

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

KEITH D. LIMEHOUSE )  
 )  
 Plaintiff, )  
 )  
 v. ) Civ. No. 03-844-SLR  
 )  
 STATE OF DELAWARE, )  
 JOSEPH R. SLIGHTS, in his )  
 official capacity as Superior )  
 Court Judge, )  
 MIKE MURPHY, in his official )  
 capacity as an employee of the )  
 Office of the Prothonotary of )  
 Newcastle County Courthouse, )  
 DELAWARE STATE CAPITAL POLICE, )  
 WILLIAM JOPP, in his official )  
 capacity as Chief of Delaware )  
 State Capital Police, and )  
 RAYMOND W. COBB, )  
 )  
 Defendants. )

**MEMORANDUM ORDER**

At Wilmington, this 3rd day of March, 2004, having reviewed plaintiff's motion for partial default judgment (D.I. 7), plaintiff's motion to strike (D.I. 8), defendants' motions to dismiss (D.I. 11, 15), and the memoranda submitted thereto;

IT IS ORDERED that defendants' motions to dismiss (D.I. 11, 15) shall be **granted** and plaintiff's motions (D.I. 7, 8) **denied** for the reasons that follow:

1. Plaintiff filed the present action on August 29, 2003 alleging civil rights violations brought pursuant to 42 U.S.C. §§

1983, 1985. (D.I. 1) Plaintiff contends that defendant Cobb filed a false representation which resulted in the deprivation of plaintiff's equal protection of the law. (D.I. 1, ¶¶ 21-27) The State of Delaware, Delaware Superior Court Judge Joseph R. Slight, Mike Murphy, an employee in the Office of the Prothonotary of New Castle County, and William Jobb, Chief of the Delaware State Capitol Police (the "State defendants"), are alleged to have conspired with Cobb in violation of § 1985 to interfere with plaintiff's civil rights. (D.I. 1, ¶¶ 28-45)

2. On September 22, 2003, Cobb filed a motion to extend the time to file an answer (D.I. 5), which was granted by the court on September 24. Subsequently, on September 25, plaintiff filed a motion to strike Cobb's motion for an extension. As a consequence of the court's September 24 order, plaintiff's motion to strike is **moot**. (D.I. 8)

3. On September 25, 2003, plaintiff filed a motion for partial default judgment against the State of Delaware pursuant to Fed. R. Civ. P. 55(b)(2). Prior to entry of a default judgment a plaintiff must first file a motion for an entry of default. Fed. R. Civ. P. 55(a). See Meehan v. Snow, 652 F.2d 274, 276 (2d Cir. 1981) ("The procedural steps contemplated by the Federal Rules of Civil Procedure following a defendant's failure to plead or defend as required by the Rules begin with the entry of a default by the clerk upon a plaintiff's

request.”). As plaintiff failed to obtain an entry of default prior to his motion for entry of a default judgment, plaintiff’s motion is **denied**.<sup>1</sup> (D.I. 7)

4. On October 1, 2003, Cobb filed a motion to dismiss on the basis of insufficient services of process, failure to state a claim upon which relief can be granted, lack of subject matter jurisdiction, and the doctrine of federal abstention.<sup>2</sup> (D.I. 11) On October 7, 2003, the State defendants filed a motion to dismiss for failure to state a claim upon which relief can be granted. (D.I 15)

5. The present action arises from acts alleged to have occurred in the course of civil litigation currently pending in Delaware Superior Court before Judge Slights. See Limehouse v. Steak & Ale Restaurant Corp., C.A. No. 03C-03-299. Plaintiff contends that Cobb, who represents a defendant in the state litigation, knowingly placed a false representation, related to the sufficiency of service of process, in a document filed in the Office of the Prothonotary of the Superior Court of New Castle

---

<sup>1</sup>The court further notes the entry of defaults and default judgments are discouraged in the Third Circuit. See U.S. v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 194-95 (3d Cir. 1984). Fed. R. Civ. P. 55 is to be liberally construed so as to insure that cases are decided on their merits. Id.

