United States District Court, D. South Carolina.

Jesse R. LANCE, a.k.a. the Heirs of Willie Lance, Plaintiff,

v.

Donald D. BREWER, Jr., Defendant.

Civil Action No. 2:07-365-SB-BM

Slip Copy, 2007 WL 1219636 (D.S.C.)

April 24, 2007.

Willie Lance, Jesse R. Lance, Georgetown, SC, pro se.

ORDER

Honorable SOL BLATT, JR., Senior United States District Judge.

*1 This matter is before the Court upon Plaintiff Jesse R. Lance's ("the Plaintiff") pro se complaint, wherein he alleges racism and discrimination. Specifically, the Plaintiff's complaint alleges that in late 2005 Defendant Donald D. Brewer, Jr. ("the Defendant") cut down three large trees and other tree limbs on his property without permission. The Plaintiff asserts that the Defendant sold these trees for profit but that he and his relatives did not receive any profit. The Plaintiff states that the Defendant told him the county gave him permission to cut down the trees, but according to the Plaintiff, a county employee told him that the Defendant did not have permission to cut down the trees. In addition to these claims, the Plaintiff asserts that the Defendant's grandfather purchased the property adjoining his property forty to fifty years ago by "fooling" the Plaintiff's cousin into selling ten to twenty acres of river-front property for $200.00. The Plaintiff alleges that the Defendant's actions constitute racism and discrimination, and he seeks $85,000.00 on behalf of the heirs of Willie Lance.

The record contains a report and recommendation ("R & R") of a United States Magistrate Judge, made in accordance with 28 U.S.C. § 636(b)(1)(B). In the R & R, the Magistrate Judge concluded that even liberally construing the Plaintiff's complaint, federal question jurisdiction does not exist because the Plaintiff fails to state a claim for a federal civil rights violation pursuant to 42 U.S.C. § 1981 or 1983. Next, the Magistrate Judge concluded that because diversity jurisdiction also does not exist, the Plaintiff's complaint is subject to summary dismissal for lack of subject matter jurisdiction.

First, "[t]o state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988). "The 'under color of state law' element of a § 1983 claim requires that 'the conduct allegedly causing the deprivation of [the plaintiff's rights] be fairly attributable to the State.' " Conner v. Donnelly, 42 F.3d 220, 223 (4th Cir.1994) (quoting Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982)).

Here, the named Defendant is a private individual who owns a business named Don's Scrap Metal and Iron; the Defendant is not a public employee or official. Nevertheless, the Fourth Circuit has articulated "three situations in which particular conduct by a private entity constitutes 'state action.' " Conner, 42 F.3d at 223.

First, a private entity that is regulated by the state acts under color of state law where there is a "sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." Second, a private party acts under color of state law where the state, through the extensive regulation of the private party, has exercised coercive power or has provided such significant encouragement that the action must in law be deemed to be that of the state. Finally, a private party acts under color of state law where "the private entity has exercised powers that are 'traditionally the exclusive prerogative of the state.' "

*2 Id. (internal citations omitted). As the Magistrate Judge concluded, none of these three situations applies in the present case. Moreover, to the extent the Plaintiff attempts to state a claim pursuant to § 1981, the Court agrees with the Magistrate Judge that the Plaintiff has failed to allege an essential element of a § 1981 claim, as the facts do not relate to any contract, nor do the facts relate to a property law enjoyed by white citizens but not by the Plaintiff, who is black. See 42 U.S.C. § 1981(a).

Because the Plaintiff's complaint fails to state a claim for a federal civil rights violation pursuant to 42 U.S.C. § 1981 or 1983, it is clear that federal question jurisdiction does not exist. In addition, to the extent the Plaintiff's complaint does assert a state law cause of action based in tort, it is clear that the Court lacks diversity jurisdiction to adjudicate such a claim, as complete diversity of the parties does not exist. See 28 U.S.C. § 1332(a).

