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DLD-043

November 29, 2018

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C.A. No. 18-2868

(Filed Jan. 29, 2019)

BRIAN M. BURMASTER, CEO,
Burmaster International Group, Appellant

VS.

SWITZERLAND

(W.D. Pa. Civ. No. 1-18-cv-00134)

Present: JORDAN, GREENAWAY, JR., and NYGAARD,
Circuit Judges

Submitted are:

- (1) By the Clerk for possible dismissal due to a jurisdictional defect;
- (2) Appellant's Response to Legal Division Letter advising of possible dismissal;
- (3) Appellant's Supplemental Response; and
- (4) Appellant's Document in Support of Appeal in the above-captioned case.

Respectfully,

Clerk

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ORDER

The appeal is dismissed for lack of jurisdiction because it is taken from an order that is not final. See 28 U.S.C. § 1291. Generally, orders transferring venue are not immediately appealable. See Carteret Sav. Bank, F.A. v. Shushan, 919 F.2d 225, 228 (3d Cir. 1990); Nascone v. Spudnuts, 735 F.2d 763, 772-73 (3d Cir. 1984). Because the order appealed did not end the federal litigation or have sufficient indicia of finality, it does not present the kind of unusual circumstances that would invoke the exceptions to that rule. Carteret, 919 F.2d at 228 n.7; United States v. Berkowitz, 328 F.2d 358, 360 (3d Cir. 1964) (exercising jurisdiction over transfer order that effectively ended the litigation and, thus, had sufficient indicia of finality).

By the Court:

s/ Kent A. Jordan
Circuit Judge

Dated: January 29, 2019
cc: Brian M. Burmaster

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BRIAN BURMASTER,)
Plaintiff,)
v.) Civil Action No. 18-1834 (ABJ)
SWITZERLAND,)
Defendant.)

ORDER

(Filed Oct. 16, 2018)

On September 10, 2018, the Court issued an Order directing plaintiff to "properly serve defendant by October 10, 2018, or the Court will be required to dismiss the suit without prejudice." Order [Dkt. # 12]. Because plaintiff has not properly served defendant, the Court will dismiss the case without prejudice pursuant to Federal Rule of Civil Procedure 4(m). SO ORDERED.

/s/ Amy B. Jackson
AMY BERMAN JACKSON
United States District Judge

DATE: October 16, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

BRIAN BURMASTER,)
CEO, Burmaster)
International Group,)
Plaintiff,) Civil Action No. 18-134 Erie
v.)
SWITZERLAND,)
Defendant.)

MEMORANDUM ORDER

(Filed Aug. 3, 2018)

This *pro se* civil rights action was commenced on May 7, 2018 and was referred to United States Magistrate Judge Lisa Pupo Lenihan for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D. The magistrate judge's report and recommendation (ECF No. 5), issued on June 28, 2018, recommended that the action be transferred to the United States District Court for the District of Columbia. Service was made on the Plaintiff at his most recent address of record (see ECF No. 7), and objections were filed on July 25, 2018 (ECF No. 8). After *de novo* review of the complaint and documents in the case, together with the report and recommendation and Plaintiff's objections thereto, the following order is entered:

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AND NOW, this 3rd day of August, 2018,

IT IS HEREBY ORDERED that the within action shall be transferred forthwith to the United States District Court for the District of Columbia. The report and recommendation of Magistrate Judge Lenihan, issued on June 28, 2018, is adopted as the opinion of this Court.

/s/ Mark R. Hornak
MARK R. HORNAK
United States District Judge

cc/ecf Lisa Pupo Lenihan
U.S. Magistrate Judge

Brian Burmaster
250 East Wisconsin Ave, Suite 1800
Milwaukee, WI 53202

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA**

BRIAN BURMASTER,)	
<i>CEO, Burmaster</i>)	Civil Action No. 18 – 134E
<i>International Group,</i>)	District Judge
Plaintiff,)	Mark R. Hornak
v.)	Magistrate Judge
)	Lisa Pupo Lenihan
SWITZERLAND,)	ECF No. 1
Defendant.)	

