

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AUTREY J. LOCKLEAR,)
)
Plaintiff,)
)
v.) C.A. No. 02-1579-SLR
)
WILLIAM M. REMINGTON,)
)
Defendant.)

MEMORANDUM ORDER

At Wilmington this 28th day of April, 2003, having reviewed defendant's motion to dismiss and plaintiff's papers submitted in connection therewith;

IT IS ORDERED that said motion (D.I. 7) is granted for the reasons that follow:

1. **Background.** On October 25, 2002 plaintiff filed this action pro se pursuant to 42 U.S.C. § 1983 seeking a declaratory judgment, preliminary and permanent injunction against defendant Remington¹ in relation to the collection of delinquent state taxes. (D.I. 2 at 4; D.I. 3) Specifically, plaintiff requests that the court: 1) enjoin defendant from "encumbering [his] property by state tax lien until a settlement [is] established;" 2) enjoin defendant from garnishing his wages

¹Plaintiff is suing Remington in his capacity as the Director of Revenue for the State of Delaware. (D.I. 2, 3) Plaintiff indicates that the new Acting Director of Revenue is David Sullivan. (D.I. 18)

until a settlement is established; and 3) structure a settlement for plaintiff's tax liability. (D.I. 2 at 8) Plaintiff admits owing approximately \$358,756.34 in income tax to the State of Delaware for the 1987 and 1988 tax years. (D.I. 2 ¶ 5) The "amount owed by plaintiff is a result of a defalcated investor funds during the taxable periods." (Id.) Plaintiff asserts that he attempted to satisfy this tax debt by filing a Notice of Judgment with the Delaware Superior Court on June 7, 2000. (Id. at ¶ 6) On the same day, plaintiff made a "state-based offer to compromise his debt for the amount of \$500" based on his inability to pay the full amount owed pursuant to 30 Del. C. § 564. (Id. at ¶¶ 7, 8) Contemporaneously, plaintiff filed an offer to compromise an \$800,000 tax debt owed to the Internal Revenue Service. (Id. at ¶ 7) Plaintiff indicates that his state offer to compromise was rejected by defendant, although a counter offer in the amount of \$108,353.52 was made to settle the debt. (Id. at ¶ 10) Plaintiff filed an administrative appeal with the Delaware Tax Appeal Board. (Id. at ¶ 11) Additional appeals followed. (Id. at ¶¶ 18 - 22) As a result of adverse rulings by the Delaware Tax Appeal Board, the Delaware Court of Chancery and Delaware Supreme Court, plaintiff instituted this action on October 25, 2002. (Id.)

2. Defendant moved to dismiss the complaint on December 11, 2002. (D.I. 7, 9) Plaintiff filed an answering

brief on December 30, 2002 (D.I. 10), requested oral argument on January 21, 2003 (D.I. 16) and moved to strike defendant's opposition memorandum on February 11, 2003. (D.I. 16) On April 16, 2003, apparently dissatisfied with the progress of his case through the judicial system, plaintiff filed a writ of mandamus with the United States Court of Appeals for the Third Circuit to compel this court to act on this complaint. (D.I. 18)

3. **Standard of Review.** In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the complaint." Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v. Harrisburg County Police Dep't., 91 F.3d 451,

456 (3d Cir. 1996). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

4. **Analysis.** While defendant has moved to dismiss pursuant to Rule 12(b)(6) under numerous theories, the court cannot address the arguments without first assessing the effect of the Tax Injunction Act, 28 U.S.C. § 1341 (the "Act"). The Act prohibits federal courts from enjoining "the assessment, levy or collection of any tax under state law" where state law provides a "plain, speedy and efficient" remedy. Kerns v. Dukes, 153 F.3d 96, 101 (3d Cir. 1998); Raskauskas v. Town of Bethany Beach, 555 F. Supp. 783, 786 (D. Del 1983). Generally, a district court is precluded from issuing an injunction or granting declaratory relief from the collection of state taxes. Raskauskas, 555 F. Supp. at 787. Moreover, the principles of comity restrict federal courts from interfering in this area recognized as a compelling state interest. See Fair Assessment in Real Estate Assoc. v. McNary, 454 U.S. 100, 102-103 (1981); Lang v. Remington, 1999 WL 33220547 at 3-4 (D. Del. 1999). The documentation supplied by defendant as well as plaintiff's summary of his case establish that plaintiff had a plain, speedy and efficient remedy to pursue for his claims. First, plaintiff filed an administrative appeal with the Delaware Tax Appeal Board. (D.I. 2 ¶ 11) Plaintiff then filed in the Court of

Chancery, arguing essentially the same allegations asserted at bar. The Court of Chancery rejected plaintiff's claims and granted defendant's motion to dismiss. (D.I. 9, A-1) Although the Delaware Supreme Court did not address the merits of plaintiff's appeal, having found instead that he failed to pay the appropriate filing fees to prosecute the appeal, the court finds that the Supreme Court's review of the claims demonstrates an efficient system in place to address plaintiff's concerns. (Id. at A-5) The procedural remedies available through the state court system are sufficient and, therefore, preclude this court from exercising jurisdiction to consider plaintiff's request for injunctive and declaratory relief.²

Sue L. Robinson
United States District Judge

²Although plaintiff has filed this case under 42 U.S.C. § 1983, the court does not reach the issue of whether he has asserted viable claims therein, finding instead that the crux of plaintiff's claims are injunctive, and intervention is precluded under the Act. Likewise the court does not reach whether 30 Del. C. § 564 creates a property interest, with the attendant due process requirements, protected by the Fourteenth Amendment. Instead, the court defers, on the basis of Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923) and District of Columbia v. Feldman, 460 U.S. 462 (1983), to the judgment of the Chancery Court that there was no settlement agreement reached by plaintiff and defendant that would warrant the relief requested.