

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DONALD DONOVAN,)
)
 Plaintiff,)
)
 v.) Civ. No. 03-859-SLR
)
 KENT A. JORDAN,)
 ANNE Y. PARK,)
 ANDREW J. KAMEROS,)
 SHAWN T. NOUD,)
 COLM F. CONNOLLY,)
 JACQUELINE ZEBLEY,)
 THOMAS WINTERBOTTOM,)
 JOSEPH SALARNO,)
 PENNY MARSHALL and)
 ELENI KOUSOULIS,)
)
 Defendants.)

MEMORANDUM ORDER

At Wilmington, this 9th day of December, 2003, having reviewed the motions to dismiss (D.I. 16, 19¹) as well as the papers filed in connection with said motion;

IT IS ORDERED that said motions (D.I. 16, 19) are granted for the following reasons:

1. Plaintiff filed the present civil action requesting declaratory relief on September 5, 2003. (D.I. 1) Concurrently, plaintiff is the subject of a federal grand jury indictment for

¹Defendants Marshall and Kousoulis filed a pleading denominated as an "answer." However, in such pleading, defendants move to dismiss the complaint for failure to state a claim upon which relief can be granted. (D.I. 19, ¶ 8)

federal tax evasion and failure to file a tax return.²

2. The complaint seeks declaratory judgment as to the following: (1) the United States District Court for the District of Delaware is without lawful authority under Article III of the U.S. Constitution; (2) the judges, magistrates and clerk of the United States District Court for the District of Delaware are not vested with any judicial authority under Article III of the U.S. Constitution; (3) the judges, magistrates and clerk of the United States District Court for the District of Delaware are not vested with any judicial authority under Article III of the U.S. Constitution; (4) defendants Park, Kameros, Noud, Connolly, Zebley, Winterbottom, Salarno, and Judge Jordan are not officers, agents, or employees of the United States of America; (5) the grand jury indictment lacks basis in federal law; (6) the grand jury indictment is invalid for vagueness; (7) defendants Park, Kameros, Noud, Connolly, Zebley, Winterbottom, Salarno, and Judge Jordan acted under color of law to deprive plaintiff of due process and equal protection under the law. (D.I. 1) Each of the plaintiff's prayers for relief relate to the pending criminal action.

3. Presently before the court are the motions of the defendants to dismiss the complaint for failure state a claim

²Plaintiff's criminal case is schedule for trial before United States District Judge Kent Jordan on January 5, 2004.

upon which relief can be granted and for lack of subject matter jurisdiction. (D.I. 16, 19)

4. 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.

5. 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, 520-21 (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).

6. The complaint seeks declaratory relief pursuant to 28 U.S.C. § 2201. That statute provides the statutory authority for

United States courts to grant declaratory relief "except with respect to Federal taxes."³ 28 U.S.C. § 2201; see Bob Jones Univ. v. Simon, 416 U.S. 725 (1974); see also Dows v. City of Chicago, 78 U.S. 108 (1870). Federal law further provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421. In the instant case, each of the plaintiff's claims is directed toward declaratory relief for the purpose of restraining the collection of federal taxes.

7. Consequently, the court concludes that plaintiff has failed to state a claim upon which relief can be granted and defendants' motions to dismiss the complaint are granted. (D.I. 16, 19)

Sue L. Robinson
United States District Judge

³The statute provides a narrow exception to this exclusion for certain not-for-profit corporations which is not applicable here.