

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CIVIL NO. 07-1296 JRT/FLN

CHRISTOPHER ROLLER,)	
)	
Plaintiff,)	
)	
v.)	UNITED STATES'
)	MEMORANDUM IN SUPPORT
)	OF MOTION TO DISMISS
)	
THE JAMES RANDI EDUCATIONAL)	
FOUNDATION, INC.,)	
ANTHONY OSTLUND & BAER, P.A.,)	
BOSLEY MEDICAL GROUP,)	
GE MEDICAL SYSTEMS INFORMATION)	
TECHNOLOGIES, INC.,)	
LAKWOOD CHURCH,)	
MASLON EDELMAN BORMAN & BRAND,)	
STATE OF MINNESOTA,)	
UNITED STATES,)	
)	
Defendants.)	

I. INTRODUCTION

Plaintiff Roller, a filer of many suits¹ apparently commenced the above captioned case against the James Randi Educational Foundation, Inc., and others on or about February 23, 2007. C.D. 1.² On or about May 18, 2007, plaintiff filed an Amended Complaint and a "complaint supplemental" in which the United States is named as a defendant. Plaintiff's

¹A query of Pacer in the District of Minnesota triggers a list of multiple suits.

²C.D. refers to the district court clerk's docket entries.

complaints against the United States list a compendium of statements of concern to plaintiff. The only apparent claim against the United States is a claim for patent infringement pursuant to 35 U.S.C. § 271. Plaintiff is aware he may not sue the United States for patent infringement and he has acknowledged this fact in other cases pending before this Court. Roller v. CIA, Civ. No. 07-1675 JRT/FLN. C.D. 14.

One reason that plaintiff may not sue for patent infringement is that he does not yet have a patent. Id. and see U.S. Patent Publication No. 2007/0035812 A1 (Feb. 15, 2007) (patent application). Another reason he may not proceed in this Court is that the district court does not have jurisdiction over patent claims.

STANDARD OF REVIEW

Defendant moves to dismiss plaintiff's complaint for failure to set forth a jurisdictional basis pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(2). Federal Rule of Civil Procedure 12(b) states. "The following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person." A Rule 12(b)(1) motion also permits a defendant to challenge the complaint on its face, or

the defendant may contest the truthfulness of the alleged facts. Osborn v. United States, 918 F.2d 724, 729 n. 6 (8th Cir. 1990).

Defendant also moves to dismiss the complaint for failure to state a claim upon which relief may be granted pursuant to Federal Rule of Civil Procedure 12(b)6. A cause of action may be dismissed for failure to state a claim when it appears beyond doubt that the plaintiff cannot prove any set of facts in support of [his] claim that would entitle [him] to relief. Schaller Tel. Co. v. Golden Sky Sys., Inc., 298 F.3d 736, 740 (8th Cir. 2002). In analyzing the adequacy of a complaint under Rule 12(b)(6), the court must construe the complaint liberally and afford the plaintiff all reasonable inference to be drawn from those facts. See Turner v. Holbrook, 278 F.3d 754, 757 (8th Cir. 2002). For the purpose of a motion to dismiss, facts in the complaint are assumed to be true. Navarre Corp., Sec. Litig., 299 F.3d 735, 741 (8th Cir. 2002). However, the Supreme Court has recently discussed the standard and in examining an issue before it discussed the issue and stated that it "explicitly disavowed the oft-quoted statement...." "the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears

beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief'". Bell Atlantic Corp. v. Twombly __U.S.__ 127 S. Ct. 1955, 1974 (2007).

In Peterson v. Argent Mortg. Co., slip copy, 2007 WL 1725355 *1 (D.Minn., June 14, 2007) Minnesota District Judge Magnuson noted that although a complaint need not contain detailed factual allegations, the allegations "must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true." Id.

Finally, defendants challenge plaintiff's service pursuant to F.R.Civ.P. Rule 12(b)(5).

LEGAL ANALYSIS

Plaintiff alleges patent infringement by the United States Title 35, United States Code, Section 271. This must be dismissed. He also alleges a conspiracy.

A. Plaintiff's Claims Must Be Dismissed As There Is No Jurisdictional Basis For The Court To Entertain Any Claim Against The Defendant.

1. Defendant's Sovereign Immunity Defense

A complaint must be dismissed if the plaintiff fails to set forth a cognizable jurisdictional basis to allow the

district court to entertain plaintiff's claims. Fed.R.Civ.P. 12(b)(1). Whenever it appears by suggestion of the parties or otherwise that the court lacks subject matter jurisdiction, the court must dismiss the action. Fed.R.Civ.P. 12(h)(3). The person asserting jurisdiction bears the burden of showing that the case is properly before the court at all stages of the litigation. See McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 289 (1936).

"It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction." United States v. Mitchell, 463 U.S. 202, 212 (1983).

To avoid dismissal, a complaint must allege facts sufficient to state a claim as a matter of law and not merely legal conclusions. Springdale Educ. Ass'n. v. Springdale Sch. Dist., 133 F.3d 649, 651 (8th Cir. 1998).

Plaintiff must overcome the defense of sovereign immunity in order to establish the jurisdiction necessary to survive a Rule 12(b)(1) motion to dismiss.

The doctrine of sovereign immunity bars those suits against the United States that are not specifically waived by statute. United States v. Nordic Village Inc., 503 U.S. 30,

37 (1992). 35 U.S.C. § 271 does not waive sovereign immunity.

