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

THOMAS RISICH	:	
	:	**CIVIL ACTION**
-v-	:	
	:	
BENSALEM TOWNSHIP, et al.	:	**No. 04-5305**
	:	

Diamond, J. **February 17, 2005**

MEMORANDUM

Plaintiff Thomas Risich alleges that Bensalem Township, and its Police Officers -- Donald Schwab and George Price -- violated his civil rights when, following a car accident, Plaintiff was issued a citation and compelled to defend himself in traffic court. Defendants have moved, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss Plaintiff's federal claims. I grant the Motion. Because Plaintiff's remaining claims are based entirely on Pennsylvania state law, I dismiss them for want of jurisdiction.

Background

Plaintiff alleges that on November 20, 2002, he was injured when Officer Schwab, who was speeding in a police cruiser against oncoming traffic, struck Plaintiff's vehicle. (Compl. at ¶¶ 1, 7-11). Mr. Risich alleges that after the accident, Officer Price arrived on the scene and interviewed Plaintiff and Schwab. (Id. at ¶¶ 16-19).

Following the accident, Bensalem Township mailed to Plaintiff a citation and summons, charging him with failure to yield to an emergency vehicle in violation of Pennsylvania Motor Vehicle Code § 3325(a). (Id. at ¶¶ 20-22). Plaintiff appeared in traffic court on three occasions to

defend himself. (N.T., February 10, 2005 at 3:21-4:3). On October 10, 2003, the traffic court acquitted Plaintiff. (Compl. at ¶ 24).

Plaintiff alleges that Defendants conspired to protect Schwab from allegations that he violated Vehicle Code Section 3105(e), which requires that emergency vehicle operators drive with due regard for the safety of all persons. (Id. at ¶ 29). Plaintiff further alleges that "Price conspired with defendant Schwab to create a story fixing blame for the . . . accident upon [Risich] and as part of [the] conspiracy prepared and issued a traffic summons to [Risich] for 'failing to yield right of way to an emergency vehicle.'" (Id. at ¶ 19).

In the first count of his Complaint, Plaintiff alleges that Defendants maliciously prosecuted him, and that he has "suffered and continues to suffer harm in violation of the Fourth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. Section 1983." (Id. at ¶ 33). In the Complaint's second count, Plaintiff brings state law claims of malicious prosecution, defamation, and invasion of privacy. (Id. at ¶ 46).

Legal Standards

A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of a complaint. LaFate v. Hosp. Billing & Collections Serv. Ltd., No. 03-985, 2004 U.S. Dist. LEXIS 17592, *2 (E.D. Pa. Sept. 1, 2004) (citing Conley v. Gibson, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957)). In considering Defendants' Motion, I am required to accept all well-pleaded allegations in the Complaint as true, and view these allegations in the light most favorable to Plaintiff. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989) (citations omitted); Nesbit v. Gears Unlimited, Inc., 347 F.3d 72, 77 (3d Cir. 2003). I may look at any documents and statements that are essential to Plaintiff's complaint, and which form the basis of his claims. See Lum v. Bank of America, 361

F.3d, 217, 222 n.3 (3d Cir. 2004); see also Tlush, 315 F. Supp. 2d at 654. I may also consider those documents and statements whose authenticity Plaintiff does not dispute. See Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993); see also Cuchara v. Gai-Tronics Corp., CIV No. 03-6573, 2004 U.S. Dist. LEXIS 11334 (E.D. Pa. April 8, 2004). I may grant Defendants' Motion only if Plaintiff cannot obtain relief under any set of facts that could be established. Ramadan v. Chase Manhattan Corp., 229 F.3d 194, 195 (3d Cir. 2000) (citing Alexander v. Whitman, 114 F.3d 1392, 1397-98 (3d. Cir. 1997)).

Discussion

I. Plaintiff's Fourteenth Amendment Claim

Plaintiff charges under § 1983 thatDefendants maliciously prosecuted him in violation of his due process rights. This is not a legally cognizable claim.

Before 1994, the Third Circuit permitted plaintiffs to base § 1983 claims on the elements of the common law tort of malicious prosecution. See Lee v. Mihalich, 847 F.2d 66, 69-70 (3d Cir. 1988); see also Albright v. Oliver, 510 U.S. 266, 271, n.4, 127 L. Ed. 2d 114, 114 S. Ct. 807 (1994) (noting that the Third Circuit followed "[t]he most expansive approach...which holds that the elements of a malicious prosecution action under § 1983 are the same as the common-law tort of malicious prosecution."). The Third Circuit reasoned that the constitutional underpinning for such claims was substantive due process. See e.g., Lippay v. Christos, 996 F.2d 1490, 1502 (3d Cir. 1993). In 1994, however, the Supreme Court held that § 1983 malicious prosecution claims could not be based on substantive due process, but, rather, must be based on provisions of the Bill of Rights that provide "an explicit textual source of constitutional protection." Albright, 510 U.S. at 272 (citations and internal quotations omitted).