<sup>2</sup>Cobb also moved the court to require a more definite statement and to strike portions of plaintiff’s complaint. (D.I. 11) Because Cobb’s motion to dismiss will be granted, the court will not address the alternate relief requested.

County "with the intent to dissuade ... [Judge] Slight, not to properly enter default nihil dicit into final judgment where the defendant did not answer summons" within the time limit proscribed under Delaware Superior Court Rules. (D.I. 1, ¶ 21) Plaintiff contends that Cobb did so for the purpose of "raising the amount of billable hours" and without authority. (Id., ¶ 23-24) Plaintiff further contends that Cobb's statements constitute a class E felony under Delaware law. (Id., ¶ 36) Plaintiff contends that Judge Slight "allowed himself to be induced to conspire to deprive plaintiff of equal protection of the laws ... by accepting statements of Defendant Cobb." (Id., ¶ 33) Plaintiff contends that defendant Murphy "made several telephone calls to Plaintiff in the attempt to deceive plaintiff to not appear for a motion hearing for sanctions against Defendant Cobb." (Id., ¶ 34) Plaintiff further contends that "Murphy made statements that are plainly false with regard to the application of procedures of the New Castle County Civil Case Management Plan." (Id., ¶ 35) Plaintiff asserts that these statements constitute a class E felony under Delaware law. (Id., ¶ 36) Plaintiff contends that "[d]efendants Kashner, Walker, and Donohue, in the line of duty as Delaware State Capitol Police Officers, refused to arrest Defendant Cobb where presented by Plaintiff with a first-hand account of the criminal act ... on

June 27, 2003.”<sup>3</sup> (Id., ¶ 38) Plaintiff was subsequently ejected from the New Castle County Courthouse premises. Further, plaintiff contends that “Defendant Slight’s denial of Plaintiff’s motion in underlying litigation ... deprived Plaintiff of relief as ordered by rule of court ... and are breach of plaintiff’s fundamental rights as guaranteed by United States Constitution’s Fourteenth Amendment.” Plaintiff seeks damages in the amount of \$1,762,690. The State defendants are being sued in their official capacities. (D.I. 1; D.I 24, ¶ 5)

6. 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

---

<sup>3</sup>The court notes, however, that “Kashner, Walker, and Donohue” are not joined as defendants in the present action.

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).

7. Accepting all of plaintiff's factual allegations as true and construing the complaint in the light most favorable to plaintiff, the complaint fails to state a cause of action against defendant Cobb. Plaintiff brings this claim pursuant to 42 U.S.C. § 1983, alleging a deprivation of civil rights. It is, however, well settled law that § 1983 creates no remedy against a person not acting under color of law. See Polk County v. Dodson, 454 U.S. 312, 318 (1981) ("[A] lawyer representing a client is not, by virtue of being an officer of the court, a state actor 'under color of state law' within the meaning § 1983."). In the present case, there is no factual or legal basis to conclude that Cobb, serving as counsel for a defendant in private civil litigation, is acting under color of state law. Consequently, plaintiff's claim against defendant Cobb must fail.

8. With respect to the State defendants, plaintiff seeks money damages against the State, the State Capitol Police, and certain State officials in their official capacities. Where a

plaintiff sues a State or State agency for money damages, Eleventh Amendment immunity will bar the action. See Edelman v. Jordan, 415 U.S. 651, 662-63 (1974). Similarly, where a suit names a state official in his official capacity the state is the real party in interest and, as a consequence, the Eleventh Amendment immunity applies. See Edelman v. Jordan, 415 U.S. 651, 662-63 (1974). While Congress, pursuant to its remedial powers under Section 5 of the Fourteenth Amendment, may abrogate a state's Eleventh Amendment immunity, it must clearly state its intent to do so. See Seminole Tribe of Florida v. Florida, 517 U.S. 44, 55 (1996). Section 1983 does not contain such an express congressional intent to abrogate the Eleventh Amendment. See Edelman, 415 U.S. at 677. As the State of Delaware has not waived its sovereign immunity, plaintiff's claim for money damages against the State of Delaware, the State Capitol Police, and the named State officers is barred.

Sue L. Robinson  
United States District Judge