FILED

SEP 17 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VINCENT W. SHACK,

Plaintiff-Appellant,

v.

NBC UNIVERSAL MEDIA, LLC; et al.,

Defendants-Appellees.

No. 20-55921

D.C. No.
5:19-cv-02494-PA-SP
Central District of California,
Riverside

ORDER

Before: O'SCANNLAIN, RAWLINSON, and CHRISTEN, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the August 31, 2020 notice of appeal was not filed within 30 days after the district court's judgment entered on April 30, 2020 or the post-judgment order entered on June 17, 2020. *See* 28 U.S.C. § 2107(a); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

MF/Pro Se

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 19-02494 PA (SPx)	Date	April 29, 2020
Title	Vincent W. Shack v. NBC Universal Media, LLC et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
T. Jackson	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendants:	
None	None	

Proceedings: IN CHAMBERS

On April 3, 2020, the Court ordered plaintiff Vincent W. Shack ("Plaintiff") to show cause in writing why this action should not be dismissed for lack of subject matter jurisdiction under the Rooker-Feldman doctrine. (Dkt. 89.) Plaintiff filed a Response on April 13, 2020. (Dkt. 99 ("Response").) In addition, defendants NBC Universal Media, LLC, Samsung Electronics America Inc., IMG Worldwide, Inc., and Ladies Professional Golf Association (collectively "Defendants") have all filed Motions to Dismiss this action. (Dkts. 81, 84, and 88.) Defendants all argue this action should be dismissed because it is barred under (1) the doctrine of res judicata, and (2) the applicable statutes of limitations. Plaintiff has filed Oppositions to these respective motions. (Dkts. 95, 96, 100.) Defendants have filed Reply briefs. (Dkts. 97, 98, 101.) Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds this matter appropriate for decision without oral argument. For the reasons discussed below, the Court finds that the Rooker-Feldman doctrine bars the Court from having subject matter jurisdiction over Plaintiff's claims. This action is dismissed in its entirety.

I. Background

On February 4, 2009, Plaintiff filed a complaint in the Superior Court of California for the County of Riverside against all defendants named in the present action—IMG Worldwide, Inc., Ladies Professional Golf Association, NBC Universal, Inc., and Samsung Electronics America, Inc.[1] (Dkt. 68 ("FAC") ¶10.) Plaintiff alleged claims for intentional tort and negligence. See Shack v. NBC Universal, 2011 Cal. App. Unpub. LEXIS 1616, at *2 (Mar. 4, 2011).

Plaintiff's claims arose from events that occurred during the 2007 Samsung World Championship, a professional golfing event held at the Bighorn Country Club in Palm Desert. (FAC ¶1.) According to Plaintiff, NBC cameraman Dan Beard struck Plaintiff with either his camera or forearm while recording an errant tee-shot on the 18th hole. (Id. ¶2.) Beard then "spewed derogatory language" at Plaintiff. (Id.) Plaintiff was "visibly shaken and suffered immediate and serious injury" to

[1] Plaintiff also named Dan Beard and Bighorn Properties, Inc. as defendants in his state court action, but they are not named defendants in this action.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 19-02494 PA (SPx) Date April 29, 2020

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his neck area and "other physical and mental injuries." (Id.) Beard reported to police and tournament security personnel that Plaintiff threatened him. (Id. at ¶3.) Plaintiff believes Beard made false statements in his report. (Id.) The head of security for the tournament informed Plaintiff that no charges would be filed, and that Plaintiff was free to attend the tournament the following day. (Id. at ¶4.) However, when Plaintiff attempted to enter the tournament the next day, he was denied admission. (Id. at ¶5.) Police officers removed Plaintiff from the tournament. (Id. at ¶6.) Plaintiff said this experience was "demoralizing" and "demeaning" because he relies on the golf community for professional opportunities. (Id. at ¶6.)

In state court, Plaintiff "generally alleged that IMG, the LPGA, NBC, and Samsung were responsible in some manner for Beard's 'outrageous battery' or act of striking him in the neck." (Id. at ¶23.) Defendants all filed successful motions to strike Plaintiff's claims under California's anti-SLAPP statute. See Shack, 2011 Cal. App. Unpub. LEXIS 1616, at *2. Plaintiff filed an appeal. Id. The California Court of Appeal affirmed the orders striking Plaintiff's two claims for relief and dismissing his complaints against Defendants. Id. at *4. The appellate court concluded that Plaintiff's claims "were properly stricken because both could be based solely on defendants' protected activities" of making "reports to police and security personnel that Shack threatened Beard." Id. at *3. The appellate court also concluded that Plaintiff failed to demonstrate a reasonable probability of prevailing on his claims, which were subject to the absolute litigation privilege of California Civil Code §47(b). Id. at *3-4. On May 11, 2011, the California Supreme Court denied Plaintiff's petition for review. (FAC, Ex. B.)

