

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CIVIL NO. 05-2177 JRT/FLN

CHRISTOPHER ROLLER,)
)
Plaintiff,)
)
v.)
)
GEORGE BUSH ADMINISTRATION, C/O)
GEORGE W. BUSH, RICHARD B. CHENEY,)
DONALD H. RUMSFELD, and)
JOHN DAVID ASHCROFT,)
)
Defendants.)

**FEDERAL DEFENDANTS’
MEMORANDUM IN SUPPORT
MOTION TO DISMISS**

INTRODUCTION

Plaintiff Christopher Roller first filed a Summons and Complaint on or about September 20, 2005¹. This first complaint is a disjointed dialogue purporting to sue the “George Bush” Administration for conspiracy under two statutes: 42 U.S.C. §1985 and 18 U.S.C. §241. In the closing paragraph Plaintiff states: “I believe 911 and the war in Iraq was [sic] conspired by the George Bush Administration under the guidance of the mafia, with godly powers at their disposal, in a quest to try to set me up as a false profit, [sic] like I am responsible for these events and everything bad in the world. I am suing the George Bush Administration for \$1 trillion, for conspiring against me, Chris Roller, in accordance with 42 U.S.C. § 985 and 18 U.S.C. §241.” Ex. 2. (Complaint).

On or about January 1, 2006, Plaintiff filed and served on the undersigned an Amendment

¹See Ex. 1, Clerk’s Docket (C.D.) 1.

to Complaint. C.D. 15, Ex. 3. In this document Plaintiff amends his cause of action, abandoning his 42 U.S.C. §1985 and 18 U.S.C. §241 claims. See Ex. 3, Para. 1. He now states he is seeking relief pursuant to Minn. Stat. 609.05 (6).² Id.

The crux of Mr. Roller's Amended Complaint appears to state that the George Bush Administration conspired with the mafia to make Mr. Roller look like the god responsible for the events of September 11, 2001. He appears to claim this is an actionable fraud under Minn. Stat. 609.05. Ex. 3.

The Federal Defendants request this Court to dismiss plaintiff's allegations pursuant to F.R.Civ.P 12(b)(1), (2), (5) and (6); lack of jurisdiction and improper service, and failure to state a claim upon which relief may be granted. The defendants also raise the defenses of qualified immunity and failure to exhaust administrative remedies. The defendants specifically preserve, and do not waive any defenses available to them.

DISCUSSION

A. Plaintiff's Claims Must Be Dismissed As This Court Has No Jurisdictional Basis to Entertain Plaintiff's Claims

A complaint must be dismissed if the plaintiff fails to set forth a jurisdictional basis allowing the District Court to entertain plaintiff's complaint. F.R.Civ.P. 12(b)(1). In this case the plaintiff sets forth a Minnesota fraud statute that has no application against any of the Federal Defendants. The Federal defendants have not waived sovereign immunity for suit

²There does not appear to be a section (6) under this section.

under this statute. Plaintiff's pleading is obscure. There is no showing by plaintiff that he seeks to proceed under the Federal Tort Claims Act, (FTCA) 28 U.S.C. §2671 et. seq. Plaintiff fails to plead his case as falling under the purview of the Act. He does not demonstrate, as he is required to do before commencing suit that he has exhausted his administrative remedies. Id. Additionally plaintiff does not name any party who is amenable to suit under the FTCA, nor has service been accomplished against any agency.

Plaintiff's case similarly fails if considered as a constitutional claim. Plaintiff alleges a state fraud statute. Fraud is generally considered a tort. Plaintiff fails to allege any constitutional claims against any Federal defendant. It is plaintiff's burden to demonstrate this Court's jurisdictional grounds to entertain plaintiff's Complaint, and again, a liberal reading of plaintiff's complaint fails to make even the most facile showing that the Complaint is intended to make out a constitutional claim. Moreover, in the event such a claim were to be made by plaintiff, he would be required to set forth with great particularity his qualified claims against each individual. In addition to plaintiff's pleading deficiencies, were he to suggest to this Court his desire to allege constitutional claims, his case must also fail as he has failed to meet the individual service requirements of F.R.Civ.P 4(i) and (e) to pursue such a claim. Consequently, this Court must dismiss plaintiff's claims pursuant to F.R.Civ.P 12(b)1,2, 5 and 6.

B. Plaintiff's Claim Must Be Dismissed For Failure to State A Claim Upon Which Relief May Be Granted

Plaintiff purports to sue the "George Bush Administration" pursuant to Minn. Stat.

§ 609.05(6). In reviewing the statute no section (6) is apparent. Turning a general inquiry to the heart of the statute, it appears that plaintiff seeks to sue the administration for fraud. Plaintiff's suit must fail as he has no jurisdictional basis to sue an "administration" under this statute. No lucid reading of Plaintiff's Amended Complaint allows the reader to discern any jurisdictional basis for Plaintiff's complaint. Rather, Plaintiff sets forth a theoretical accusation that the George Bush Administration conspired with the Mafia to make Mr. Roller the responsible party for the events of 911. Plaintiff does not and can not set forth any set of facts upon which to base this theory. Even assuming such facts may exist, Plaintiff fails to set them forth vis a vis the actors of the "Administration" in a way that can survive this Motion to Dismiss. Consequently Plaintiff's case must be dismissed.

Dismissal of a claim is appropriate where it is clear that no relief can be granted under any set of facts that are consistent with the allegations of the Complaint. See F.R.Civ.P. 12(b)(6). When considering a motion to dismiss pursuant to Rule 12(b)(6), a "district court must accept the allegations contained in the complaint as true and all reasonable inferences from the complaint must be drawn in favor of the non-moving party." Young v. City of Charles, 244 F.3d 623, 627 (8th Cir. 2001)(citing Hafley v. Lohman, 90 F.3d 264, 266 (8th Cir. 1996)). A complaint must be dismissed for failure to state a claim upon which relief can be granted if "it appears beyond a reasonable doubt that [the] plaintiff can prove no set of facts in support of a claim entitling him to relief." Costley v. Thibodeau, Johnson & Feriancek, Pllp, 189 F. Supp. 2d 938, 940 (D. Minn. 2001); Helleloid v. Indep. School Dist.

Number 361, 149 F. Supp. 2d 863, 866-67 (D. Minn.2001).

C. Defendants Waive No Defenses

Defendants' defenses may include the failure to name a proper party, the failure to sue a proper party, failure to exhaust, failure to serve, failure to set forth a sufficient factual basis to proceed against an individual person, immunity, qualified immunity or other special privileges. Defendants specifically retain and do not waive any potential defenses.

Defendants urge this Court to dismiss plaintiff's case for lack of jurisdiction and the other basis set forth herein. While pro se cases are to be construed liberally, even a broad reading of plaintiff's filings does not permit a reader to discern a jurisdictional basis for suit or a suable entity.

CONCLUSION

Based on the foregoing, this Court must dismiss plaintiff's Complaint.

Dated: March 22, 2006

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