

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

VERRON FIELDS,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 05-05897
	:	
v.	:	
	:	
THE PENNSYLVANIA DEPARTMENT	:	
OF CORRECTIONS, et al.,	:	
	:	
Defendants.	:	

Stengel, J.

May 5, 2006

MEMORANDUM AND ORDER

Pro se plaintiff Verron Fields ("Plaintiff") brings this purported *qui tam* action for copyright infringement against defendants Friendship Cable of Texas, Inc., d/b/a Correctional Cable TV, Inc. ("CCT") and the Pennsylvania Department of Corrections (the "DOC") (collectively "Defendants"). Each Defendant has filed a motion to dismiss the complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure. For the reasons that follow, I will grant both motions and dismiss this case with prejudice.

I. BACKGROUND

CCT has entered into contracts with a number of state correctional institutions to provide cable television services for inmates. Plaintiff is an inmate at SCI-Graterford, one of the correctional institutions under contract with CCT. Plaintiff alleges that he pays a monthly fee for the cable television provided to the inmates at Graterford by CCT.

Among the television channels provided by CCT are two movie channels that, according to Plaintiff, "play [c]opyrighted movies for approximately 22 hours a day, 7 days a week, 365 days a year." Plaintiff alleges that, as a result of the movies played on these two channels, Defendants have violated (and continue to violate) the Copyright Act. Plaintiff brings this purported *qui tam* civil action¹ seeking statutory damages for copyright infringement "on behalf of various artists of the Motion Pictures [sic] Association of America."

Plaintiff initiated this lawsuit by filing a motion to proceed *in forma pauperis*. The Court granted his motion on November 14, 2005, and Plaintiff filed his complaint on the same day. On February 27, 2006, CCT filed a motion to dismiss (Docket No. 9) for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. The DOC filed a motion to dismiss (Docket No. 10) on the same day, arguing that Plaintiff has failed to state a claim upon which relief can be granted.

II. LEGAL STANDARDS

Rule 12(b)(1) of the Federal Rules of Civil Procedure permits a court to dismiss a lawsuit for lack of subject matter jurisdiction.² A district court considering a Rule

¹*Qui tam* is short for the Latin phrase *qui tam pro domini rege quam pro se ipso in hac parte sequitur*, which means "who as well for the king as for himself sues in this matter." BLACK'S LAW DICTIONARY (8th ed. 2004). *Qui tam* actions arise from statutes that create a cause of action for private citizens to sue on behalf of a governmental entity. See Vt. Agency of Nat'l Res. v. U.S. ex rel. Stevens, 529 U.S. 765, 769 n.1 (2000).

²District courts may dismiss a case for lack of standing under Rule 12(b)(1). See Kahn v. Am. Heritage Life Ins. Co., 324 F. Supp. 2d 652, 657 (E.D. Pa. 2004); Kwan v. United States, 84 F. Supp. 2d 613, 617 n.1 (E.D. Pa. 2000).

12(b)(1) motion to dismiss must distinguish between facial and factual challenges to its subject matter jurisdiction. Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977). "In a facial attack, a defendant argues that the plaintiff did not properly plead jurisdiction" By contrast, "a 'factual' attack asserts that jurisdiction is lacking on the basis of facts outside of the pleadings." Smolow v. Hafreer, 353 F. Supp. 2d 561, 566 (E.D. Pa. 2005) (citing Mortensen, 549 F.2d at 891).

When reviewing a facial attack on subject matter jurisdiction, such as the attack on standing made here, "the court must only consider the allegations of the complaint and documents referenced therein and attached thereto, in the light most favorable to the plaintiff." Gould Elecs., Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000) (citations omitted). Courts in the Third Circuit dismiss complaints for lack of subject matter jurisdiction "grudgingly," and the threshold showing needed to withstand a Rule 12(b)(1) motion to dismiss is low. Harrison v. Local 54, 518 F.2d 1276, 1283 (3d Cir. 1975). Dismissal for lack of subject matter jurisdiction is appropriate only where the claim is "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy" Nesbit v. Gears Unlimited, Inc., 347 F.3d 72, 80 (3d Cir. 2002) (quoting Indian Nation v. County of Oneida, 414 U.S. 661, 666 (1974)).

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted examines the legal sufficiency

of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A federal court may grant a motion to dismiss only where "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Carino v. Stefan, 376 F.3d 156, 159 (3d Cir. 2004) (quoting Conley, 355 U.S. at 45-46). In determining whether to grant a motion to dismiss, a federal court must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. Carino, 376 F.3d at 159. See also D.P. Enters. v. Bucks County Cmty. Coll., 725 F.2d 943, 944 (3d Cir. 1984).

The Federal Rules of Civil Procedure do not require a plaintiff to plead in detail all of the facts upon which he bases his claim. Conley, 355 U.S. at 47. Rather, the Rules require a "short and plain statement" of the claim that will give the defendant fair notice of the plaintiff's claim and the grounds upon which it rests. Id. A plaintiff, however, must plead specific factual allegations. Neither "bald assertions" nor "vague and conclusory allegations" are accepted as true. See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997); Sterling v. Southeastern Pa. Transp. Auth., 897 F. Supp. 893 (E.D. Pa. 1995). Accordingly, "a court should not grant a motion to dismiss [under Rule 12(b)(6)] 'unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Graves v. Lowery, 117 F.3d 723, 726 (3d Cir. 1997) (quoting Conley, 355 U.S. at 45-46).