Plaintiff has now filed an action in this Court against the same Defendants concerning the same events alleged in his state lawsuit. The FAC alleges that the Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331. (Id. at ¶1.) The FAC presents four claims for relief: (1) misuse of First Amendment through utilization of California's [anti-SLAPP], (2) violation of the Ralph Civil Rights Act, Cal. Civ. Code § 51.7, (3) violation of the Unruh Civil Rights Act, and (4) violation of 42 U.S.C. § 1983. (Id. at 10-15.) On April 3, 2020, the Court ordered Plaintiff to show cause in writing why this action should not be dismissed for lack of subject matter jurisdiction because Rooker-Feldman applied. (Dkt. 89.)

II. Legal Standard

The Rooker-Feldman doctrine prevents a federal district court from having subject matter jurisdiction to hear a direct appeal from a final judgment of a state court. See Noel v. Hall, 341 F.3d 1148, 1158 (9th Cir. 2003); D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fid. Trust Co., 263 U.S. 413, 416 (1923). As the Supreme Court has explained, this doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). Even if a plaintiff frames his claim as a constitutional challenge, if he seeks what, in substance, would be appellate review of a state judgment, the action is barred by Rooker-Feldman. See Bianchi v. Rylaarsdam, 334

F.3d 895, 901 n.4 (9th Cir. 2003).

To determine whether the Rooker-Feldman doctrine applies, a federal district court must assess whether the plaintiff is attempting to bring a "forbidden de facto appeal." See Noel v. Hall, 341 F.3d 1148, 1163 (9th Cir. 2003). A case is a de facto appeal "[i]f a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision." Id. at 1164. If the case is a de facto appeal, the plaintiff is also barred from litigating "any issues that are 'inextricably intertwined' with issues in that de facto appeal." Kougasian v. TMSL, Inc., 359 F.3d 1136, 1142 (9th Cir. 2004) (citing Noel, 341 F.3d at 1158). Issues presented are inextricably intertwined "[w]here the district court must hold that the state court was wrong in order to find in favor of the plaintiff." Doe & Assocs. Law Offices v. Napolitano, 252 F.3d 1026, 1030 (9th Cir. 2001); Cooper v. Ramos, 704 F.3d 772, 782 (9th Cir. 2012).

III. Analysis

A. Rooker-Feldman Doctrine

After reviewing Plaintiff's First Amended Complaint and Response to the Court's Order to Show Cause, the Court finds that this action is a de facto appeal of the California Court of Appeal's ruling in Plaintiff's prior lawsuit against Defendants. Therefore, the Rooker-Feldman doctrine prevents this Court from having subject matter jurisdiction over this action.

In the FAC, Plaintiff states "[h]e is asking the honorable court to respectfully permit a reversal and to add a claim for 'intentional infliction of emotional distress.'" (FAC at 12.) The Court interprets this to mean that Plaintiff is asking the Court to overturn the final judgment in Plaintiff's state court action. Plaintiff believes his state court claims "were never properly disposed of" due to Defendants' anti-SLAPP motions. (Response at 4.) He even contends "the SLAPP motion[s] should have been denied and sanctions applied." (Id. at ¶25.) Plaintiff essentially asks the Court to "hold that the state court was wrong in order to find in favor of the plaintiff." Doe & Assocs. Law Offices v. Napolitano, 252 F.3d 1026, 1030 (9th Cir. 2001). Rooker-Feldman bars the Court from doing so.

Plaintiff's Response to the Order to Show Cause further illustrates that this is a de facto appeal. Specifically, Plaintiff states "[h]e is asking the honorable court to respectfully permit [the] Victim Claim Board an opportunity to examine the said Complaint and to add a claim for 'intentional infliction of emotional distress.'" (Response ¶29; see also FAC at 15 ("The plaintiff clearly documents being denied leave from the Fourth (4th) District Court of Appeal which would have permitted the State Attorney of California General Counsel to gain proper jurisdiction to review his Victim Government Claim").) Plaintiff's request would require the Court to review his state action and reverse the California Court of Appeal for Plaintiff's benefit. The Court lacks the power to issue such a ruling. Compare Cooper v. Ramos, 704 F.3d 772, 778 (9th Cir. 2012) (Rooker-Feldman applies where a party, "having lost in state court, 'essentially invited federal courts of first instance to review and reverse unfavorable state-court

judgments.'") (quoting Exxon Mobil, 544 U.S. at 283).

