UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GEORGE SASSOWER, :

Plaintiff, :

- v - : 78 Civ. 4989

ANTHONY GRZYMALSKI, et al., :

Defendants. :

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FILED U.S. DISTRICT COURT S.D. OF N.Y. AUG 3 4 53 PM '79

#48938

APPEARANCES:

GEORGE SASSOWER, ESQ.
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New Rochelle, N.Y. 10804

Plaintiff Pro Se

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Veterans Memorial Highway
Hauppauge, New York 11787
BY: ERICK F. LARSEN, ESQ.
Of Counsel

Attorneys for Defendants Grzymalski, Morris, Croce, Finnerty, Pachman, Larsen, Mastroianni, Regula, Buluk, Chichanowicz, Reichle and the County of Suffolk

LAWRENCE W. PIERCE, D.J.

OPINION AND ORDER

Plaintiff brings this pro se action for compensatory and punitive damages in the amount of $5 million pursuant to federal civil rights law, 42 U.S.C. §1983. Defendants include two judges of the Surrogate's Court of Suffolk County (Judges Signorelli and Seidell); the Public Administrator of Suffolk

County (Mastroianni) and his attorney (Berger); the Sheriff of Suffolk County (Finnerty) and his Deputy Sheriffs (Grzymalski, Morris, Croce, Regula, Buluk, Chichanowicz, and Reichle); the County Attorney of Suffolk County (Pachman) and his assistant counsel (Larsen); and the County of Suffolk.

Several motions are presently pending before this Court. Plaintiff has moved for an order directing that an inquest be taken and that a default judgment be entered against all defendants, except Judges Signorelli and Seidell who have answered the complaint. Defendants, other than Judges Signorelli and Seidell and defendant Berger, have cross-moved for an order:

1. Extending defendants' time to answer the complaint nunc pro tunc pursuant to Fed.R.Civ.P. 6(b)(2).

2. Dismissing the complaint or, in the alternative, staying this action on the grounds that there are three state proceedings currently pending which involve the same issues presented in this action; that this Court should abstain from exercising its jurisdiction in the interest of comity; that the complaint fails to state a claim against these defendants; and that these defendants, other than Grzymalski and Morris, are absolutely immune from liability.

3. Transferring this action to the U.S. District Court for the Eastern District of New York for the convenience of the parties and in the interest of justice.

FACTS

For the purpose of disposing of these motions the Court assumes the truth of the allegations of the parties as follows. Plaintiff was the executor of an estate which was subject to the review of the Surrogate's Court of Suffolk County. On March 8, 1978, he was adjudged to have been in criminal contempt of court by Acting Surrogate Seidell for failing to comply with an order directing him to surrender the estate's books and records to defendant Mastrioianni, the Suffolk County Public Administrator. On June 10, 1978, plaintiff was taken into custody at his home in Westchester County by defendants Morris and Grzymalski. That evening, Sassower's wife and daughter presented to the Suffolk County Sheriff's Office a court order directing his release. Five hours later, plaintiff was released from custody on his own recognizance.

By his complaint, plaintiff alleges: (1) that all of the defendants conspired to deprive him of his constitutional and statutory rights; (2) that defendants Morris and Grzymalski used an unreasonable amount of force while arresting and transporting the plaintiff from his home to the Suffolk County Jail, thereby causing him serious injury; (3) that the facility in which plaintiff was incarcerated did not conform to statutory standards; (4) that defendants refused to allow plaintiff's wife and daughter to visit him and subjected them to imprisonment and other hardships; (5) that defendants intentionally relayed false

information to plaintiff in an attempt to emotionally aggravate him; and (6) that defendant Grzymalski fraudulently caused a felony complaint to be issued against the plaintiff which resulted in his arrest.

Pending State Court Proceedings

Prior to bringing this action, plaintiff commenced three actions in state court against several of the defendants herein. On June 10, 1978, plaintiff brought an action for a writ of habeas corpus in which he sought a final declaration of release from the custody of the Suffolk County Sheriff. On June 21, 1978, plaintiff commenced a second action in state court in which he requested damages for various tort claims. Next, on July 24, 1978, he commenced an action against defendant Finnerty, the Sheriff of Suffolk County, in which he sought an order staying or voiding the Surrogate Court's order declaring him to be in criminal contempt and its warrant of commitment.

I. MOTIONS FOR DEFAULT JUDGMENT AND TO EXTEND TIME TO ANSWER THE COMPLAINT

Plaintiff has moved for an order directing that an inquest be taken and judgment entered thereon. Defendants have cross-moved pursuant to Fed.R.Civ.P. 6(b)(2) for an extension of time to respond to the complaint. Rule 6(b)(2) provides that when a party's time in which to respond has expired, the court may, in its discretion, extend that party's time to respond upon a showing of excusable neglect. In evaluating an application for extension of time the court

may consider whether its granting of the motion would prejudice the non-moving party. Yonofsky v. Wernick, 362 F.Supp. 1005, 1015 (S.D.N.Y. 1973).

