APPENDIX

Appendix A
Case 17-3695, Document 180, 08/07/2018

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 7th day of August, two thousand eighteen.

Present: Reena Raggi,
Peter W. Hall,
Debra Ann Livingston,
Circuit Judges

Andrew Chien

Plaintiff-Appellant,

v.

Andrew K Clark, William K Grogan, LeClairRyan, Estate of Everette G. Allen Jr., Richard J. Freer, Vincent McNelley, Bradley A Haneberg, James R. Byrne, Christian K Vogel, Michael G. Caldwell, Joseph M. Ramsbury, Joaquin L Madry, Ilan Markus, Island Stock Transfer,

Defendants-Appellees

ORDER
17-3695

Andrew Chien filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Appendix B
Case 17-3695, Document 171, 07/12/2018

D. Conn. 16-cv-1881 Covello, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of July, two thousand eighteen.

Present: Reena Raggi,
Peter W. Hall,
Debra Ann Livingston,
Circuit Judges.

Andrew Chien
Plaintiff-Appellant,

v. 17-3695

Andrew K Clark, et al.
Defendants-Appellees

Appellant, pro se, moves for a stay of the district court's filing injunction, the recusal of the district court judge, and a default judgment. Appellees move for summary affirmance. Upon due consideration, it is hereby ORDERED that the motion for summary affirmance is GRANTED. See United States v. Davis, 598 F.3d 10, 13 (2d Cir. 2010). Appellant's motions are DENIED as moot.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Appendix C
U.S. District Court
District of Connecticut

Notice of Electronic Filing
The following transaction was entered on 10/1/2018 at 12:08 PM EDT and filed on 10/1/2018

Case Name: Chien v. Freer et al
Case Number: 3:15-CV-01620-AVC
Document Number: 31(No document attached)
Case Name: Chien v. Clark et al
Case Number: 3:16-cv-01881-AVC
Filer:

WARNING: CASE CLOSED on 09/08/2017
Document Number: 57(No document attached)

Docket Text:

ORDER denying [56] motion for order. Signed by Judge Alfred V. Covello on 10/1/18. (Covello, Alfred)

3:16-cv-01881-AVC Notice has been electronically mailed to:
Mark V. Connolly mvcllc@comcast.net
Timothy P. Jensen tjensen@omjblaw.com, mgambardella@omjblaw.com
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Appendix D
Case 3:16-cv-01881-AVC Document 40 Filed 09/08/17

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ANDREW CHIEN,
plaintiff, **Civil No.**
v. **3:16cvl881(AVC)**
ANDREW K. CLARK, et al.
defendants.

RULING ON DEFENDANTS' MOTIONS TO DISMISS

This is an action for damages in which the plaintiff, Andrew Chien, alleges that the defendants violated the provisions of the Racketeer Influenced and Corrupt Organizations Act (hereinafter "RICO"), 18 U.S.C. §1961, et seq., the Fourth, Fifth, Sixth, Seventh and Eighth Amendments to the United States Constitution, the Securities and Exchange Act, 15 U.S.C. §78a,et seq., and, inter alia, various Connecticut, Nevada and Virginia state statutes with respect to certain corporations in which Chien held an interest and various Virginia state court proceedings. The defendants have filed a motion for sanctions, seeking dismissal of this action and an injunction barring Chien from further filings in this court, without first seeking leave and permission to do so. For the reasons that follow, the defendants' motion is granted and the case is hereby dismissed.

The defendants argue that the complaint in this case is duplicative of other cases Chien previously filed in this and other courts and is frivolous as those actions were previously dismissed.[1] Specifically, the defendants state that the complaint is based on the

same events as those in Chien v.Freer, et al. , Civil No. 3:15cvl620(AVC) (hereinafter "Freer case"), a case this court dismissed on September 29, 2016.According to the defendants, the changes to this complaint are "superficial" and Chien could have brought them in a prior case.The defendants also state that Chien has filed the within action "in defiance of" the court's warning in the Freer case that "any future frivolous filings in this court may result in sanctions and/or a filing injunction against him."

Chien responds that the amendment in the Freer case was denied based on the timing of the motion. He states that the within complaint states new RICO causes of action and that an "order of release" was not included in the Freer case.[2] Chien proceeds to quote portions of his complaint, over 13 single spaced pages of his 22 page brief.

The defendants reply that the court's denial of Chien's motion to amend the complaint in the Freer case was substantive, not procedural. The defendants state that the new claims in this case differ from those in the Freer case "only in detail" and are based on the same events that Chien alleged in several prior actions. According to the defendants, Chien fails to articulate why he did not name the additional

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[1]See defendants state that "every court that has considered Mr. Chien's endless sequence of claims has rejected them."