Plaintiff also contends that the California Court of Appeal failed to uphold his First and Fourteenth Amendment rights – but this argument does not prevent application of Rooker-Feldman. (See FAC at 15; Response ¶¶28, 33-34.) Other courts have found that "[a] losing party in state court is [] barred from seeking what in substance would be appellate review of a state judgment in federal district court, even if the party contends the state judgment violated his or her federal rights." Feldman v. McKay, 2015 U.S. Dist. LEXIS 159741, at *8 (C.D. Cal. Nov. 25, 2015) (collecting cases) (emphasis added). In fact, "Rooker-Feldman bars federal adjudication of any suit in which a plaintiff alleges an injury based on a state court judgment and seeks relief from that judgment." Bianchi, 334 F.3d at n.4.

Plaintiff has failed to demonstrate that this action is not a de facto appeal. Instead, Plaintiff argues that federal question jurisdiction exists because each of his four claims is based on a violation of his First or Fourteenth Amendment rights. (Response at pg. 4, 8 and ¶¶2, 20, 21, 23, 30-33 (arguing Claim 1 is for violation of the First Amendment; Claim 2 and 3 are for violations of the Fourteenth Amendment, and Claim 4 is for violation of both the First and Fourteenth Amendments).) This argument is insufficient to overcome Rooker-Feldman. Moreover, Plaintiff has failed to demonstrate that his alleged injuries even arose from state action. "The state-action element in § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful." Caviness v. Horizon Cmty. Learning Ctr., Inc., 590 F.3d 806, 812 (9th Cir. 2010) (quotations and citation omitted). "[C]onstitutional standards are invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains." Naoko Ohno v. Yuko Yasuma, 723 F.3d 984, 994 (9th Cir. 2013) (emphasis in original). Plaintiff has made no showing in his FAC or Response that Defendants are state actors, or that his alleged injuries arose from state action. And even if he could make such a showing, the Court would still be barred from exercising subject matter jurisdiction pursuant to Rooker-Feldman.

B. Alternative Grounds For Dismissal

Even if Rooker-Feldman did not apply, there would still be alternative grounds to dismiss this action under res judicata and the relevant statutes of limitations. Res judicata bars an action when the prior state court action (i) involved identical parties, (ii) resulted in a final judgment on the merits, and (iii) concerned identical claims. See Boeken v. Philip Morris USA, Inc., 48 Cal. 4th 788, 797 (2010) (citing People v. Barragan, 32 Cal. 4th 236, 252-53 (2004)).[2] The first and second requirements are met here. Plaintiff has sued the same Defendants from his state lawsuit. And there was a final judgment on the merits because the California Court of Appeal affirmed the superior court's order striking Plaintiff's claims for relief pursuant to California's anti-SLAPP statute.

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[2] Federal courts must apply state law res judicata and collateral estoppel rules when a state court rendered the prior underlying judgment. See Holcombe v. Hosmer, 477 F.3d 1094, 1097 (9th Cir. 2007); Migra v. Warren City School Dist. Bd. of Education, 465 U.S. 75 (1984).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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The Court also finds that the third requirement of res judicata is met. "To determine whether two proceedings involve identical causes of action for purposes of claim preclusion, California courts have 'consistently applied the 'primary rights' theory.'" Id. (quoting Slater v. Blackwood, 15 Cal. 3d 791, 795 (1975)). "When two actions involving the same parties seek compensation for the same harm, they generally involve the same primary right." Id. 798 (citation omitted). Moreover, "a judgment for the defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same right, even though he presents a different legal ground for relief." Id. (quotations and citation omitted).

Here, Plaintiff's FAC reiterates the same allegations against Defendants that he raised in his state lawsuit. He seeks relief for injuries sustained as result of Defendants' conduct at the 2007 golfing tournament - -which was the exact basis for his original state action. The fact that Plaintiff now raises claims for relief based on First and Fourteenth Amendment violations does not change the "primary rights" analysis. See Brodheim v. Cry, 584 F.3d 1262, 1268 (9th Cir. 2009) (quoting Eichman v. Fotomat Corp., 147 Cal. App. 3d 1170, 1174 (1983)) ("[I]f two actions involve the same injury to the plaintiff and the same wrong by the defendant then the same primary right is at stake even if in the second suit the plaintiff pleads different theories of recovery, seeks different forms of relief and/or adds new facts supporting recovery."). And Plaintiff had every opportunity to raise his current claims in his prior lawsuit. Compare Palomar Mobilehome Park Ass'n v. City of San Marcos, 989 F.2d 362, 364 (9th Cir. 1993) ("California, as most states, recognizes that the doctrine of res judicata will bar not only those claims actually litigated in a prior proceeding, but also claims that could have been litigated."); see also Eichman, 147 Cal. App. 3d at 1175. Alternatively, this action is dismissed in its entirety on res judicata grounds.

