

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

CHRISTOPHER ROLLER,

Civil Action No.: 07-4069 JMR/FLN

Plaintiff,

vs.

**DEFENDANT ALL GOD’S
CHILDREN’S MEMORANDUM IN
SUPPORT OF DEFENDANT’S
MOTION TO DISMISS**

ALL GOD’S CHILDREN,

Defendant.

INTRODUCTION

Plaintiff Christopher Roller (“Roller”) has commenced an action for purported fraud against All God’s Children Church. (“AGC”) under 18 U.S.C. § 1038, asserting that “churches think [Plaintiff is] God [and] they are preaching crap/deceit in church.” Plaintiff’s Complaint is best described as a claim for false idolatry, which as this Court is aware, is beyond the jurisdiction of this Court or any court on this earth.

Plaintiff’s Complaint fails to state a claim against AGC for which relief can be granted and it should be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

As additional and alternative bases for dismissal, the Complaint should be dismissed pursuant to Fed. R. Civ. P. 9(b) because Plaintiff failed to allege fraud with particularity, and pursuant to Fed. R. Civ. P. 12 (b)(5) because Plaintiff failed to effectuate proper service of the complaint.

FACTUAL BACKGROUND

Plaintiff is a resident of the state of Minnesota. Plaintiff claims that “[i]t’s official. I am God”—and has filed a number of frivolous lawsuits in this Court based on that

assertion.¹ Plaintiff has filed so many meritless lawsuits in this district that Judge Tunheim, in an Order dated four days after this case was filed, imposed a sanction on Plaintiff forbidding the Clerk of Court from accepting any similar lawsuits from Plaintiff without an attorney's signature or prior leave of the Court.²

All God's Children Metropolitan Community Church (AGC) is a non-profit corporation operating as a Christian Church and serving the Twin Cities community. Contrary to Plaintiff's allegations, the leaders of AGC do not believe that Christopher Roller is God. See Complaint at 3 ¶ 1.

On September 24, 2007 Plaintiff filed a Complaint against AGC and twenty other churches in the United States District Court, District of Minnesota. Plaintiff sent the Summons and Complaint to AGC via certified mail, and the church received the documents on September 28, 2007. Plaintiff did not have the Summons and Complaint personally served upon AGC, nor did Plaintiff send or request an admission of service

¹ Plaintiff's past actions in this Court include, but are not limited to, the following:

- A lawsuit against the CIA claiming it has ruined his life by failing to inform others that he is god. See *Christopher Roller v. Central Intelligence Agency* (07-01298);
- Separate lawsuits against magicians David Copperfield and David Blaine for usurpation of his godly powers in violation of the labor laws. See *Christopher Roller v. David Copperfield's Disappearing, Inc.* (05-446); *Christopher Roller v. Bossa Entertainment Corp. and Magician David Blaine* (05-01112);
- A lawsuit against President George Bush and others for conspiracy against a godly entity and conspiracy to plan the attacks of September 11, 2001. See *Christopher Roller v. George Bush Administration et al.* (05-2177);
- A lawsuit against Bosley Medical Group alleging infringement of a nonexistent patent for "Godly Powers" based on the company's hair transplantation techniques. See *Christopher Roller v. Bosley Medical Group*, (07-01296).

² See Order Adopting Report and Recommendation with Modifications, *Christopher Roller v. The James Randi Educ. Found., Inc.*, 06-4702, 07-1296 (Sept. 28, 2007), (Declaration of Kelly L. Olmstead, Ex. A.)

from AGC.

Plaintiff's complaint alleges that AGC believes that Christopher Roller is God and that AGC is "commencing the hugest con on the planet" by "preaching crap/deceit." Complaint at 3, 5. But in the same breath, Plaintiff admits to using the lawsuit as a type of "survey," promising to drop the case in exchange for a promise—made under the "supernatural" powers of a courtroom oath—that church leaders do not believe that he is God. *See* Complaint at 3-5. In the end, Plaintiff's fraud claim is based upon his unjustified and fanciful assertion that AGC Church, through the deceitful preaching of its leadership, is worshipping a false god.

As discussed in greater detail below, Plaintiff's fraud claim must be dismissed because there is no cause of action for false idolatry. Plaintiff has failed to state any claim upon which relief can be granted, and the claim must be dismissed in its entirety pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff's claim must also be dismissed because Plaintiff has failed to plead fraud with particularity as required under Fed. R. Civ. P. 9(b), and because of insufficiency of service of process, pursuant to Fed. R. Civ. P. 12(b)(5).

ARGUMENT

I. Plaintiff's Complaint fails to state a claim.

A claim is subject to dismissal under Fed. R. Civ. P. 12(b)(6) when "plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conlet v. Gibson*, 355 U.S. 41, 45 (1957). Here, Plaintiff alleges that local church leaders believe that he is God but they are "preaching falsifications." Complaint at 2, 3. But there are no facts, and no legal theory, set forth in the Complaint that could conceivably provide the

basis for the relief that Plaintiff seeks.