[2]Chien also states that none of the defendants, except Island Stock Transfer, has responded to the allegations and, therefore, those allegations are deemed admitted pursuant to Federal Rule of Civil Procedure 8(b)(6).

defendants in a previous case. The defendants state that this case follows Chien's "pattern of adding, as defendants in each action, the attorneys who defended the last action and any other parties he can think of, to create an appearance of novelty." The defendants note that "Chien repeatedly expands the scope of his actions, in addition to basing them on the same events," which "underscores the increasing burden that he is placing on the judiciary, as well as the parties who are forced to defend his actions."[3]

Chien replies that the defendants are "abusing" the Rooker-Feldman and res judicata doctrines and are conspiring "to abuse the process in multi-courts [sic] .. . ." Chien cites another case in which he alleges a violation of his civil rights and states that two of the listed defendants committed perjury and/or mislead the court. He states that the defendants' arguments are "conclusive and labeled" and he points out that the court's ruling in the Freer case dealt with only 16 counts, "while this case has about one thousand of [sic] counts for 14 defendants together."[4]

"Every district court 'has the inherent power to supervise and control its own proceedings and to sanction counsel or a litigant for .... disobeying the court's orders.'" Mitchell v.Lyons Professional Services,

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[3]With respect to Chien's statement that the defendants have admitted the allegations by not responding, the defendants note that Chien never properly served the complaint in this case.

[4] With respect to service on the defendants, Chien argues, in his brief in opposition to the defendant, Island's, motion to dismiss, that his service by priority mail was sufficient.

Inc., 708 F.3d 463, 467 (quoting Mickle v. Morin, 297 F.3d 114, 125 (2d Cir. 2002)). Because dismissal is the harshest of sanctions, the court must provide" notice of the sanctionable conduct, the standard by which it will be assessed, and an opportunity to be heard. . . ." Id.

Chien has filed numerous claims, countersuits and appeals based on the events alleged in the within complaint. In several of those cases, the courts imposed sanctions on Chien, including dismissal of his claims and/or a ban on filing new actions. See Chien v. Freer, 3:13cv540 (E.D. Va. August 14, 2014); Chien v. Freer, CL 14000491-00, Cir. Ct. Prince George Cty., Va.(September 8, 2014); Freer v. Chien, NNH-cv-12-4053717 (Conn. Super. July 15, 2015); Chien v. Skystar Bio Pharm Co., 3:09cvl49 (D. Conn. August 12, 2009); In re Commonwealth Biotechnologies,Inc., U.S. Bankruptcy Court (E.D. Va. November 1, 2012).

On September 29, 2016, this court dismissed the complaint in the Freer case and denied Chien's motion to amend the complaint. In his motion to amend the complaint in that case, Chien sought to add claims pursuant to RICO and additional defendants. The court concluded that Chien failed to sufficiently state grounds warranting the proposed amendment and recognized that "[t]he factual basis for his claims has been litigated in several other courts." In its ruling, the court in Freer also cautioned Chien that "any future frivolous filings in this court may result in sanctions and/or a filing injunction against him."

The current 211-page complaint essentially attempts to end run the court's previous denial of Chien's motion to amend. The complaint in this case includes claims and parties included in Chien's

previously filed, and denied, motion to amend and proposed amended complaint. Although the complaint includes three additional parties, the claims are based on the same facts and events as previously alleged and any differences are only superficial.[5] Further, Chien fails to state why the claims and/or parties were not included in his original Freer complaint. In its September 29, 2016 ruling in the Freer case, the court provided notice regarding the possibility of sanctions in the event that Chien should file additional frivolous claims.

In addition, Chien has had ample opportunity to be heard on the sanctions at issue and, in fact, has filed two opposition briefs to the defendants' motion. The defendants' motion for sanctions is granted. The case is hereby dismissed and the plaintiff is prohibited from filing further actions in this court without leave of the court. The clerk is directed to close this case.

CONCLUSION

For the foregoing reasons, the defendants' joint motion for sanctions (document no 14) is granted. The case is hereby dismissed and the plaintiff, Andrew Chien, is prohibited from filing further actions in this court without prior leave of the court. Failure to comply with this order may result in monetary sanctions.

It is so ordered this 6th day of September, 2017 at Hartford, Connecticut.

Alfred V. Covello

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[5] The court further notes that the 211 page complaint fails to satisfy the requirements of federal rule 8(a) that pleadings contain "a short and plain statement of the claim . . . " Fed. R. Civ. P. 8(a)(2).

Appendix E
Case 3:15-cv-01620-AVC Document 69 Filed 09/29/16

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ANDREW CHIEN,
plaintiff, **Civil No.**
v. **3:15cvl620(AVC)**
Richard J Freer et al.
defendants.

RULING ON DEFENDANTS' MOTIONS TO DISMISS

This is a civil rights action in which the plaintiff, Andrew Chien, claims that the defendants, Richard J. Freer, Andrew K. Clark, the law firm of LeClairRyan and William K. Grogan, violated Chien's civil rights with respect to an action and judgment against Chien in the state of Virginia and subsequent proceedings. The defendants have filed motions to dismiss the claims against them. The issues to be decided are whether: (1) the Rooker-Feldman doctrine deprives this court of subject matter jurisdiction over the claims of counts 1, 4, and 11-15, pursuant to federal rule 12(b)(1); (2) the doctrine of res judicata bars counts 9-16; (3) all of the counts fail to state a claim pursuant to federal rule 12(b)(6); (4) the court lacks personal jurisdiction with respect to the counts against the defendants, Freer and Clark, pursuant to federal rule 12(b) (2); and (5) the court should impose a pre-filing injunction against Chien. For the reasons that follow, the motions to dismiss are granted and the request for sanctions is denied without prejudice.

FACTS

A review of the complaint and the relevant documents with respect to this court's jurisdiction, reveals the following facts.

