



Ontiveros v. Ontiveros

2019 | Cited 0 times | D. Minnesota | February 25, 2019

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

TITO FREDDY ONTIVEROS, Legal/Status Active and in Good Standing Minnesota (SOS) File Number: 995833400035,

Plaintiff, v. TITO FREDDY ONTIVEROS,

Defendant.

Case No. 0:18-cv-1916-WMW-KMM

REPORT AND RECOMMENDATION

judgment. Mot. for Summ. J., ECF No. 22. Because the Court concludes that the Plaintiff has failed to show that it is entitled to judgment as a matter of law, the Court recommends that the summary-judgment motion be denied. Moreover, based on its review of the entire record, the Court recommends that this action be dismissed with prejudice as frivolous. I. Motion for Summary Judgment The Complaint in this action alleges that the Plaintiff, Tito Freddy Ontiveros, is a corporation. 1 laws of St. , ECF No. 1. The Plaintiff alleges that the Defendant, a Colorado corporation

1 for registered

<https://mbportal.sos.state.mn.us/Business/SearchDetails?filingGuid=de8571d0-c905-e811-9155-00155d0d6f70>. which is also named Tito Freddy Ontiveros, converted private property for its own use. Id. Specifically, Plaintiff alleges that:

The Private Property consists of [a] Re-registered Judgement [case no. 1:11-cr-00214-PAB-1] Registration No. 2019029095 and the Re-registered Certificate of Live Birth registration No. 2018013741, that is Private Property and is registered with the Denver County Records of Deeds Office located in Denver, Colorado, in the Wellington Building. Id. The Plaintiff claims that the judgment and birth certificate are worth either \$104 Billion or \$104 Million, id. at 2, although no clear explanation is offered for how the defendant used the document or how doing so damaged



Ontiveros v. Ontiveros

2019 | Cited 0 times | D. Minnesota | February 25, 2019

anyone.

The corporate Plaintiff purports to be represented by an individual named Federal Correctional Institution in Florence, Colorado. Attached to the Complaint is a judgment in a criminal case, showing that on August 29, 2016, Mr. Ontiveros was found guilty of possessing a firearm as a prohibited person in violation of 18 922(g)(1) and 924(e)(1) and of possessing an unregistered firearm in 5861(d) and 5871. ECF No. 1-4 at 10. Mr. Ontiveros asserts that he is the Chief Executive Officer of the corporate Plaintiff. See, e.g., ECF No. 1- CEO; dba TITO FREDDY

Not long after bringing suit, the Plaintiff has now filed a motion for summary judgment. Summary judgment is appropriate that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law; Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Here, there are at least three reasons summary judgment should be denied. First, there is no indication that the Defendant has ever been served. Absent service, the Court does not have jurisdiction over the Defendant and could not enter a summary judgment against it.

Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be met, and the court must have venue and jurisdiction of the subject matter of the suit.

Mississippi Publishing Corp. v. Murphree, 326 U.S. 438, 444-45 (1946). Even if the Defendant has actual knowledge that this lawsuit exists, that knowledge does not give the Court personal jurisdiction over the Defendant in the absence of valid service. Mid-Continent Wood Prods., Inc. v. Harris, 936 F.2d 297, 301 (7th Cir. 1991). Because there is no indication that the Defendant has been properly served, it would be inappropriate to enter summary judgment against it. In personam authority over parties defendant is dependent not only on compliance with due process but also

Second, the motion should be denied because the corporate Plaintiff is purportedly represented by Mr. Ontiveros, who is not an attorney. It is well-settled that a corporation cannot appear in federal court except through an attorney. 506 U.S. 194, 201 part of two centuries ... that a corporation may appear in the federal courts only -lawyer, Mr. Ontiveros cannot represent a corporation in federal court. Steele v. City of Bemidji, 257 F.3d 902, 905 (8th Cir. 2001). Because Mr. Ontiveros cannot bring claims on behalf of a corporate plaintiff, the motion for summary judgment and the supporting materials that have been filed are not properly before the Court.

