaining Defendants' preliminary objections and dismissing Plaintiff's Amended Complaint as to all Defendants. Judge New issued an Opinion on November 17, 2004, explaining his rationale for the October 18, 2004 Order. Specifically, Judge Low found that Plaintiff had failed to state a claim against any of the Defendants and instead was merely attempting to circumvent the jurisdiction of the Lancaster Court of Common Pleas.

The Superior Court of Pennsylvania affirmed Judge New's Order sustaining the Defendants' preliminary objections to the Amended Complaint in a 12-page decision filed

on August 25, 2005. Plaintiff's Petition for Allowance of Appeal was denied by the Supreme Court of Pennsylvania on May 16, 2006.

In April of 2006, Plaintiff commenced this action in which he once again claims, inter alia, that Judge Allison's decision to refer Plaintiff's original suit against GEICO to arbitration, rather than conducting a jury trial, violated his constitutional rights and that the Swartz firm and Haggerty conspired with Judge Allison to deprive him of those rights. The Amended Complaint asserts various claims under the United States Constitution and the Pennsylvania Constitution as well as a state claim for intentional infliction of emotional distress. As noted above, defendants seek dismissal based, inter alia, on the Rooker-Feldman doctrine.

The Rooker-Feldman doctrine bars federal jurisdiction under two circumstances: if the claim was "actually litigated" in state court or if the claim is "inextricably intertwined" with the state adjudication. ITT Corp. v. Intelnet Int'l Corp. et al., 366 F.3d 205 (3d Cir. 2004). State and federal

claims are inextricably intertwined “(1) when in order to grant the federal plaintiff the relief sought, the federal court must determine that the state court judgment was erroneously entered’ [or] (2) when ‘the federal court must—take action that would render [the state court’s] judgment ineffectual.’” Desi’s Pizza, Inc. v. City of Wilkes-Barre, 321 F.3d 411, 421 (3d Cir. 2003) (quoting FOCUS v. Allegheny Cty. Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996)). “If the relief requested in the federal action requires determining that the state court’s decision is wrong or would void the state court’s ruling, then the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit.” FOCUS v. Allegheny Cty. Court of Common Pleas, 75 F.3d 834,840 (3d Cir. 1996).

A comparison of the allegations in the Complaint sub judice with those in the Philadelphia Common Pleas action against Defendants Judge Allison, the Swartz firm and Haggerty reveals that Plaintiff is once again complaining about Judge Allison’s handling of the Lancaster County

action and that he considers the Swartz firm and Haggerty to have conspired with Judge Allison all to Plaintiff's detriment. Plaintiff's federal and constitutional claims as well as Plaintiff's claim for intentional infliction of emotional distress which are the subject of this action were all resolved against Plaintiff and in favor Defendants in the Philadelphia Common Pleas action. Granting Plaintiff the relief he seeks in the action sub judice (directing Judge Allison to expunge his unconstitutional orders and to cease his infringement upon Plaintiff's constitutional rights) would result in this Court determining that the Court of Common Pleas' decision ( as well as the decision of the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania) was wrong. As a result, the issues in the case sub judice and the Philadelphia Common Pleas action are inextricably intertwined and this Court has no jurisdiction, pursuant to the Rooker-Feldman doctrine to hear this suit.

Since it appears from the tortured history recited above that Plaintiff is attempting to unilaterally abuse the

legal process, the Court will schedule a hearing on the Defendants' motion for sanctions at a later date.

An appropriate Order follows.

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MILOS JURICKO

V.

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PAUL ALLISON, in his official  
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ORDER

The motion of the Defendant Paul K. Allison to set  
aside default [Doc. #14] is GRANTED.

The motion of the Defendants Swartz Campbell, LLC  
and James Haggerty, Esq. to dismiss the Amended  
Complaint [Doc. #3] is GRANTED.

The motion of the defendant Paul K. Allison to  
dismiss the Amended Complaint [Doc. #11] is GRANTED.

The Amended Complaint is DISMISSED WITH  
PREJUDICE.

The Clerk is DIRECTED to mark this case closed for  
statistical purposes.

The Court will schedule a hearing on the defendants' motion for sanctions at a future date.

IT IS SO ORDERED.

BY THE COURT:

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Thomas M. Golden, J.