Chien is a resident of the state of Connecticut. At times relevant to these proceedings, Chien was the director and controlling operator of China Bull Management Inc. (hereinafter "CHBM"), a publicly traded company located in New Haven, Connecticut.

The defendant, Freer, is a resident of the state of Virginia. He is a former chief executive officer of Commonwealth Biotechnologies, Inc. (hereinafter "CBI").

The defendant, LeClairRyan, is the law firm that represents Freer.

The defendant, Clark, is an attorney employed by LeClairRyan and has actively represented Freer.

The defendant, Grogan, is the Commissioner in Chancery in the Virginia court.

On February 17, 2012, Freer filed an action against Chien in Virginia state court. After finding Chien in default and conducting a damages trial, with Chien's participation,[1] the Virginia court rendered judgment against Chien in the amount of $1.6 million dollars. The Virginia supreme court dismissed. Chien's appeal. On September 26, 2012, Freer filed an action in the Connecticut superior court, in order to domesticate the Virginia judgment. On January 4, 2013, Freer also filed judgment collection proceedings against Chien in the Virginia state court.

On February 28, 2013 and May 8, 2013, Grogan

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[1]Although Chien participated in a July 30, 2012 hearing, he states in his complaint that the court prejudiced him by "prohibiting Chien from presenting evidence . . . ."

issued capias orders for United States marshals to arrest Chien based on his repeated failure to respond to debtor interrogatories. When he refused to comply with the court, Grogan found Chien in contempt and a flight risk and ordered that he be committed to the custody of the Chesterfield County Sherriff's department. Chien states that his incarceration made it impossible for him to file a follow-up written objection to his oral objection at a May 8, 2013 bankruptcy court hearing. The Complaint states that "[s]ince May 8, 2013, [the] defendants illegally incarcerated Chien in V[irginia]."

On May 7, 2014, March 9, 2015 and August 31, 2015, Grogan entered additional orders remanding Chien to custody for his failure to comply with the court and detailing the conditions for his release. According to the complaint, the May 7, 2014 order made a condition of Chien's release the requirement that he "submit[] all properties including CHBM cash to either Grogan or Clark."

In June 2014, Chien "submitted a copy of [a] 'criminal Report of CBI'" which he claims contained a "summary of Freer's misconduct in CBI .. . ." Chien submitted this report "to defendant Grogan for the purpose to suspend [his] illegal incarceration." The complaint states that Grogan "never did his due process by filing a report [in the] Va court for Chien's objection." In failing to file the report, Grogan allegedly deprived Chien of his liberty and prejudiced him.

In September 2014, the defendants allegedly wrongfully seized Chien's "valuable properties"[2] in Connecticut while Chien was incarcerated in Virginia. The complaint alleges that Freer and an employee LeClairRyan, James R. Byrne, failed to make a list of

the items seized. Chien's incarceration made it "impossible [for him] to exercise the exemption to protect properties of non-parties and .. . Chien's professional belongings." Grogan "attended [the] C[onnecticut] superior court telephone conference and cheated and deceived everyone that after turnover he w[ould] give Chien a due process right to object to any turnover ...." He also stated that the property would not be turned over directly to Freer.

Thereafter, "Grogan secretly with Freer, Clark [and] LeClairRyan, separated, transferred, divided, concealed or destroyed any of them without a noticeto Chien." The complaint lists property that the defendants seized, including SEC documents, corporate paperwork and information, brokerage account information, lawsuit information, engineering and patent paperwork and drawings, bank account information, tax forms, credit card statements and Chien's writings and records. The complaint states that 20 CHBM stock certificates are missing and that Byrne instructed Chien's ex-wife, Ms. Fu, "to ship everything in Chien's office under court-contempt threatening."

The complaint alleges that the defendants unlawfully liquidated CHBM "without SEC filing, shareholders approval, and public disclosure" which amounted to "grand-larceny." On September 26, 2014, Freer allegedly "made a false stock certificate of

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[2]In the complaint, Chien states that there is a desktop computer that "missed the shipment to Virginia]." The complaint states that the computer is the property of CHBM and is used for business purposes only and Chien's refusal to turn it over is not a proper basis for his incarceration.

CHBM," with shares in his name. According to the complaint, Clark and Grogan "design[ed] a plan of fabricating a CHBM stock certificate for Freer as early as Feb. 2014."

On November 5, 2014, Freer allegedly "secretly directly sent a shareholder meeting notice to partial shareholders only of CHBM for the purpose to create a false chairman/president position of CHBM for himself." Freer subsequently moved the"CHBM office from C[onnecticut] to Richmond, V[irginiaJ. On November 19, 2014, Freer switched the CHBM bank account into his name and on November 26, 2014, allegedly "stole all cash of CHBM.""[I]n early December of 2014[,] Freer withdrew the CHBM cash to pay his legal fee to Clark, LeClairRyan and Grogan. The complaint states that the defendants' actions "significantly destroyed the share value of CHBM."

After Chien "discovered the grand-larceny, Chien made complaint to [the] SEC and filed objections in several state courts of both V[irginia] and C[onnecticut] since December 2014."