Courts must liberally construe *pro se* complaints and "apply the applicable law, irrespective of whether [the] litigant has mentioned it by name." Higgins v. Beyer, 293 F.3d 683, 688 (3d Cir. 2002). Thus, Plaintiff's complaint, "however inartfully pleaded, must be held to [a] less stringent standard[] than [a] formal pleading drafted by [a] lawyer[]" Estelle v. Gamble, 429 U.S. 97, 106 (1976) (citations and quotations omitted).

III. DISCUSSION

Defendants make a number of well-reasoned arguments for the dismissal of Plaintiff's case. I will initially address the issue of standing because questions of subject matter jurisdiction must be considered at the outset. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998).

A. The Court lacks subject matter jurisdiction to address Plaintiff's claim because he has not adequately alleged that he has standing.

The Supreme Court has held that a plaintiff must meet three requirements to establish standing under Article III of the United States Constitution:

First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly . . . traceable to the challenged action of the defendant, and not . . . the result of the independent action

of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (citations and quotations omitted). The Supreme Court has also recognized several "prudential" standing requirements that are separate and distinct from the constitutional standing requirements of Article III. These prudential standing requirements are "judicially self-imposed limits on the exercise of federal jurisdiction." Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 11 (2004). The Court has described the prudential standing requirements as "[1] the general prohibition on a litigant's raising another person's legal rights, [(2)] the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches, and [(3)] the requirement that a plaintiff's complaint fall within the zone of interests protected by the law invoked." Id.

Here, Plaintiff has failed to demonstrate that he has suffered an injury in fact. Plaintiff alleges in his complaint that he brings this copyright infringement action and seeks damages "on behalf of various artists within the Motion Pictures [sic] Association of America." Notably, however, Plaintiff does not allege that his own legal rights have been infringed by Defendants' conduct. A federal court's jurisdiction "can be invoked only when the plaintiff himself has suffered some threatened or actual injury resulting from the putatively illegal action." Warth v. Seldin, 422 U.S. 490, 499 (1975). Moreover, a plaintiff "generally must assert his own legal rights and interests, and cannot

rest his claim to relief on the legal rights or interests of third parties." Warth, 422 U.S. at 499. Plaintiff has based his claim for relief in this case under the Copyright Act on the rights of unidentified third-party artists. He therefore lacks standing to bring his claim.³

B. Plaintiff has failed to allege a claim under the Copyright Act because he has not alleged an ownership interest in the movies at issue.

Even if I were to ignore the standing issue discussed above, Plaintiff cannot maintain a claim under the Copyright Act in his individual capacity. "To establish a claim of copyright infringement, a plaintiff must establish: (1) *ownership of a valid copyright*; and (2) unauthorized copying of original elements of the plaintiff's work." Dun & Bradstreet Software Servs., Inc. v. Grace Consulting, Inc., 307 F.3d 197, 206 (3d Cir. 2002) (emphasis added). In this case, the complaint does not allege that Plaintiff has any ownership or other interest in the movies played at his correctional institution. Accordingly, Plaintiff has failed to allege a claim under the Copyright Act.⁴

³In Stevens, 529 U.S. at 776, the Supreme Court held that plaintiffs have standing to bring a *qui tam* civil action on behalf of the United States under the Federal Claims Act (the "FCA"). The instant case, however, is readily distinguishable from the Stevens case. *Qui tam* actions "do not exist at common law and can only be maintained under express or strongly implied statutory authority." Marra v. Burgdorf Realtors, Inc., 726 F. Supp. 1000, 1012 (E.D. Pa. 1989) (quoting United States ex rel. Marcus v. Hess, 317 U.S. 537, 541 (1943)). The FCA expressly authorizes private persons to sue on behalf of the United States. 31 U.S.C. § 3730(b)(1). By contrast, the Copyright Act does not authorize *qui tam* civil actions. Plaintiff, therefore, may not argue that he has standing to bring this claim under Stevens. See also Stevens, 529 U.S. at 769 n.1 (describing the three *qui tam* statutes that "remain on the books").

⁴I need not address the DOC's Eleventh Amendment argument. While this argument may be meritorious, it is unnecessary to address it in light of the analyses above.

IV. CONCLUSION

Plaintiff has failed to allege facts allowing him to bring a *qui tam* copyright infringement action on behalf of the Motion Picture Association of America.

Furthermore, Plaintiff cannot maintain a copyright infringement action in his individual capacity. I will therefore grant both motions to dismiss. An appropriate Order follows.

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VERRON FIELDS,	:	CIVIL ACTION
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Plaintiff,	:	NO. 05-05897
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v.	:	
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THE PENNSYLVANIA DEPARTMENT	:	
OF CORRECTIONS, et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 5th day of May, 2006, upon consideration of the motions to dismiss filed by defendants Friendship Cable of Texas, Inc., d/b/a Correctional Cable TV, Inc. (Docket No. 9) and the Pennsylvania Department of Corrections (Docket No. 10), it is hereby **ORDERED** that the motions are **GRANTED**. The Clerk of Court is directed to close this case for statistical purposes.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.