In his half-page, written objections to the R & R, the Plaintiff asserts that the Defendant does not reside in Georgetown, South Carolina, as the Magistrate Judge stated, but that the Defendant resides in Johnsonville, South Carolina. Unfortunately for the Plaintiff, however, this fact does not alter the Court's analysis because the parties still are not of diverse citizenship, as both the Plaintiff and the Defendant reside in South Carolina.

Also, the Plaintiff states that he objects to "all of the Magistrate [Judge's] Report and Recommendation." (Obj. at 1.) However, he does not set forth any legal basis for his objection but instead states: "GOD ALMIGHTY does not like what you Racist people are doing, and GOD will show it very soon by punishment, and Destruction. The United States Court has Federal Jurisdiction, because this is a Civil Rights Violation." (Obj. at 1.) Ultimately, the Plaintiff's unsubstantiated statement that the Court has federal jurisdiction because this is a civil rights violation does not change the fact that even liberally construing the Plaintiff's complaint, it fails to state a claim for a federal civil rights violation pursuant to 42 U.S.C. § 1981 or 1983. As a result, the Plaintiff's complaint does not provide the Court with federal question jurisdiction. Moreover, as previously mentioned, because the parties are not of diverse citizenship, the Court also lacks diversity jurisdiction. In sum, therefore, the Court agrees with the Magistrate Judge that the Court does not have subject matter jurisdiction over the Plaintiff's complaint.

Based on the foregoing, it is hereby

ORDERED that the R & R is adopted; the Plaintiff's objections are overruled; and the Plaintiff's complaint is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

Report and Recommendation

BRISTOW MARCHANT, United States Magistrate Judge.

Plaintiff, proceeding pro se, brings this action against a neighbor in Georgetown, South Carolina, alleging discrimination and racism. The plaintiff files this action in forma pauperis under 28 U.S.C. § 1915.

*3 Under established local procedure in this judicial district, a careful review has been made of the pro se complaint pursuant to the procedural provisions of 28 U.S.C. § 1915, and in light of the following precedents: Denton v. Hernandez, 504 U.S. 25 (1992); Neitzke v. Williams, 490 U.S. 319, 324-25 (1989); Haines v. Kerner, 404 U.S. 519 (1972); Nasim v. Warden, Md. House of Corr., 64 F.3d 951 (4th Cir.1995) (en banc); Todd v. Baskerville, 712 F.2d 70 (4th Cir.1983). As the Plaintiff is a pro se litigant, his pleadings are accorded liberal construction. Hughes v. Rowe, 449 U.S. 5 (1980); Estelle v. Gamble, 429 U .S. 97 (1976); Haines v. Kerner, 404 U.S. at 519; Loe v. Armistead, 582 F.2d 1291 (4th Cir.1978); Gordon v. Leeke, 574 F.2d 1147 (4th 1978). Even under this less stringent standard, however, the pro se complaint is still subject to summary dismissal. The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir.1990).

Discussion

The complaint alleges that the plaintiff lives on a parcel of land that adjoins a parcel of land owned by defendant Brewer. Plaintiff alleges that the defendant's grandfather purchased the adjoining land forty to fifty years ago by "fooling" the plaintiff's cousin into selling ten to twenty acres of river front property for $200.00. Plaintiff alleges that in late 2005 the defendant cut down three large oak trees on the plaintiff's property and sold them for profit without the plaintiff's permission and that the defendant also cut down limbs from plaintiff's trees without permission. Plaintiff alleges that the defendant stated that he had permission from the County to cut the trees, but that the County employee advised the plaintiff that the defendant was not given permission. Plaintiff alleges that the defendant's actions are racism and discrimination, and seeks $85,000.00 on behalf of the Heirs of Willie Lance.

Federal courts are courts of limited jurisdiction, "constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute." In re Bulldog Trucking, Inc., 147 F.3d 347, 352 (4th Cir.1998). Because federal courts have limited subject matter jurisdiction, there is no presumption that the court has jurisdiction. Pinkley, Inc. v. City of Frederick, 191 F.3d 394, 399 (4th Cir.1999). Accordingly, a federal court is required, sua sponte, to determine if a valid basis for its jurisdiction exists, "and to dismiss the action if no such ground appears." Bulldog Trucking, 147 F.3d at 352; see also F.R. Civ. P. 12(h)(3) ("Whenever it appears ... that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.").