On April 24, 2015, Clark delivered a copy of a CHBM stock certificate and documents including an "Order Confirming Conveyance, Transfer, Sale, and Application of Debtor's Estate." Chien states that there were several errors in the order and the order makes clear that Grogan was responsible for ordering the false stock certificate. In addition, the order makes clear that "Chien wasn't present when Grogan opened the boxes shipped from C[onnecticut]." Finally, according to the complaint, the order provides that Grogan was to "liquidate and distribute all cash of CHBM [and] to conceal grand-larceny nature of Freer stealing CHBM cash."[3]

The complaint alleges that Clark is not licensed to

practice law in Connecticut but has, nevertheless, filed documents in this case and in cases filed in the superior and bankruptcy courts.

According to the complaint, all of the defendants abused the process of the court by falsifying dates on documents, using improper signatures, improper service, improper notice of a hearing date and committing various procedural errors with respect to Grogan's orders.

On November 9, 2015, Chien filed the complaint in this case for the defendants' "willful and malicious conduct" with respect to the Virginia proceedings. Chien claims that Freer, LeClairRyan and Clark willfully committed fraud with respect to CHBM and CBI, "[e]ngaged in [wjillful [p]rosecution by [fjalsified [e]vidence in [the] [Virginia] court," abused the process of the Virginia court and wrongfully claimed treble damages with respect to the claims before the Virginia court. He also claims that there was no basis for the conspiracy claim against him.

The complaint states, inter alia, that the defendants, Freer, LeClairRyan and Clark, "cheated and deceived [the] C[onnecticut] superior court when they executed [the] V[irginia] court judgment in Ct [a]ided by [the] [d]efendant, Grogan" and that Grogan lacked the authority to incarcerate Chien indefinitely. According to the complaint, Clark falsely certified a

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[3]According to the complaint, "Grogan doesn't have a license m CT" and his order could not be properly executed in Connecticut, The complaint further asserts that the order is also not valid in Virginia because Freer failed to file a motion in Virginia and the order "was manipulated by [the] defendants Clark and LeClairRyan."

court form in that action and "secretly engaged defendant Grogan as a commissioner to charge debt collection without motion procedure, without permission and knowledge of the judge who presided over the case.

STANDARD

A court must grant a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) if a plaintiff fails to establish a claim upon which relief may be granted. Such a motion "asses(es) the legal feasibility of the complaint, [it does] not .. . assay the weight of the evidence which might be offered in support thereof." Ryder Energy Distribution Corp, v, Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984). When ruling on a 12 (b)(6) motion, the court must "accept the fact alleged in the complaint as true, and draw all reasonable inferences m favor of the plaintiff." Broder v. Cablevision Sys. Corp.z 418 F.3d 187, 196 (2d Cir. 2005). In order to survive a motion to dismiss, the complaint must allege "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp, v. Twombly, 550 U.S. 544, 570(2007). The complaint must allege more than " [t]hread bare recitals of the elements of a cause of action, supported by mere conclusory statements." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The court may consider only those "facts stated on the face of the complaint, in documents appended to the complaint or incorporated in the complaint by reference, and to matters of which judicial notice may be taken." Allen v. WestPoint-Pepperell, Inc., 945 F.2d 40, 44 (2d Cir. 1991).

A court must grant a motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12 (b) (1) where a plaintiff has failed to establish subject matter jurisdiction. Fed. R. Civ.P. 12(b)(1). Dismissal for lack

of subject matter jurisdiction under rule 12(b)(1) is proper "when the district court lacks the statutory or constitutional power to adjudicate it." Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000); see also Morrison v. Nat'l Australia Bank Ltd., 547 F.3d 167, 170 (2d Cir. 2008). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."

Fed. R. Civ. P. 12(h)(3); see Moodie v. Federal Reserve Bank of N.Y., 58 F.3d 879, 882 (2d Cir. 1995) (recognizing that "[d]efects in subject matter jurisdiction cannot be waived and may be raised at any time during the proceedings."). Once subject matter jurisdiction is challenged, "a plaintiff has the burden of proving by a preponderance of the evidence that it exists." Makarova, 201 F.3d at 113. In analyzing a motion to dismiss pursuant to rule 12 (b) (1) , the court must accept all well pleaded factual allegations as true and must draw inferences in favor of the plaintiff. Merritt v. Shuttle,Inc., 245 F.3d 182, 186 (2d Cir. 2001). Where a defendant challenges the district court's subject matter jurisdiction, the court may resolve disputed factual issues by reference to evidence outside the pleadings, such as affidavits. Makarova,201 F.3d at 113.

DISCUSSION

I. Rooker-Feldman Doctrine

The defendants, Richard Freer, Andrew Clark and LeClairRyan, first argue that the claims in counts 1-4, 9 and 11-15 of the complaint should be dismissed because the court lacks subject matter jurisdiction to hear the claims under the so-called Rooker-Feldman doctrine. The defendant, Grogan, also argues that this doctrine bars the claims against him based on his contempt and collection orders. Specifically, the

defendants argue that Chien seeks to challenge state court judgments or decisions and in the federal system, only the United States Supreme Court reviews such decisions.

Chien responds that he "didn't ask the court to reject any state-court judgment or ask any state court making modification of the state court's order."

The defendants reply that counts 1-4, 9, and 11-15 do seek modification of several Connecticut and Virginia state court orders.