Since Albright, the Third Circuit has repeatedly held that § 1983 malicious prosecution claims must be based on a deprivation of liberty other than substantive due process. See Donahue v. Gavin, 280 F.3d 371, 379-80 (3d Cir. 2002); Merckle v. Upper Dublin School District, 211 F.3d 782, 792 (3d Cir. 2000); Torres v. McLaughlin, 163 F.3d 169, 173 (3d Cir. 1998); see also Backof v. N.J. State Police, 92 Fed. Appx. 852, 856 (3d Cir. 2004); Petaccio v. Davis, 76 Fed. Appx. 442, 446 n.2 (3d Cir. 2003); Gardner v. McGroarty, 68 Fed. Appx. 307, 311 (3d Cir. 2003); Knight v. Borough of Penns Grove, 50 Fed. Appx. 93, 95 (3d Cir. 2002); Gordon v. City of Philadelphia, 40 Fed. Appx. 729, 730 (3d Cir. 2002).

Citing Albright, Plaintiff argues that "there is an embarrassing diversity of judicial opinion" respecting whether a § 1983 malicious prosecution claim can be based on substantive due process. (Pl.'s Brief at 3) (citing Albright, 510 U.S. at 271 n.4). Plaintiff ignores, however, that the Albright Court ended that "embarrassing diversity," holding that "it is evident that substantive due process may not furnish the constitutional peg on which to hang such a 'tort.'" Albright, 510 U.S. at 271 n.4. In light of Albright and its progeny -- including a substantial body of Third Circuit authority -- I dismiss Plaintiff's Fourteenth Amendment claim.

II. Plaintiff's Fourth Amendment Claim

Plaintiff also bases his § 1983 malicious prosecution claim on the Fourth Amendment. At oral argument, however, Plaintiff conceded that he has no authority to support his allegation that his Fourth Amendment rights were violated.

To allege a cognizable cause of action under the Fourth Amendment, Plaintiff must set forth the elements of malicious prosecution along with "some deprivation of liberty consistent with the concept of 'seizure.'" Gallo v. Philadelphia, 161 F.3d 217, 222 (3d Cir. 1998); see also Brockington

v. Philadelphia, 2005 U.S. Dist. LEXIS 1456, *12 (E.D. Pa. 2005).

To make out malicious prosecution under Pennsylvania law, Plaintiff must allege that: Defendants initiated a criminal proceeding; the criminal proceeding ended in Plaintiff's favor; the proceeding was initiated without probable cause; and Defendants acted maliciously or for a purpose other than bringing Plaintiff to justice. See Hilfirty v. Shipman, 91 F.3d 573, 579 (3d Cir. 1996) (citing Haefner v. Burkey, 534 Pa. 62, 626 A.2d 519, 521 (Pa. 1993). In charging that Defendants, to deflect suspicion from Defendant Schwab, conspired to obtain Plaintiff's conviction for a motor vehicle violation he did not commit, Plaintiff has adequately plead malicious prosecution at common law. The question remains, however, as to whether Plaintiff was ever "seized" for Fourth Amendment purposes.

The Third Circuit has held that a person need not be arrested, handcuffed, or detained to be "seized." Gallo, 161 F.3d at 219, 223; see also Brockington v. Philadelphia, 2005 U.S. Dist. LEXIS, *12-*13 (E.D. Pa. 2005). In Gallo, the City of Philadelphia and numerous public officials investigated Gallo, and accused him of deliberately setting fire to his business. Gallo, 161 F.3d at 218. As a result of the investigation, Gallo was criminally charged with mail fraud, malicious destruction of a building by fire, and making false statements to obtain a loan. Id. at 219. Gallo pled guilty to making false statements to obtain a loan, but he was eventually acquitted of the remaining charges. Id. at 218. When he was indicted, Gallo was required to post a $10,000 bond, attend court hearings (including trial and arraignment), and contact Pretrial Services on a weekly basis. Id. at 222. In addition, until he was acquitted, Gallo was prohibited for eight months from traveling outside New Jersey and Pennsylvania. Gallo, 161 F.3d at 222. Gallo sued the City and others, alleging under § 1983 a violation of his Fourth Amendment Rights. Id at 220. The Third Circuit

observed that these circumstances created a "close question," but held that the restrictions on Gallo amounted to a Fourth Amendment "seizure." Id.

In Bristow v. Clevenger, after the plaintiff was charged with theft, the police fingerprinted and photographed her, and investigated whether she had a criminal record. She was subsequently compelled to attend various judicial proceedings before the prosecution dropped the charges against her. Bristow v. Clevenger, 80 F. Supp. 2d 421, 426-29 (W.D. Pa. 2000). The plaintiff then filed suit against local government officials and others, alleging malicious prosecution based on her "seizure" under the Fourth Amendment. Id. The court disagreed, concluding that the restrictions on Ms. Bristow were far less intrusive than those placed upon Gallo: Bristow did not have to post bond; her freedom of movement was not confined to a geographic area; and her court proceedings were far less restrictive. Id. at 429-30. Thus, the court held that under Gallo, there was no "seizure." Id.