Defendant is not aware of a cause of action in this jurisdiction, or in any United States jurisdiction, for false idolatry. Thus, even if the Court were to take all of Plaintiff's allegations as true, Plaintiff's Complaint does not state a cognizable claim as a matter of law. Accordingly, dismissal of Plaintiff's claim with prejudice is warranted.

II. Plaintiff's Complaint must be dismissed under Rule 9(b) because the Complaint fails to allege fraud with particularity.

Rule 9(b) requires that in "all averments of fraud . . . , the circumstances constituting fraud . . . shall be stated with particularity." Fed. R. Civ. P. 9(b). To satisfy Rule 9(b) a complaint "must plead such facts as the time, place, and content of the defendant's false representations, as well as the details of the defendant's fraudulent acts, including when the acts occurred, who engaged in them, and what was obtained as a result." *United States ex rel. Keshav S. Joshi v. St. Luke's Hospital, Inc.*, 441 F.3d 552 (8th Cir. 2006). In short, the complaint must identify the "who, what, where, when, and how" of the alleged fraud. *United States ex rel. Costner v. URS Consultants, Inc.*, 317 F.3d 883, 888 (8th Cir. 2003) (citing *Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 550 (8th Cir. 1997)).

But Plaintiff's allegations here are general and conclusory, failing to identify who perpetrated the alleged fraud, when the alleged fraud was committed, and what acts constitute the alleged fraud. In fact, the Complaint fails to identify with any modicum of particularity any action at all taken specifically by AGC.

Rule 9(b)'s particularity requirement "is intended to enable the defendant to respond specifically and quickly to the potentially damaging allegations." *Costner*, 317 F.3d at 888 (citations omitted). Absent a particularized recitation of the circumstances under which AGC allegedly committed fraud, AGC is unable to adequately defend itself and is susceptible to the reputational harm that Rule 9(b) is designed to prevent. Given its failure to comply with the heightened pleading requirements imposed by Fed. R. Civ. P. 9(b), Plaintiff's complaint must be dismissed.

III. Plaintiff's Complaint must be dismissed under Rule 12(b)(5) because the Complaint was not properly served.

A complaint must be dismissed when service of process is insufficient under the Rules of Civil Procedure because a federal court lacks jurisdiction over an improperly served defendant. *Printed Media Servs., Inc. v. Solna Web, Inc.*, 11 F.3d 838, 843 (8th Cir. 1993). An objection to insufficient process may be made even when a defendant has actual notice of the Complaint. *Id.* Here, service was ineffectual because Plaintiff mailed a copy of the Summons and Complaint to Defendant via certified mail; Plaintiff did not personally serve Defendant, and Plaintiff did not send or seek an admission or waiver of service from Defendant.

Fed. R. Civ. P. 4(h)(1) provides in relevant part that, if no waiver of service is obtained:

service upon a domestic or foreign corporation . . . shall be effected. . . by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized

by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

Delivery of the summons and complaint under this provision requires personal delivery to the agent or officer. *See* 1 Moore's Fed. Prac. 3d. § 4.53[2]. But Plaintiff delivered the process via certified mail, not personal service.

Rule 4(h)(1) also provides that service upon a corporation may be effected "in the manner prescribed for individuals by subdivision (e)(1)." Rule 4(e)(1) provides, in relevant part, that service "may be effected. . . pursuant to the law of the state in which the district court is located, or in which service was effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State."

Minnesota Rule of Civil Procedure 4.03(d), like its federal counterpart, requires personal service of a lawsuit upon a corporation. Service by mail is also permissible if the summons and complaint are served together with two copies of a notice and acknowledgment of service and a prepaid return envelope. Minn. R. Civ. P. 4.05. Here, Plaintiff purported to serve process via certified mail, but did not have permission from AGC to effect service in that manner and neither sent to nor sought from AGC the required notice or acknowledgement of service.

Plaintiff's Complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(5) because service of process was ineffectual under Fed. R. Civ. P. 4(h) and the District Court therefore lacks jurisdiction over AGC in this matter: Plaintiff served the summons and complaint via certified mail, and failed to provide or request the required waiver or

acknowledgement of service required under the Federal and Minnesota rules.

CONCLUSION

Plaintiff's Complaint fails to state a cause of action because there is no known or recognized cause of action for false idolatry. In addition, Plaintiff has failed to state his fraud claim with the particularity required by Fed. R. Civ. P. 9(b), thus depriving AGC of sufficient information to form a cogent defense against Plaintiff's baseless claims. Finally, because Plaintiff did not effect proper service of the Summons and Complaint in this matter, this Court lacks jurisdiction over Defendant and the Complaint must be dismissed under Fed. R. Civ. P. 12(b)(5).

DATED: October 15, 2007

**ROBINS, KAPLAN, MILLER & CIRESI
L.L.P.**

By: s/ Kelly L. Olmstead _____
Katie Crosby Lehmann, (#257357)
Kelly L. Olmstead (#343523)
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015
612-349-8500

**ATTORNEYS FOR DEFENDANT
ALL GOD'S CHILDREN
METROPOLITAN COMMUNITY
CHURCH**