Although pro se pleadings should be liberally construed, and are held to a less stringent standard when challenged by motions to dismiss, a pro se complaint must still contain specific facts to support its conclusions; Haines v. Kerner, 404 U.S. 519, 520 (1972); Horseley v. Asher, 741 F.2d 209, 211 n.3 (8th Cir. 1984). Kaylor v. Fields, 661 F.2d 1177, 1183 (8th Cir. 1981).

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Haines v. Kerner, 404 U.S. 519, 520 (1972); Horsev v. Asher, 741 F.2d 209, 211 n.3 (8th Cir. 1984). Although it is to be liberally construed, a pro se complaint must still contain specific facts to support its conclusions. Kaylor v. Fields, 661 F. 2d 1177, 1183 (8th Cir. 1981).

2. Federal Tort Claim

Plaintiff has not clearly pled a tort claim but if a tort claim is alleged, it must fail. FDIC v. Meyer, 510 U.S. 471 (1994).

In order to plead an FTCA claim, the claim must be: 1) against the United States, 2) for money damages, 3) for injury or loss of property, or personal injury or death, 4) caused by the negligent or wrongful act or omission of any employee of the Government, 5) while acting within the scope of his office or employment, 6) under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. FDIC v. Meyer, 510 U.S. at 477. Here, plaintiff has failed to meet the requirements for properly alleging an FTCA claim. Plaintiff has not alleged a claim for actions recoverable under the FTCA. A review of plaintiff's claim shows that the alleged basis of his claim is patent

infringement by the United States and/or conspiring. Plaintiff's conspiracy claim is not cognizable under the FTCA. Under Minnesota law (where plaintiff appears to allege that the act in question occurred), a conspiracy claim must be supported by an underlying tort, which plaintiff has not alleged here. D.A.B. v. Brown, 570 N.W. 2d 168, 172 (Minn. App. 1997). Thus, because a private person would not be liable to plaintiff for conspiracy, plaintiff cannot maintain a claim against the federal defendant(s) under the FTCA for conspiracy. Accordingly, plaintiff's FTCA claim cannot proceed against the United States, and must be dismissed. Plaintiff cites no statute for his alleged conspiracy claims. Even if he had alleged conspiracy pursuant to federal statute it would fail in this case.

42 U.S.C. §1985 prohibits:

two or more persons in any State or Territory [from] conspir[ing] or go[ing] in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws...

42 U.S.C. §1985(3).

In order to state a claim under 42 U.S.C. § 1985(3), a plaintiff must plead 1) a conspiracy; 2) for the purpose of

depriving a person or class of persons of equal protection of the laws; 3) an act in furtherance of the alleged conspiracy; and 4) an injury to person or property, or the deprivation of a legal right. Federer v. Gephardt, 363 F.3d 754, 757 (8th Cir. 2004). The "purpose" element of a claim under § 1985(3) also requires proof of a "class-based 'invidiously discriminatory animus.'" Larson v. Miller, 76 F.3d 1446, 1454 (8th Cir. 1996). Further, because § 1985 provides a remedy but grants no substantive stand-alone rights, the source of the right or laws violated must be found elsewhere. Federer, 363 F.3d at 757. Here, plaintiff has not alleged a class-based animus; his claims are based on actions allegedly taken against him alone. As a result, he has failed to properly allege at least the purpose element of a conspiracy. In addition, because all of plaintiff's claims in addition to his § 1985 claim must be dismissed as well, and because § 1985 grants no substantive stand-alone rights, plaintiff's § 1985(3) claim must be dismissed.

3. Patent Claim

Plaintiff appears to allege that he has a patent on "godly powers". A public record search shows that plaintiff thus far has only a patent application; a patent has not been

granted. See www.uspto.gov. (Click search aids; existing patents and published applications. Put in the number 20070035812; shown only as an application). Consequently, plaintiff's claim is not ripe, as there is no patent to infringe. Id. Moreover, plaintiff's patent infringement claim must be presented to the Court of Federal Claims for redress. See 28 U.S.C. 1498; see also, Lockridge v. U.S., 218 Ct. Cl. 687, *2 n. 2 (1978) (noting that 28 U.S.C. §1338 does not waive the sovereign immunity of the United States, citing Truton v. U.S., 212 F. 2d 344-355 (6th Cir. 1954)).

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

Dismissal under Rule 12(b)(6) is appropriate and serves to eliminate actions which are fatally flawed in their legal premises and deigned to fail, thereby sparing litigants the burden of unnecessary pretrial and trial activity. Neitzke v. Williams, 490 U.S. 319, 326-327 (1989).

Dismissal of a claim is appropriate where it is clear 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 construe the complaint liberally". Turner v. Holbrook, 278 F.3d 754, 757

(8th Cir. 2002). However, 12(b)(6) serves to eliminate actions which are fatally flawed in their legal premises. In re Navarre Corp. Sec. Litig., 299 F.3d 735, 738 (8th Cir. 2002). The plaintiff's claims in the instant case are fatally flawed, as shown in part A, above. Either the statutes are not relevant; the facts are patently and demonstrably untrue on their face, (there is no patent), or jurisdiction has not and cannot be established. A liberal reading of the entirety of plaintiff's claims show that the claims are legally insufficient and must be dismissed.

CONCLUSION

Based upon a full review of all the facts and records in this case, the plaintiff's claims must be dismissed with prejudice in their entirety.

Dated: July 17, 2007

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