REPORT AND RECOMMENDATION

(Filed Jun. 28, 2018)

I. RECOMMENDATION

Plaintiff, a United States citizen, filed this suit against the foreign state of Switzerland, complaining of his arrest there, and his extradition to the United States. For the reason stated herein, it is respectfully recommended that this civil action be transferred to the United States District Court for the District of Columbia.

II. REPORT

a. Background and Allegations

Plaintiff was indicted by a federal grand jury in the Eastern District of Louisiana for making threats via email to injure two attorneys representing a class action suit against the British Petroleum Company.

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(ECF No. 1-3, pp. 6-7.) On September 3, 2015, Plaintiff was detained in Switzerland pursuant to an Interpol notice. Id. Plaintiff alleges that while in Swiss custody, he was forcibly medicated, and his computer was confiscated. (ECF No. 1, p. 2.) The United States requested Plaintiff's extradition on October 9, 2015. (ECF No. 1-3, p. 8.) A competency hearing for the Plaintiff was held in the Eastern District of Louisiana on October 12, 2016. (ECF No. 1-5.) Plaintiff was found incompetent to stand trial. (ECF No. 1, p. 3.) Plaintiff denies the validity of any professional psychiatric opinions about his mental health and claims that his condition is a result of heavy metal poisoning. (ECF No. 1, p. 3.)¹

Plaintiff requests, *inter alia*, that Switzerland pay him \$440 million for arresting and extraditing him.² (ECF No. 1, p. 3.)

b. Discussion

Pursuant to 28 USC § 1391(f)(4), a civil action against a foreign state may be brought in the United States District Court for the District of Columbia. Relatedly, “[t]he district court of a district in which is filed

¹ In the caption of the case, Plaintiff lists the following: “Foreign Sovereign Immunity Act (28 §§ 1330-1332); Chemical Weapon Attack on US National (18 §§ 229 C3); Act of Terrorism transcending borders (18 §§ 2332b); Fraud and False Statements (18 U.S.C. §§ 1001-1026); Civil Rights Violation (42 §§ 1983); Racketeer-Induced Corrupt Organization (18 §§ 1964c).”

² As an exhibit to his Complaint, Plaintiff attaches a “Citi-bank Deposit Slip . . . where US\$440 million should be delivered[.]” (Appendix I, ECF No. 1-9 at 1-2.)

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a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 USC § 1406(a). Plaintiff's Complaint against Switzerland and the attached exhibits reveal no contacts with the Western District of Pennsylvania or the Commonwealth of Pennsylvania,³ and venue here is necessarily improper. See 28 U.S.C. § 1391(b)(1)-(3).⁴ Instead, this is a civil action against a foreign state, and therefore, should proceed in the United States District Court for the District of

³ Plaintiff's only mention of Pennsylvania is the post office box in Erie, Pennsylvania designated as his address of record, his request that "this US Federal Courthouse in Erie, Pennsylvania" afford him the relief he seeks (ECF No. 1, p. 3.), and his indication on his case designation sheet, that his "business resides in Erie County." (ECF No. 1-13 at 2.) *See also* Civil Cover Sheet ECF No. 1-13 at 1 (indicating that his business is incorporated or principal place of business is located in Pennsylvania).

⁴ 28 U.S.C. § 1391(b)(1)-(3) provides as follows:

- (b) **Venue in general.** – A civil action may be brought in –
- (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
 - (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
 - (3) if there is no district in which any action may otherwise be brought, as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

28 U.S.C. § 1391(b)(1)-(3).

Columbia. 28 U.S.C. § 1391(f)(4). Consequently, this Court must transfer this civil action pursuant to 28 U.S.C. § 1406(a).

III. CONCLUSION

For the foregoing reason, it is respectfully recommended that this civil action be transferred to the United States District Court for the District of Columbia pursuant to 28 U.S.C. §§ 1391(f)(4) and 1406(a).

In accordance with the applicable provisions of the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) & (C), and Rule 72.D.2 of the Local Rules of Court, Plaintiff shall have fourteen (14) days from the date of the service of this Report and Recommendation to file written objections thereto. Plaintiff's failure to file timely objections will constitute a waiver of his appellate rights.

Dated: June 28, 2018 BY THE COURT

s/Lisa Pupo Lenihan
United States
Magistrate Judge

cc: Brian M. Burmaster
PO Box 1812
Erie, PA 16512