The plaintiff herein has not asserted that he will suffer any prejudice, and it appears to the Court that he will not suffer any such prejudice by the Court's granting of defendants' motion. Moreover, plaintiff's claim that the defendants infringed upon his civil rights should not be disposed of by way of a default judgment without consideration of the merits of the claim since the defendants have indicated that they are prepared to respond to the complaint. See Heyman v. Commerce and Industry Insurance Co., 524 F.2d 1317 (2d Cir. 1975); Brown v. Wechsler, 135 F.Supp. 622 (D.C.C. 1955). Finally, defendants state that their failure to respond timely was a result of their attorney's unfamiliarity with the administrative operations of this Court. The Court therefore finds that defendants' failure to respond timely to the complaint in this action was the product of excusable neglect.

Defendants' motion is hereby granted on condition that there shall be no further extensions of time to respond to the complaint within ten days following the entry of this Opinion and Order. Plaintiff's motion for an inquest and default judgment against these movants is hereby denied.

Furthermore, it appearing that defendant Vincent G. Berger, Jr. was not served with the complaint, the complaint

is dismissed with respect to this defendant without prejudice.

II. MOTION TO DISMISS THE COMPLAINT

Movant-defendants have moved to dismiss the complaint on the grounds that it is vague and conclusory and that this Court should abstain from exercising its jurisdiction because there are related state court actions which are presently pending. In the discussion that follows, each of these grounds for dismissal is addressed.

Vague and Conclusory Pleadings

Rule 8(a)(2) of the Federal Rules of Civil Procedure provides that a pleading which sets forth a claim for relief shall contain a short and plain statement of the claim which indicates that the claimant is entitled to relief. Therefore, detailed pleadings are not required under the Rules. Furthermore, where a party is proceeding pro se, the pleadings will be construed liberally by the Court. Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Frankos v. LaVallee, 535 F.2d 1346, 1347 (2d Cir.), cert. denied, 429 U.S. 918 (1976). However, although a pro se plaintiff is held to a less stringent standard of pleading than a lawyer, Frankos v. LaVallee, 535 F.2d at 1347, a pro se complaint which asserts a claim under 42 U.S.C. §1983 must contain more than mere conclusory allegations. Id. at 1349; Powell v. Jarvis, 460 F.2d 551, 553 (2d Cir. 1972). Furthermore, "in a civil action for damages under the Civil Rights Act against public officials, highly specific facts are required to be alleged." Meyer v.

State of New York, 344 F.Supp. 344 F.Supp. 1377, 1378 (S.D.N.Y. 1971) (quoting Roberts v. Barbosa, 227 F.Supp. 20, 22 (S.D. Cal. 1964), aff'd, 463 F.2d 424 (2d Cir. 1972).

The Court finds that the allegations contained in the complaint are conclusory and fail to satisfy the requisite standard of particularity with respect to all defendants except Morris and Grzymalski. Although the allegations concerning defendants Morris and Grzymalski specify dates and particular instances of alleged misconduct, the allegations concerning the other defendants are conclusory and void of detail. The complaint alleges, for example, that the defendants conspired to deprive the plaintiff of his constitutional rights but fails to state the role of each defendant in the conspiracy or what acts, if any, each of them committed. Such conclusory allegations are insufficient, particularly since plaintiff is an attorney and not an inexperienced pro se complainant. Accordingly, the motion to dismiss the complaint with respect to all movant-defendants except Morris and Grzymalski must be granted.[1/]

Abstention

Movant-defendants also contend that since several of the issues raised in the complaint herein are also before the New York Supreme Court in actions commenced by plaintiff in that court, this Court should abstain from exercising its jurisdiction and should dismiss the complaint. The Court notes that only in exceptional circumstances should a federal

court refrain from exercising its jurisdiction. County of Allegheny v. Frank Mashuda Co., 360 U.S. 185, 188-89 (1959). Generally, "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction . . . ." McClellan v. Carland, 217 U.S. 268, 282 (1910).

In Colorado River Water Conservation District v. United States, 424 U.S. 800, 814-16 (1976), the Supreme Court enumerated the circumstances under which the doctrine of abstention may be properly applied (1) when a federal constitutional issue may be mooted or presented in a different posture after a state court determination of pertinent state law issues; (2) when difficult questions of state law involving important public policy issues which transcend the result of the action at bar are presented for resolution; and (3) when "federal jurisdiction has been invoked for purposes of restraining state criminal proceedings." Also see United States v. Alleyne, 454 F.Supp. 1164, 1171 (S.D.N.Y. 1978).

Since the facts alleged in this action do not involve any of the circumstances enumerated in Colorado River Water Conservation District, it would be improper for this Court to dismiss the complaint on abstention grounds. Accordingly, the defendants' motion to dismiss the complaint is denied.