Third, the Plaintiff has failed to show that it is entitled to judgment as a matter of law. willfully interferes with the personal property of another without lawful justification Williamson v. Prasciunas, 661 N.W.2d 645, 649 (Minn. Ct. App. 2003); see also DLH, Inc. v. Russ interference with personal property, done without lawful justification by which



Ontiveros v. Ontiveros

2019 | Cited 0 times | D. Minnesota | February 25, 2019

quotation marks and citation omitted).

In the corporate s CEO, Mr. Ontiveros, registered the judgment in his criminal In support of the motion, the Plaintiff

Public Health and Environment and a copy of the same criminal case Judgment attached to its Complaint. ECF No. 22-1. The Plaintiff contends that the Defendant had previously possessed the criminal case and birth certificate for over a year prior to that registration, thereby wrongfully interfering with the Id. Even if these documents were properly before the Court, they fail entirely to establish that the Defendant interfered with personal property that belongs to the Plaintiff.

For these reasons, the motion for summary judgment should be denied. II. Dismissal Is Appropriate

provisions that require each complaint filed by a federal prisoner to be screened to determine whether it is frivolous or fails to state a claim. See 28 U.S.C. 1915(e)(2) apply here, because the plaintiff did not file this case seeking to proceed in forma pauperis See Radabaugh v. Corporation Trust Company, No. 17-cv-1559 (JRT/BRT), The provisions of 28 U.S.C. 1915(e)(2) and 1915A, which permit sua sponte dismissal of frivolous complaints for prisoners or plaintiff[s] proceeding in forma pauperis, do not apply here because Radabaugh paid the requisite filing fee.

However, even where a plaintiff has paid the filing fee, a district court may dismiss a frivolous action under its inherent authority. See Mallard v. United States Dist. Court, 490 U.S. 296, 307 08 (1989) (simply codify existing rights or powers. Section 1915(d), for example, authorizes action, but there is little doubt they would have the power to do so e); Porter v. Fox, 99 F.3d 271, 273 (8th Cir. 1996) (noting that district courts may sua sponte dismiss frivolous complaint prior to service); Fitzgerald v. First E. Seventh St. Tenants Corp., 221 F.3d 362, 364 (2d Cir. 2000) dismiss a frivolous complaint sua sponte even when the plaintiff has paid the required filing fee

Neitzke v. Williams, 490 U.S. 319, 325, 327 28 (1989); Steven v. Mnuchin, No. 17-mc-0061 (JRT/DTS), 2017 WL 8944030, at *1 & n.1 (D. Minn. Dec. 8, 2017) (same), report and recommendation adopted by, No. 17- mc-0061, 2018 WL 582477 (D. Minn. Jan. 29, 2018).

Based on its review of the record, the Court concludes this action is frivolous. The legal theory on which this claim is based is indisputably meritless. Mr. Ontiveros has formed a Minnesota corporation using his own name and is attempting to bring suit on the corporation created a Colorado corporation using his own name, and both entities were likely created for the specific purpose of trying to pursue this lawsuit. The corporate Plaintiff is attempting to collect billions of dollars from the Colorado defendant based on a theory that Mr. criminal judgment and his birth certificate are private property that the Colorado defendant unlawfully possessed. The notion that these documents themselves constitute private property of such immense value is absurd, as is the idea that corporate entities seemingly created for the purpose of pursuing this lawsuit could deprive



Ontiveros v. Ontiveros

2019 | Cited 0 times | D. Minnesota | February 25, 2019

one another of their possession and use. The Court cannot fathom a basis in tort law to conclude that such a conversion claim may proceed and cannot discern any theory by which the plaintiff could be damaged. To allow this case to proceed would make the Court a party to a legal farce and waste judicial resources. For these reasons, this Court recommends that the action be dismissed with prejudice pursuant to

III. Recommendation

Based on the discussion above, IT IS HEREBY RECOMMENDED THAT: 1. (ECF No. 22) should be DENIED; 2. (ECF No. 21) should be DENIED

AS MOOT; and 3.

DISMISSED WITH PREJUDICE as frivolous. This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court

recommendations within 14 days after being served a copy of the objections. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c). This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed. Date: February 25, 2019 s/Katherine Menendez Katherine Menendez

United States Magistrate Judge