"Under the Rooker-Feldman doctrine, lower federal courts lack subject-matter jurisdiction over claims that effectively challenge state-court judgments." In re Wilson, 410 Fed. Appx. 409, 410 (2d Cir. 2011)(slip op.)(citing District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486-87 (1983)); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923)). After the Supreme Court's Decision in Exxon Mobil Corp, v. Saudi Basic Industries Corp., 544 U.S. 280 (2005), the second circuit "held that there are four requirements that must be met before the Rooker-Feldman doctrine may apply: (1) 'the federal-court plaintiff must have lost in state court;' (2) 'the plaintiff must complain of injuries caused by state-court judgment;'(3) 'the plaintiff must invite district court review and rejection of that judgment;' and (4) 'the state-court judgment must have been rendered before the district court proceedings commenced.'" Id. (quoting Hoblock v. Albany County Bd. Of Elections, 422 F.3d 77, 85 (2d Cir. 2005) (internal quotation marks and alterations omitted)). In addressing this issue, the court may take judicial notice of court records m the state case. AmBase Corp, v. City Investing Co. Liquidating Trust, 326 F.3d 63, 72 (2d Cir. 2003)

In his complaint, Chien seeks to set aside or modify

state court orders with respect to seizure of the assets of CHBM, the orders that Grogan issued and judgments against Chien in Virginia and Connecticut. Specifically, with respect to the counts at issue, count one alleges that Grogan's orders to enforce the Virginia judgment were unlawful. Counts two through four address wrongdoing with respect to Grogan's October 31, 2014 orders regarding CHBM and its assets. Count nine, allege that the defendants abused the process of the courts with respect to nine of Grogan's orders. Counts eleven and twelve allege that that the judgments in the Virginia court, the bankruptcy court and the Richmond district court were unlawful because they were based upon an alleged fabrication regarding Freer's unpaid compensation. Count thirteen alleges that the defendants abused the process of the Virginia court and obtained a judgment by "fabricated evidence" and "false statements." Count fourteen alleges that the defendants "cheated" the court when they applied a treble damages provision of Virginia law. Count fifteen alleges that the defendants "cheated" the Connecticut courts when they certified the Virginia judgment and unlawfully collected Chien's property based on "fabricated evidence."

This court lacks jurisdiction over these claims because they "effectively challenge state-court judgments. In re Wilson, 410 Fed. Appx. 409, 410 (2d Cir. 2011) (slip op.)(citing District of Columbia Court of Appeals v. Feldman, 460 U.S. 462,486-87 (1983); Rooker v, Fidelity Trust Co., 263 U.S. 413, 415-16 (1923)). It is undisputed that these claims are ones in which Chien "lost in state court," and involve "injuries caused by a state-court judgment." Hoblock v. Albany County Bd. Of Elections, 422 F.3d 77, 85 (2d Cir.

2005). Chien's complaint "has invite[d] district court review and rejection of [the state court] judgment[s]" and the state-court judgments at issue were "rendered before the district court proceedings commenced." Id. The allegations in the courts at issue rely on the invalidity of the Virginia judgment, the Connecticut order regarding domestication of that judgment or one of Grogan's orders, which were all subject to state court review and judgment. According to the Rooker-Feldman doctrine, the court lacks jurisdiction to hear such claims. The defendants' motions to dismiss on this ground are granted.

II. Res Judicata

The defendants next argue that counts 9-16 should be dismissed based upon the doctrine of res judicata.[4]

Chien responds that res judicata only applies to claims subject to a trial on the merits in the underlying action. He also states that considering res judicata, the court applies the law of the state of Virginia.

The defendants reply that the "prior dismissals with prejudice of Mr. Chien's civil cases against these same defendants in the Eastern District of Virginia (as affirmed by the Fourth Circuit), by the Prince George County Circuit Court, and the prior dismissal by Judge Thompson in this District Court were final judgments, on the merits, even if those judgments were not the results of trials." The defendants state that Chien has alleged "the same underlying factual claims relative to the $1.6 million 2012 civil

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[4] Although the court dismissed counts 9 and 11-15 under the Rooker-Feldman doctrine, it will also consider the applicability of the doctrine of res judicata to those claims.

judgment ... in the state and federal courts of Virginia, in the [djistrict of Connecticut before Judge Thompson, and again in the instant action." With respect to any "newer events" that occurred after the earlier court proceeding the defendants state that these allegations "are not 'new' transactions" and "are merely allegations of continuing conduct based on the same post-judgment collection proceedings."

Under the doctrine of claim preclusion, also known as res judicata, precludes that were "[a] final judgment on the merits the parties or their privies from or could have been raised in that of an action relitigating issues action." St. Pierre v. Dyer, 208 F.3d 394, 399 (2d Cir. 2000) (quoting Federated Dep't Stores, Inc, v. Moitie, 452 U.S. 394, 399 (1981)); Monahan v. N.Y. City Dep't of Corr., 214 F.3d 275, 284 (2d Cir. 2000). Therefore, res judicata "'bar[s] litigations between the same parties if the claims in the later litigation arose from the same transaction[5] that formed the basis of the prior adjudication. Liquidating Trust" AmBase Corp, v. City Investing 326 F.3d 63, 73 (2d Cir. 2003) (quoting Maldonado v. Flynn,417 A.2d 378, 381 (Del.Ch. 1980)).[6] The second circuit has recognized "the well-established rule that a plaintiff cannot avoid the effects of res judicata by plotting' his claim into various suits, based on different legal theories (with different evidence 'necessary' to each suit)." Waldman v. Village of Kiryas Joel, 207 F.3d 105, 110 (2d Cir. 2000) (citing

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[5]The term "'transaction' refers to a 'common nucleus of operative facts.'" AmBase Corp, v. City Investing Liquidating Trust, 326 F.3d 63, 73 (2d Cir.2003) (quoting Schnell v. Porta Sys. Corp., 1994 WL 148276, at *4 (Del. Ch. April 12, 1994)).