Under the applicable rules and caselaw, "the facts providing the court jurisdiction must be affirmatively alleged in the complaint." Davis v. Pak, 856 F.2d 648, 650 (4th Cir.1988) (citing McNutt v. General Motors Acceptance Corp., 298 U.S. 178 (1936)). To this end, Federal Rule of Civil Procedure 8(a)(1) requires that the complaint provide "a short plain statement of the grounds upon which the court's jurisdiction depends[,]" although even if the complaint does not contain "an affirmative pleading of a jurisdictional basis, the federal court may find that it has jurisdiction if the facts supporting jurisdiction have been clearly pleaded." Pinkley, Inc., 191 F.3d at 399 (citing 2 Moore's Federal Practice § 8.03[3] (3d ed.1997)).

*4 Here, liberally construing Plaintiff's allegations, he is alleging a federal civil rights violation under 42 U.S.C. § 1983 or § 1981 based on a claim of racial discrimination. However, to state a claim under 42 U.S.C. § 1983, a plaintiff must set forth two essential elements: (1) that a right secured by the Constitution or laws of the United Sates was violated, and (2) that the alleged violation was committed by a person acting under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). In this case, the named defendant is a private individual who owns a business named Don's Scrap Metal and Iron, not a public official acting under color of state law. While a private entity defendant

can in some limited circumstances act under color of state law for purposes of § 1983, the Fourth Circuit has articulated three situations in which particular conduct by a private entity constitutes "state action;" see Conner v. Donnelly, 42 F.3d 220, 223 (4th Cir.1994); none of which applies here.

"First, a private party that is regulated by the state acts under color of state law where there is a 'sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself.' " Id. See also Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351 (1974). Second, state action can be found "where the state, through extensive regulation of the private party, has exercised coercive power or has provided such significant encouragement that the action must in law be deemed to be that of the state." Conner v. Donnelly, 42 F.3d at 224. Third, state action can be found where the private party exercised powers "that are 'traditionally the exclusive prerogative of the state.' " Id . Plaintiff has not set forth any allegations to show that the defendant's actions could be deemed state action under any of these three scenarios, nor does he allege any facts that would support that legal theory. Plaintiff also failed to allege an essential element of a § 1981 claim, as the alleged facts do not relate to any contract, nor do the facts relate to a property law enjoyed by white citizens FN1 which the plaintiff did not enjoy. See Amini v. Oberlin College, 440 F.3d 350, 358 (6th Cir.2006); 42 U.S.C. § 1981(a).

FN1. Plaintiff is an African-American.

Since plaintiff's claims do not pose any federal question, they cannot serve as the basis for federal jurisdiction. To the extent plaintiff's allegations can be construed to set forth a cause of action, it would instead appear to be based in state law; for example, South Carolina tort law. Such a state law claim would be cognizable in this Court under the federal diversity statute, if that statute's requirements were to be satisfied. Cianbro Corp. v.. Jeffcoat & Martin, 804 F.Supp. 784, 788-791 (D.S.C.1992). However, the diversity statute requires complete diversity of parties and an amount in controversy in excess of seventy-five thousand dollars ($75,000.00). See 28 U.S.C. § 1332(a). Complete diversity of parties in a case means that no party on one side may be a citizen of the same State as any party on the other side. See Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 372-374 (1978). Since plaintiff alleges that both he and the defendant live in Georgetown, South Carolina, this Court has no diversity jurisdiction in this case.

Recommendation

*5 Because plaintiff's facts fail to state a claim upon which relief can be granted and because this Court does not have subject matter jurisdiction, it is recommended that the Court dismiss the complaint in the above-captioned

case without prejudice and without issuance and service of process. See Neitzke v. Williams, 490 U.S. 319, 324-25 (1989); Haines v. Kerner, 404 U .S. 519 (1972).