Here, the restrictions imposed on Plaintiff were far less intrusive than those placed on either Gallo or Bristow. Mr. Risich alleges that he was "seized" because Defendants mailed him a summons, and because he was forced to attend traffic court on three occasions to defend himself. (Compl. at 20) (N.T., February 10, 2005 at 4:12 - 4:18). Although the Third Circuit discussed the restraining effect of compelling Gallo to attend court proceedings, this was in the context of the restraints resulting from the imposition of bail, requiring weekly contact with Pretrial Services, and limiting interstate travel. Gallo, 161 F.3d at 224. Here, the extent of Plaintiff's restraint was limited to his three traffic court appearances. These restraints are vastly less severe than those imposed on Gallo. Indeed, at oral argument, Plaintiff's counsel conceded that there is no authority supporting his conclusion that the Defendants' actions constitute a "seizure." (N.T., February 10, 2005 at 4:8 - 4:12).

Because Plaintiff has not adequately pled a violation of his Fourth Amendment rights, his claim fails as a matter of law. Accordingly, I dismiss Plaintiff's Fourth Amendment Claims, and thus Count I in its entirety.

III. The Court Lacks Jurisdiction Over Plaintiff's State Law Claims

A federal court is required to examine its jurisdiction in every case. FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231, 107 L. Ed. 2d 603, 110 S. Ct. 596 (1990) overruled on other grounds by City of Littleton v. Z.J. Gifts D-4, LLC, 124 S. Ct. 219, 159 L. Ed. 84 (2004); see also, Allen v. Wright, 468 U.S. 737, 750 (1984). The court may address jurisdiction *sua sponte* at any stage of proceedings. See FW/PBS, Inc., 493 U.S. at 230; Sun Buick v. Saab Cars U.S.A., 26 F.3d 1259, 1261 (3d Cir. 1994); Eastampton Center, LLC v. Township of Eastampton, 155 F. Supp. 2d 102, 112 (D.N.J. 2001). In determining whether to exercise pendent jurisdiction over state law claims, federal courts should consider judicial economy, convenience, fairness to litigants, and comity. See Hudson United Bank v. Litenda Mortg. Corp., 142 F.3d 151, 157 (3d Cir. 1998); Lentino v. Fridge Employees Plans, Inc., 611 F.2d 474, 478 (3d Cir. 1979).

Because I have dismissed Count One of his Complaint, all that remains before me is what Plaintiff has described as his "supplemental state claims" for malicious prosecution, defamation, and invasion of privacy. (Compl. at ¶¶ 2, 39-47). In the absence of a federal claim or diversity jurisdiction, however, I have discretion to dismiss these claims as well for want of jurisdiction. 28 U.S.C. 1367(c)(3); see also Hudson United, 142 F.3d at 157; Fortuna's Cab Service, 269 F. Supp. 2d 562, 566 (D.N.J. 2003) (citing United Mine Workers v. Gibbs, 383 U.S. 715, 726, 16 L. Ed. 2d 218, 86 S. Ct. 1130 (1966)).

It is undisputed there is no diversity jurisdiction here: Mr. Risich and the defendant Bensalem Township are both residents of Pennsylvania. (Compl. at ¶¶ 3-4); see also 28 U.S.C. § 1332. There is no other basis for federal jurisdiction, and at this early stage of litigation, there is no prejudice to either party if Plaintiff's Complaint is dismissed in its entirety. See Queen City Pizza, Inc. v. Domino's Pizza, Inc., 124 F.3d 430, 444 (3d Cir. 1997) ("Because all federal claims were correctly dismissed and dismissal of the remaining contract claims would not be unfair to the litigants or result in waste of judicial resources," dismissal of state law claims was appropriate). Accordingly, I will dismiss the remainder of Plaintiff's Complaint.

BY THE COURT:

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PAUL S. DIAMOND, J.

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O R D E R

AND NOW this 17th day of February, 2005, upon consideration of the Motion of Defendants to Dismiss Plaintiff's Fourth Amendment and Fourteenth Amendment Claims, the Response of Plaintiff, argument of counsel, and any related submissions, it is **ORDERED** that the Motion is **GRANTED** as follows:

1. Count I is **DISMISSED** for failure to state a claim.

2. Count II is **DISMISSED** for want of federal jurisdiction.

IT IS FURTHER ORDERED that the Complaint is **DISMISSED with prejudice** in its entirety. The Clerk of Court shall close this matter for statistical purposes.

BY THE COURT.

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Paul S. Diamond, J.