Woods v. Dunlop Tire Corp. 972 F.2d 36, 39 (2d Cir. 1992)).

To determine whether a subsequent action is barred under the doctrine of res judicata, courts consider whether the earlier decision was: "(1) a final judgment on the merits; (2) by a court of competent jurisdiction; (3) in a case involving the same parties or their privies; and (4) involving the same cause of action." EDP Med. Computer Sys., Inc, v. United States, 480 F.3d 621, 624 (2d Cir. 2007) (quoting In re Teltronics Servs., Inc., 762 F.2d 185, 190 (2d Cir. 1985)). With respect to additional facts occurring after the prior court proceedings, the second circuit has recognized that when the subsequent facts are simply "additional instances of what was previously asserted; " they are not outside the common nucleus of operative facts of the prior action. Waldman v. Village of Kiryas Joel, 207 F.3d 105, 113 (2d Cir. 2000). The court has also recognized that alleged co-conspirators are also entitled to the effects of res judicata. In re

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[6]The second circuit has recognized that "determining the res judicata effect that will be given the judgment of a federal court is distinctively a matter of federal law." PRC Harris, Inc, v. Boeing Co., 700 F.2d 894, 896 n.l (2d Cir. 1983). The court applies state law to determine whether a prior state court judgment operates to preclude the claim. Marvel Characters Inc, v. Simon, 310 F.3d 280, 286 (2d Cir. 2002). Here, like the federal standard, Virginia law recognizes the "conduct, transaction or occurrence" standard for the application of res judicata. See Martin-Bangura v. Virginia Dept, of Mental Health, 640 F. Supp.2d 729, 738, 740 n.9 (E.D. Va. 2009) (citing rule 1.6 of the Virginia supreme court rules).

Teltronics Services, Inc., 762 F.2d 185, 192 (2d Cir. 1985).

The defendants argue that res judicata bars the claims in counts nine through sixteen. Counts nine, thirteen and sixteen allege that the defendants abused court process and subjected Chien to malicious prosecution. The relevant facts that form the basis of these claims were litigated in a prior federal district court action in this court. See Chien v.Biotechnologies Inc. et al. Civil No. 3:12cv l378(AWT). On August 22, 2013, the court dismissed the claims in that case. In addition, with respect to count sixteen and Chien's incarceration in Virginia, and his alleged injury resulting therefrom, Chien filed an appeal of the decision to incarcerate him. The Virginia court of appeals and supreme court denied his appeal.

Count ten alleges that the defendants, Clark, LeClairRyan and Grogan, violated Chien's civil rights with respect to his incarceration in Virginia for failing to comply with court orders. Chien litigated this claim pursuant to 42 U.S.C.section 1983, in the United States District Court for the Eastern District of Virginia. The district court dismissed Chien's claim, 1:13cv00993-LO-IDD, Document 7 (E.D. Va. Nov. 6, 2013), and the fourth circuit affirmed the district court's decision. Chien v. LeClairRyan, et al., No. 13-8017 (4th Cir. Jan. 11, 2016).

In counts eleven through fifteen, Chien challenges the validity of the Virginia judgment and the domestication of that judgment in Connecticut upheld the judgment.

The court concludes that the claims in counts nine through sixteen involve earlier "final judgment on the merits" "by [] court[s] of competent jurisdiction." EDP Med. Computer Sys., 480 F.3d at 624. The claims also

"involve[e] the same parties or their privies; and involv[e] the same cause of action." With respect to any transactions that occurred after the prior court proceedings, such facts are simply "additional instances of what was previously asserted;" they are not outside the common nucleus of operative facts of the prior action.Waldman v.Village of Kiryas Joel, 207 F.3d 105, 113 (2d Cir. 2000) .Accordingly, the motion to dismiss with respect to these claims is granted.

Ill. Failure to State a Claim - Federal Rule 12(b)(6)

The defendants also move to dismiss all counts of the complaint for failure to state a cause of action pursuant to Federal Rule of Civil Procedure 12(b)(6). Specifically, the defendants argue that Chien either lacks standing or has failed to provide facts to support the alleged causes of action.

Chien responds his complaint contains sufficient facts to support his causes of action.

(a) Count One

The defendants argue that in addition to its failure to withstand the Rooker-Feldman doctrine, count one, which is titled "To Make False CHBM Certificate for Freer by All Defendants," fails to make reference to a cause of action. The defendants also state that to the extent count one alleges a wrongful occupation of CHBM, Chien lacks standing to assert a claim on CHBM's behalf.

Chien responds that he seeks to bring count one pursuant to 18 U.S.C. section 1341, for mail fraud and similar fraud, and Virginia Code section 182-186(B), for false statements to defraud. With respect to standing, Chien argues that he is the sole director of CHBM and, therefore, he has fiduciary liability and standing.

The defendants reply that may not amend

standing, the plaintiff cannot amend his cause of action m a brief." With respect to Chien has failed to provide a basis for his standing to bring defendants state that Chien fails to cite any law that a sole director has fiduciary liability and standing to bring these claims on behalf of CHBM.