III. MOTION TO STAY

Although the existence of similar actions pending in state court will not, without more, constitute proper grounds for dismissing a complaint under the doctrine of abstention, it may constitute a sufficient ground for staying the federal action. E.g., Will v. Calvert Fire Insurance Co., 437 U.S. 655 (1978); Klein v. Walston & Co., 432 F.2d 936 (2d Cir. 1970). Under the appropriate circumstances, a federal court may, in its discretion, stay an action pending conclusion of a related state court action. Will v. Calvert Insurance Co., id. at 662-667; Mottolese v. Kaufman, 176 F.2d 301, 303 (2d Cir. 1943); Bethlehem Steel Corp. v. Tishman Realty & Construction Co., Inc., 72 F.R.D. 33, 40 (1976).

The factors which federal courts have considered in determining whether an action should be stayed include: (1) the principle of comity; (2) judicial efficiency; (3) the adequacy and extent of relief available in the alternative forum; (4) the identity of parties and issues in both actions; (5) the likelihood of a prompt disposition in the state court; (6) the convenience of the parties, counsel, and witnesses; and (7) the possibility of prejudice to a party as a result of the stay. Nigro v. Blumberg, 373 F.Supp. 1206, 1213 (E.D. Pa. 1974).

Having reviewed the amended complaint filed by the plaintiff in New York State Supreme Court on or about

June 21, 1978 in which one of the two remaining defendants herein, Grzymalski, is named as a defendant, the Court finds that the federal action before this Court should be stayed. The amended complaint in that state action alleges the same misconduct by defendant Grzymalski as has been alleged in the complaint in the instant action. It appears therefore that judicial efficiency will be promoted by a stay of this action until completion of the earlier commenced state proceeding. If plaintiff prevails in the state action, defendant would be precluded, under the doctrine of collateral estoppel, from relitigating issues which were determined in that action. Furthermore, since the state action was commenced prior to the instant action, comity dictates that the state action should proceed and that this action be stayed. Finally, plaintiff has not alleged that any prejudice or inconvenience will result from a stay of this action.

Accordingly, defendants' motion to stay this action is hereby granted.

IV. CHANGE OF VENUE

In actions brought in federal court pursuant to the federal Civil Rights Laws, plaintiff's choice of forum is limited to the judicial district where all defendants reside or where the cause of action arose. 28 U.S.C. §1391(b). Plaintiff herein has elected to bring this action in the district where his claim allegedly arose, the Southern

District of New York. Defendants have moved to change venue from this district to the Eastern District of New York.

The determination of whether to change venue lies within the discretion of the court See e.g., Foster v. U.S. Lines Co., 227 F.Supp. 946, 9 7 (S.D.N.Y. 1961). A civil action may be transferred to another district in which the action could have been brought when such a transfer would be in the interest of justice and would be more convenient for the parties and witnesses. 28 U.S.C. §1404(a).

Defendants contend that this action should be transferred since all defendants and all witnesses reside in the Eastern District of New York. In view of the proximity of the Courthouses of the Southern and Eastern Districts of New York, these contentions are not sufficient to warrant a change of venue, especially when weighed against the plaintiff's right to choose the forum.

For these reasons, defendants' motion to transfer venue to the Eastern District of New York is hereby denied.

V. CONCLUSIONS

1. Plaintiff's motion for an inquest and for a default judgment is denied. Defendants' motion for an extension of time to answer the complaint is granted on condition that there be no further extentions. Defendants shall have 10 days from the entry of this Opinion and Order in which to answer the complaint.

2. Defendants' motion to dismiss the complaint

on the ground that it is vague and conclusory is granted with respect to defendants Croce, Finnerty, Pachman, Larsen, Mastroianni, Regula, Buluk, Chicanowicz, Reichle, and the County of Suffolk. It is denied with respect to defendants Grzymalski and Morris.

3. Defendants' motion to dismiss the complaint on the ground of federal abstention is denied.

4. Defendants' motion to stay this action pending conclusion of a related state action is granted.

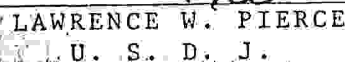
5. Defendants' motion to transfer this action to the Eastern District of New York is denied.

6. The complaint is dismissed without prejudice with respect to defendant Berger since the record indicates that he has not been served with the complaint.

7. This action is transferred to the suspense calendar of this Court pending resolution of the action brought by the plaintiff on June 21, 1978 in New York State Supreme Court.

SO ORDERED.

Dated: New York, New York
August 1, 1979



LAWRENCE W. PIERCE
U. S. D. J.

FOOTNOTE

1. Having dismissed the complaint with respect to all movant/defendants except Morris and Grzymalski the issue concerning the defense of absolute immunity is not addressed.