The Court also recognizes that Plaintiff's claims would be time-barred by various statutes of limitations. Plaintiff's Claim 1 "ask[s] the honorable court to respectfully permit a reversal and to add a claim for 'intentional infliction of emotional distress.'" (FAC at 12.) A claim for intentional infliction of emotional distress has a two-year statute of limitations. See Cal. Civ. P. Code § 335.1. As for Claims 2 and 3, claims under the Ralph Civil Rights Act or Unruh Civil Rights Act will have either a two or three-year statute of limitations. See O'Shea v. Cty. of San Diego, 2019 U.S. Dist. LEXIS 164600, at *10-11 (S.D. Cal. Sept. 24, 2019) (collecting cases); K.S. v. Fremont Unified Sch. Dist., 2007 U.S. Dist. LEXIS 24860, at *9-10 (N.D. Cal. Mar. 23, 2007) (collecting cases); Gatto v. County of Sonoma, 98 Cal. App. 4th 744 (2002). And California's two-year statute of limitations for personal injury claims would apply to Plaintiff's Claim 4 for a violation of Section 1983 claim. See Canatella v. Van De Kamp, 486 F.3d 1128, 1132 (9th Cir. 2007) (quoting Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004), cert. denied, 546 U.S. 820 (2005)); Cal. Civ. P. Code § 335.1.

Plaintiff's various claims would have likely accrued by 2009 or 2010 because he had knowledge of his alleged injuries when they occurred at the golfing tournament in October 2007. Johnson v. California, 207 F.3d 650, 653 (9th Cir. 2000) ("Under federal law, a claim accrues when the plaintiff knows, or should know, of the injury which is the basis of the cause of action."). Therefore, Plaintiff's

claims would have been time-barred for several years now. This is another alternative basis for dismissal of this action.

Conclusion

Because the Court finds that this is a de facto appeal of a state court judgment, the Rooker-Feldman doctrine applies. The Court is barred from exercising subject matter jurisdiction over this action. Alternatively, this action is dismissed by virtue of res judicata and is time-barred by the statute of limitations. Accordingly, the Complaint is hereby dismissed without leave to amend because amendment would be futile. See, e.g., Johnson v. Buckley, 356 F.3d 1067, 1077 (9th Cir. 2004) (identifying futility as a factor in deciding whether to permit amendment); Steckman v. Hart Brewing, 143 F.3d 1293, 1298 (9th Cir. 1998) ("Although there is a general rule that parties are allowed to amend their pleadings, it does not extend to cases in which any amendment would be an exercise in futility or where the amended complaint would also be subject to dismissal.") (citations omitted). The Court will enter a Judgment consistent with this Order.

IT IS SO ORDERED.

JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Vincent W. Shack, Plaintiff, v. NBC Universal Media, LLC et al., Defendants.	CV 19-02494 PA (SPx) JUDGMENT

Pursuant to the Court's April 29, 2020 Order dismissing Plaintiff's First Amended Complaint without leave to amend,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this action is dismissed with prejudice in its entirety.

IT IS SO ORDERED.

DATED: April 30, 2020

Percy Anderson
UNITED STATES DISTRICT JUDGE

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Vincent W. Shack has no parent corporation and no publicly held company owns 10% or more of its stock.

CERTIFICATE OF WORD COUNT

USCA No. 20-55921

Vincent W. Shack vs. NBC Universal et al.

Document Title: Brief for Respondent Vincent W. Shack

Pursuant to Rule 33.1(h) of the Rules of this Court, I certify that the accompanying Brief of Respondents Vincent W. Shack, pro se was prepared using Century Schoolbook 12-point typeface, contains 4,338 words, excluding the parts of the document that are exempted by Rule 33.1(d). This certificate was prepared in reliance on the word-count function of the word processing system (Microsoft Word) used to prepare the document.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 8th day of July 2020.

Vincent W. Shack.pro se
64337 Doral Drive
Desert Hot Springs, California 92240
vgreengolf@aol.com
(760) 218-9777

Sworn to and subscribed before me this 8th day of July 2020.

_____

NOTARY REPUBLIC

My commission expires _____

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 11 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

VINCENT W. SHACK,

Plaintiff-Appellant,

v.

NBC UNIVERSAL MEDIA, LLC; et al.,

Defendants-Appellees.

No. 20-55921

D.C. No.
5:19-cv-02494-PA-SP
Central District of California,
Riverside

ORDER

Before: O'SCANNLAIN, RAWLINSON, and CHRISTEN, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 5) is denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.