The court concludes that count one of the complaint fails to state a cause of action. The complaint does not make any claims pursuant to a statutory cause of action and the plaintiff may not amend his complaint in his response brief. In addition, Chien has failed to provide a basis for his standing to bring claims on behalf of CHBM. Therefore, in addition to its deficiencies under the Rooker-Feldman doctrine, as previously discussed, the motion to dismiss counts two and three is granted for failure to identify a proper cause of action.

(b) Counts Two and Three

The defendants next argue that in addition to their failure to withstand the Rooker-Feldman doctrine, the allegations in counts two and three fail to concern the subject matter of the cited sections of the Securities Exchange Act.

Chien argues in opposition that these allegations are also claims under 18 U.S.C section 1341 and Virginia Code section 182-186 (B).

The defendants reply that Chien "cannot amend his [c]omplaint in a brief."

The court agrees. Chien has failed to properly identify the legal basis for his claims with respect to the facts alleged in counts two and three. Therefore, in addition to their deficiencies under the Rooker-Feldman doctrine, previously discussed, the motion to dismiss counts two and three is granted for failure to identify a proper cause of action.

(c) Count Four

The defendants argue that count four's allegation that the defendants stole CHBM cash fails to state a claim against them. Specifically, the defendants argue that even if the claim could be interpreted to be one for conversion under Virginia law, Chien lacks standing.

Chien argues in opposition that the "defendants use share conveyance as excuse which is wrong."

The defendants reply that Chien's arguments are "incomprehensible" and if he "is reiterating his argument about his status as the sole director of CHBM, he has added nothing to it and it has no merit."

Chien fails to state facts warranting a claim on behalf of CHBM in count four. See Riverview Farmer Assocs. Va. Gen. P'ship v. Bd. Of Supervisors of Charles City County, 259 Va. 419, 429 (2000) (recognizing that claim for conversion of privately owned property may not be brought by nonparty). Therefore, in addition to its deficiencies under the Rooker-Feldman doctrine, as previously discussed, the motion to dismiss count four is granted for failure to state a cause of action.

(d) Count Five

The defendants next argue that the claim in count five fails. Specifically, the defendants argue that Chien lacks standing with respect to this claim because he brings it on behalf of unnamed parties in Virginia.

Chien argues in opposition that he has a fiduciary duty and standing as sole director of CHBM.

The defendants reply that m this count, Chien "purports to bring a claim on behalf of unnamed parties in Virginia, and Mr. Chien has no standing to

do so."

Chien fails to identify a sufficient basis for standing with respect to claims of alleged, and unnamed, nonparties in Virginia. Therefore, the defendants' motion to dismiss count five, pursuant to federal rule 12(b)(6), is granted.

(e) Count Six

The defendants next argue that the claim in count six fails. Specifically, the defendants argue that Chien lacks standing with respect to this claim and also fails to provide a legal basis for his allegations.

With respect to count six, Chien argues that the claim is brought pursuant to 18 U.S.C. section 1951, for interference with interstate commerce by threats or violence.

The defendants reply that the complaint "does not contain a [s]ection 1951 claim, and does not plead the necessary facts for such a claim: 'actual or threatened force, or violence, or fear of injury, immediate or future,. . [or] wrongful use of actual or threatened force, violence, or fear .. .'"

The allegations in count six appear to involve the transfer of corporate shares and property from Mr. Chien's wife. Chien has failed to provide facts establishing standing to bring this claim and has failed to provide facts sufficient to prove a claim under 18 U.S.C. section 1951. Therefore, the defendants' motion to dismiss this claim pursuant to federal rule 12(b) (6) is granted.

(f) Counts Seven and Eight

The defendants next argue that the claims in counts seven and eight fail to allege sufficient facts to support the allegation that Grogan and Clark "illegally practiced law" in Connecticut. The defendants also argue that "the courts of Virginia and

Connecticut have not recognized a private right of action against a party for practicing law without a license."

Chien argues in opposition that the claims are for "malpractice and self-dealing of law in CT."

The defendants respond that Chien cannot amend his complaint in his opposition brief. The defendants also state that there is "no cause of action for malpractice by a party that was never the attorney's client."

Counts seven and eight fail to state proper causes of action. Chien may not amend complaint in his opposition memorandum and he has failed to establish his right to bring a private right of action for the illegal practice of law in Connecticut or Virginia. Therefore, the defendants' motions to dismiss the claims in counts seven and eight, for failure to state a claim pursuant to federal rule 12(b) (6), are granted.

(g) Counts Fourteen and Fifteen

The defendants argue that the allegations in counts fourteen and fifteen, that they "deceived and cheated" the Connecticut and Virginia courts, "refer to no recognized cause of action." The defendants also state that Chien lacks standing to bring claims on behalf of the Connecticut and Virginia courts.

Chien argues in opposition that he brings these claims pursuant to the rules governing the bar of the state of Virginia.

The defendants reply that Chien cannot amend complaint in his opposition brief and also fails to explain his standing to bring such claims. The defendants note that the disciplinary rules Chien cites "do not provide the basis for a private cause of action." The allegations in counts fourteen and fifteen fail to state a cause of action and Chien may not amend his

complaint in his opposition brief. In addition, the court notes that Chien fails to state his standing to bring claims on behalf of the states of Connecticut and Virginia. Therefore, in addition to their deficiencies under the Rooker-Feldman and res judicata doctrines, as previously discussed, the motion to dismiss counts fourteen and fifteen is granted for failure to state a cause of action.

