

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

THOMAS D. GUYER, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 01-683-SLR  
 )  
 LAURENCE V. CRONIN, JEROME O. )  
 HERLIHY, Delaware Superior )  
 Court Judge, MARY G. YOUNG, )  
 YMCA Central Branch Director, )  
 and ANYONE ELSE RESPONSIBLE, )  
 )  
 Defendants. )

**MEMORANDUM ORDER**

At Wilmington this 15<sup>th</sup> day of February, 2002, having reviewed the various motions filed in this matter and the responses thereto;

IT IS ORDERED that:

1. Plaintiff's motion to remove state court judge and to amend the complaint (D.I. 9) is granted in part and denied in part. The motion to amend the complaint is granted as a matter of course pursuant to Fed. R. Civ. P. 15(a). The clerk is ordered to remove defendant Joseph O. Herlihy from the caption and add defendant Jerome O. Herlihy. The motion to remove state court judge is denied.

2. Plaintiff's motion to vacate order and transfer case (D.I. 16) is denied. With regard to the motion to vacate the order denying motion to disqualify/recuse, the case cited by

plaintiff (01-cv-253) is closed and the only other pending case (99-cv-923) was dismissed by this court, so no conflict of interest exists. With regard to motion to transfer case to a different venue, plaintiff's stated reason for change of venue, lack of impartiality, is not included in the statute governing change of venue, 28 U.S.C. § 1404. Furthermore, where plaintiff and defendants reside in Delaware and the actions complained of occurred in this district, transfer would not be for the convenience of the forum and plaintiff could not have commenced this action in any other district besides the District of Delaware.

3. Defendant Laurence V. Cronin and defendant Mary G. Young's motion to dismiss (D.I. 10) and defendant Jerome O. Herlihy's motion to dismiss (D.I. 17) are granted for the following reasons:

a. Under Fed. R. Civ. P. 12(b)(1), the court's jurisdiction may be challenged either facially (based on the legal sufficiency of the claim) or factually (based on the sufficiency of jurisdictional fact). See 2 James W. Moore, Moore's Federal Practice § 12.30[4] (3d ed. 1997). Under a facial challenge to jurisdiction, the court must accept as true the allegations contained in the complaint. See id. Dismissal for a facial challenge to jurisdiction is "proper only when the claim 'clearly appears to be immaterial and made solely for the

purpose of obtaining jurisdiction or . . . is wholly insubstantial and frivolous.'" Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1408-1409 (3d Cir. 1991) (quoting Bell v. Hood, 327 U.S. 678, 682 (1946)).

b. The court reads the complaint as an attempt to appeal unfavorable judgments of the state court through institution of this civil rights action against the state court judge and the state court defendant and attorney or, in the alternative, as a petition to have the state action removed to federal court.

c. So far as plaintiff seeks review of the state court decisions to dismiss discrimination and due process claims and deny plaintiff's motion to strike defendants' exhibits, this court finds that the Rooker-Feldman doctrine precludes federal district court jurisdiction to review these state court decisions and requires dismissal for lack of subject matter jurisdiction. See, e.g., Port Authority Police Benevolent Ass'n, Inc. v. Port Authority of New York and New Jersey Police Dept., 973 F.2d 169, 178 (3d Cir. 1992) (holding that "the Rooker-Feldman doctrine precludes federal court review of lower state court decisions, just as it precludes review of the decisions of a state's highest court."). See also Logan v. Lillie, 965 F. Supp. 695, 698 (E.D. Pa. 1997) ("Rooker-Feldman [does not] permit a disappointed state plaintiff to seek review of a state court decision in the federal

court by masquerading his complaint in the form of a federal civil rights action.”). Plaintiff must appeal the decisions of lower state courts, even those addressing federal constitutional issues, through the state court appellate process, not by appeal to the United States District Court.

d. So far as the complaint is a petition to remove the state court case to the federal district court, only a defendant is permitted to petition for such removal. See 28 U.S.C. § 1441(a). Consequently, this court lacks authority to grant plaintiff’s petition to remove the state action to federal district court.

4. The court in its discretion treats plaintiff’s “First Amended Complaint” (D.I. 23) as a second motion for leave to amend the complaint. The motion is denied for the following reasons:

a. “A party may amend the party’s pleading once as a matter of course at anytime before a responsive pleading is served. . . .” Fed. R. Civ. P. 15(a). “Otherwise, a party may amend the party’s pleading only by leave of court or by written consent of the adverse party. . . .” Id.

b. Though motions to amend are to be liberally granted, a district court “may properly deny leave to amend where the amendment would not withstand a motion to dismiss.” Centifanti v. Nix, 865 F.2d 1422, 1431 (3d Cir. 1989).

c. The amended complaint would not survive a motion to dismiss under Fed. R. Civ. P. 12(b)(1) for the reasons already stated in paragraph 3(c) above. Accordingly, the court denies the motion for leave to amend the complaint.

5. Plaintiff's motion to compel defendant Judge Herlihy to answer interrogatories (D.I. 22) is denied as moot.

Sue L. Robinson  
United States District Judge