Cohen v. Gruber et al

2020 | Cited 0 times | D. Maryland | April 8, 2020

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND JEFFREY B. COHEN, * Plaintiff, * v. * Civil Action No. ELH-18-2476 HARRY MASON GRUBER, et al., * Defendants. * ***

MEMORANDUM Pending is plaintiff Motion for Reconsideration (ECF 46) of the Order (ECF 35) denying his Motion for Judicial Notice (ECF 30) and Motion to Amend/Correct (ECF 32). Upon consideration of the Motion, the court finds it provides no grounds for reconsideration and will be denied.

On August 13, 2018, Cohen filed the above-captioned Complaint against Harry Gruber, in his capacity as Assistant United States Attorney, and Cam Costello, in his capacity as Special Agent, United States Department of Treasury. ECF 1. On January 7, 2019, Cohen filed a First Amended Complaint naming only Gruber as a defendant. ECF 21. Gruber then moved to dismiss the Amended Complaint (ECF 23), which Cohen opposed (ECF 27). Thereafter, Cohen filed several motions, including a Motion for Judicial Notice, wherein he asked the court to take judicial . ECF 30. Cohen also filed a Motion to

Amend/Correct, seeking leave to file a second amended complaint, alleging 13 counts against Gruber, Assistant U.S. Attorney Joyce McDonald, and Robert Hur, the U.S. Attorney for the District of Maryland, all stemming from pl . ECF 32.

denied his Motion to Amend/Correct, noting, among other things, that it was belatedly filed on the

same day Cohe and it presented new causes of action. Id. at 3-4. On September 11, 2019, I ECF 44. On October 4, 2019, Cohen filed his Motion for Reconsideration.

The , 637 F.3d 462, 470 n.4

(4th Cir.), cert. denied, 132 S. Ct. 115 (2011). But, to avoid elevating form over substance, a motion to reconsider maybe construed as a motion to alter or amend judgment under Fed. R. Civ. P. 59(e), or a motion for relief from judgment under Fed. R. Civ. P. 60(b). MLC Auto., LLC v. Town of S. Pines, 532 F.3d 269, 278-80 (4th Cir. 2008). Where, as is the case here, the Motion for Reconsideration is filed within twenty-eight days after the final judgment, Rule 59(e) controls. Bolden v. McCabe, Weisberg & Conway, LLC, No. DKC-13-1265, 2014 WL 994066, at *1 n.1 (D.Md. Mar. 13, 2014). See also Fed. R. Civ. P. 59(e) (stating that [a] motion to alter or amend .

Ross v. Early, 899 F. Supp. 2d 415, 420 (D. Md. 2012) (citing Fed. R.

Civ. P. 56(e)), , 746 F.3d 546 (4th Cir. 2014). But, the plain language of Rule 59(e) does not provide a particular standard by which a district court should evaluate a motion to alter or amend judgment. Howe motions can be successful in only three situations: (1) to accommodate an intervening change in

controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007) (internal quotations omitted); see United States ex el Carter v. Halliburton Co., 866 F. 3d 199, 210-11 (4th Cir. 2017), cert. denied, 2018 WL 587746 (June 25, 2018); Ingle ex rel. Estate of Ingle

v. Yelton, 439 F.3d 191, 197 (4th Cir. 2006); U.S. ex rel. Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002), cert. denied, 538 U.S. 1012 (2003); E.E.O.C. v. Lockheed Martin Corp., Aero & Naval Sys., 116 F.3d 110, 112 (4th Cir. 1997).

As indicated, a district court may amend a judgment under rule 59(e), inter alia Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Another purpose

Pac. Ins. Co. v. Am. Nat. Fire

Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998) (quoting Russell v. Delco Remy Div. of Gen. Motors Corp., 51 F.3d 746, 749 (7th Cir. 1995)), cert. denied, 525 U.S. 1104 (1999). But, the Fourth Circuit has cautioned that a party may not use a Rule 59(e) mot Id.; v. Alexander, 49 he court has

Matter of Reese, 91 F.3d 37, 39 (7th Cir. 1996) (quoting Frietsch v. Refco, Inc., 56 F.3d 825, 828 (7th Cir. 1995)); see 11 WRIGHT ET AL, FED. PRAC. & PROC. CIV. § 2810.1 ses for which they are intended, Rule 59(e)

Hutchinson, 994 F.2d at1082; see United States ex rel. Becker, 305 F.3d at 290. Indeed,

Pac. Ins. Co., 148 F.3d at 403 (citation omitted).

In this case, there has been no change in the controlling law, nor has Cohen presented any new evidence. With regard to the Motion for Judicial Notice, Cohen contends that the court improperly denied his request without explanation and that, pursuant to Fed. R. Evid. 201(c)(2), must take judicial notice if a party requests it and the court is supplied with the necessary H Fed. R. Evid. 201(a), Advisory Committee Note. Facts that are subject to judicial notice are

(2) capable of accurate and ready determination by resort to sources whose accuracy cannot

A court may not take judicial notice of a matter that is in dispute. Lee v. City of Los Angeles, 250 F.3d 668, 690 (9th Cir. 2001). Here, Cohen asked the court to take judicial notice of , none of which constitute adjudicative facts. Thus, there is no

Regarding the Motion to Amend/Correct, Cohen argues that his submission was not belated as discovery had not yet commenced, and he contends that the motion should have been granted because he had stated valid claims against the proposed defendants. ECF 46 at 3-4. Cohen filed his proposed amendment nearly two months after Gruber moved to dismiss the Amended Complaint. See ECF 23, 32. proposed amendment named new parties and added new causes of action, thereby altering the nature and scope of the litigation. Based on this record, Cohen has not shown a clear error of law.

In any event, Cohen does not address why his proposed claims would not be barred by

Heck v. Humphrey, 512 U.S. 477, 487 (1994). The additional counts Cohen sought to include all stemmed from pleadings filed in his criminal case. As I stated in the Memorandum Opinion dated September 11, 2019, attacks on Gruber and the proposed defendants regarding the fraudulent activity committed by Cohen necessarily imply conviction. See ECF 44 at 20. Such a claim must be dismissed pursuant to Heck unless Cohen

can demonstrate that the conviction or sentence has been invalidated. Id. (citing Edwards v. Balisok, 520 U.S. 641, 645 (1997)). The validity of the legal process by which Cohen came to be incarcerated, tried, and convicted has already been tested and resolved against him on direct appeal. See ECF 44 at 20. However, in the event Cohen is successful in his § 2255 challenge to his sentence, based on prosecutorial overreaching, he could file an appropriate civil action. 1

As there is no clear error of law and manifest injustice will not otherwise occur, the Court

An Order follows.

Date: April 8, 2020 ____/s/_____ Ellen L. Hollander United States District Judge

1 On August 27, 2018, Cohen filed a Motion to Vacate under 28 U.S.C. § 2255, and that matter is presently pending before another judge of this Court. See Cohen v. United States, Civil Action No. GLR-18-2661; see also United States v. Cohen, Crim. Action No. GLR-14-310, ECF No. 685.