(h) Count Sixteen

The defendants argue that Chien's malicious prosecution claim in count sixteen fails because he cannot allege that the prior action in question terminated in Chien's favor.

Chien argues in opposition that he "will obtain favored ruling in this court on Counts 1-15 which will support Count 16."

The defendants reply that "a claim for malicious prosecution exists only prior action terminated m the plaintiff's favor."

In order to state a claim for malicious prosecution, the prior action at issue must have terminated in favor of the plaintiff. See Ayyildiz v. Kidd, 220 Va. 1080, 1082 (1980). In this case, Chien has failed to show that the prior action at issue terminated in his favor. The within case cannot form the basis of his malicious prosecution claim, especially in light of the fact that the court has dismissed all of Chien's claims herein. Therefore, in addition to its deficiencies under the doctrine of res judicata, as previously discussed, the motion to dismiss count sixteen is granted for failure to state a cause of action.

IV. Pre-Filing Injunction

The defendants have requested a prefiling injunction with respect to any of Chien's future filings. The court has denied his request to amend and

dismissed the complaint in this case. The defendants' request is denied without prejudice. Chien is cautioned that any future frivolous filings in this court may result in sanctions and/or a filing injunction against him.

V. Motion to Amend

Chien has filed a motion to amend his complaint. However, the motion and amendment fail to satisfy the requirements for leave to amend.

Federal Rule of Civil Procedure 15 provides that the court shall grant a party's motion to amend the pleading when justice so requires." Fed.R.Civ.P. 15(a)(2). The second circuit has recognized that the court need not grant a motion to amend in case where "the problem with [the plaintiff's] causes of action is substantive" and "[b]etter pleading would not cure it." Cuoco v. Moritsugu, 222 F.3d 99, 112(2d Cir. 2000) (recognizing futility of amendment). Here, Chien fails to articulate a sufficient basis warranting amendment. The factual basis for his claims has been litigated in several other courts. In addition, his recent motion for extension of time to file another amendment is denied.

CONCLUSION

The defendants' motions to dismiss (documents ##14 and 25) are granted. The plaintiff's motion to amend and motion for extension of time (documents ##51 and 67) are denied.

It is so ordered this 28th day of September, 2016 at Hartford, Ct.

Alfred V. Covello

Appendix F
U.S. District Court
For The District of Connecticut
CIVIL DOCKET FOR CASE #: 3:15-cv-01620-AVC

The following transaction was entered on 02/03/2016, and filed on 02/03/2016,

Case Name: Chien v. Freer et al
Case Number: 3:15-CV-01620-AVC
Document Number: 31(No document attached)

Docket Text:
ORDER. The [5] Motion to Appoint Counsel is DENIED. The decision as to whether to appoint counsel for a pro se party is left to the discretion of the Court, which considers criteria including "the merits of plaintiff's case, the plaintiff's ability to pay for private counsel, his efforts to obtain a lawyer, the availability of counsel, and the plaintiff's ability to gather the facts and deal with the issues if unassisted by counsel." Cooper v. A. Sargenti Co., 877 F.2d 170, 172 (2d Cir. 1989). Here, the plaintiff has not provided a financial affidavit in support of his conclusory claim of indigence, and thus the Court has no way to determine whether the plaintiff is able to pay for private counsel. The plaintiff has submitted letters indicating that he sought assistance from one private law firm and from the ACLU; he claims no other efforts to obtain counsel on his own. Most significantly, however, the allegations in the complaint lack merit and are unlikely to succeed. Mr. Chien has a history of filing frivolous lawsuits in this and other courts, and has been sanctioned repeatedly for his conduct. See, e.g., Chien v. Barron Capital Advisors LLC, 509 F. App'x 79, 80 (2d Cir.

2013) (affirming award of sanctions against Chien); Chien v. Skystar Bio Pharm. Co., 378 F. App'x 109, 110 (2d Cir. 2010) (affirming award of sanctions against Chien); In re Commonwealth Biotechnologies,Inc., No. 11-30381-KRH, 2012 WL 5385632, at *8 (Bankr. E.D. Va. Nov. 1, 2012)(stating that Chien's conduct had been "nothing short of shocking" and that the Court had held him in contempt and ordered him to pay sanctions). Furthermore, it appears that the central allegations of the instant complaint were heard and rejected by the Eastern District of Virginia and the Fourth Circuit Court of Appeals. See Chien v. LeClair Ryan, et al., 1:13CV00993(LO)(IDD) (E. D. Va.); aff'd, 566 F. App'x 275 (4th Cir. Apr. 21, 2014). "[C]ounsel should not be appointed in a case where the merits of the indigent's claim are thin and his chances of prevailing are therefore poor." Carmona v.U.S. Bureau of Prisons, 243 F.3d 629, 632 (2d Cir. 2001). The chances of the plaintiff prevailing in this matter are poor. Accordingly, the Court will not commit its limited pro bono resources to this matter. It is so ordered. Signed by Judge Sarah A. L. Merriam on 2/3/2016. Signed by Judge Alfred V. Covello on 2/3/2016. (Katz, S.) (Entered: 02/03/2016)