4 Appendix

Appendix A

Judge Sand ruling Gerald Aranoff v TIAA March 6, 2009

Appendix A

Judge Sand ruling Gerald Aranoff v TIAA March 6, 2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

09 CIV 2076

GERALD ARANOFF,

Plaintiff,

-against-

TEACHERS INSURANCE AND ANNUITY ASSOCIATION COLLEGE RETIREMENT EQUITIES FUND,

Defendant.

CIVIL

JUDGMENT

Pursuant to the order issued MAR 06 2009 by the Honorable Leonard B. Sand, United States District Judge, dismissing the complaint, it is,

ORDERED, ADJUDGED AND DECREED: That the complaint be and it is hereby dismissed. Fed. R. Civ. P. 12(b)(1) and 12(h)(3). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from the Court's order would not be taken in good faith.

LEONARD B. SAND
United States District Judge

Dated: MAR 06 2009
New York, New York

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON

FILED
U.S. DISTRICT COURT
2009 MAR -6 PM 3:03
S.D. OF N.Y.

JUDGE SAND

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

09 CIV 2076

GERALD ARANOFF,

Plaintiff,

-against-

TEACHERS INSURANCE AND ANNUITY ASSOCIATION COLLEGE RETIREMENT EQUITIES FUND,

Defendant.

ORDER OF DISMISSAL

Plaintiff, appearing *pro se* and having paid the requisite filing fee, brings this action against his pension fund alleging violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq. Specifically, he claims that defendant is paying 55% of his pension to his ex-wife, Susan Aranoff, pursuant to a state court order in violation of ERISA. Plaintiff seeks a court order directing defendant to stop further payments and to reimburse all monies previously submitted to his ex-wife. For the following reasons, plaintiff's complaint is dismissed.

FILED
U.S. DISTRICT COURT
2009 MAR 05 PM 2:59
S.D. OF N.Y.

BACKGROUND

Plaintiff, a resident of Israel, brings this complaint as part of his ongoing efforts to overturn a Qualified Domestic Relations Order ("QDRO") issued by the New York Supreme Court, Kings County, to enforce his child support obligations. Plaintiff and his ex-wife were divorced by foreign decree on February 17, 1993. On October 17, 1997, a QDRO was issued in the matrimonial action by the New York Supreme Court, Kings County, establishing child support payments. Aranoff v. Aranoff, 682 N.Y.S.2d 622 (N.Y. App. Div. 1998). The QDRO directed plaintiff's pension fund to pay his ex-wife 55% of the benefits payable under his annuity contracts. Id. Plaintiff appealed the order contending that it was invalid and in violation of ERISA. On December 14, 1998, the New York Supreme Court, Appellate Division, affirmed the order. Id. The New York Court of Appeals dismissed plaintiff's subsequent motion to appeal on

July 8, 1999. Aranoff v. Aranoff, 93 N.Y.2d 1000 (N.Y. 1999). Plaintiff then sought relief in this Court by filing an action against defendant. See Aranoff v. TIAA-CREF, No. 01 Civ. 2543 (MBM) (S.D.N.Y. Mar. 26, 2001). By order dated March 26, 2001, the Honorable Michael B. Mukasey, former Chief Judge of this Court, dismissed plaintiff's complaint for lack of subject matter jurisdiction, determining that both the Rooker-Feldman doctrine and the domestic relations exception to federal jurisdiction barred the Court from reviewing the state court's QDRO.[1] Id. On February 27, 2008, plaintiff submitted a second complaint to this Court, again seeking relief from the state court order. By order dated April 1, 2008, the Honorable Kimba M. Wood, Chief Judge of this Court, dismissed the complaint for the same reasons stated in Judge Mukasey's order. See Aranoff v. TIAA, No. 08 Civ. 3260 (KMW) (S.D.N.Y. Apr. 1, 2008). In addition, the Court warned plaintiff that the filing of new complaints seeking to overturn the state court's QDRO may result in the issuance of an order barring the acceptance of any future complaints from him without first obtaining leave of Court to file a new action. Id.

Undeterred, plaintiff now brings the instant action again seeking relief from the state court's QDRO. He alleges that the pension fund has failed to respond to his inquiries since he last received a letter dated November 17, 2008. Plaintiff claims that many of the state court's decisions were "bad one-sided rulings" and that defendant won't respond to his inquiries fully and honestly. He brings this instant action against the pension fund in another effort to overturn the terms of the revised QDRO imposed by the state court.

DISCUSSION

Having reviewed the instant claims and according them a liberal construction in light of plaintiff's *pro se* status, Haines v. Kerner, 404 U.S. 519, 520-21 (per curiam), reh'g denied, 405 U.S. 948 (1972), the Court dismisses plaintiff's complaint for the same reasons as his prior

[1] The Court notes that shortly after the dismissal of his first complaint in this Court against his pension fund, plaintiff filed an action against his ex-wife in the United States District Court for the Eastern District of New York. See Aranoff v. Aranoff, No. 01-cv-2469-EHN-MDG (E.D.N.Y. Aug. 28, 2001). The complaint was eventually dismissed for lack of subject matter jurisdiction. Id.

complaints. This Court lacks subject matter jurisdiction over the instant action pursuant to the Rooker-Feldman doctrine. The Supreme Court has held in both Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482-86 (1983) (the "Rooker-Feldman doctrine") that a United States District Court has no authority to review final judgments of a state court in judicial proceedings, except for constitutional challenges and reviews pursuant to an application for a writ of *habeas corpus*.[2] Here, although plaintiff seeks to assert federal jurisdiction in the instant action by invoking ERISA, the gravamen of his claim continues to be his dissatisfaction with the Qualified Domestic Relations Order of the New York Supreme Court, Kings County. He is essentially seeking to contest the validity of the QDRO under which defendant is required to make the payments at issue to his ex-wife. To the extent, however, he seeks a review of the QDRO, this Court lacks jurisdiction under the Rooker-Feldman doctrine. Plaintiff may not seek to relitigate factual issues decided by the courts of New York State under the guise of an ERISA violation in this Court.

Furthermore, plaintiff should also note that the domestic relations exception to federal jurisdiction would also bar this Court from considering plaintiff's claims. In Ankenbrandt v. Richards, 504 U.S. 689, 112 S. Ct. 2206 (1992), the Supreme Court reaffirmed the continued validity of the domestic relations exception, stating that the exception divests federal courts of jurisdiction "to issue divorce, alimony and child custody decrees." Id. at 703. To the extent the state court action falls within the ambit of cases excluded by Ankenbrandt, this Court does not have jurisdiction. See American Airline s v. Block, 905 F.2d 12, 14 (2d Cir. 1990); McArthur v. Bell, 788 F. Supp. 706, 708 (E.D.N.Y. 1992). The issues of child visitation rights, custody and divorce decrees are better left to the state courts which are more experienced in interpreting and applying their own domestic relations laws.

[2] The United States Supreme Court is the only court that may give appellate review to a state court's judicial decisions. 28 U.S.C. § 1257(a).

Warning Against the Filing of Meritless Complaints

Finally, plaintiff is warned for the second time that this Court will not tolerate the continued filing of complaints seeking to overturn the state court's QDRO. The filing of any future lawsuits arising out of the subject matter of the instant or prior actions may result in the issuance of an order pursuant to 28 U.S.C. § 1651 barring the acceptance of any future complaints from plaintiff without first obtaining leave of Court to file a new action. See In Re Sassower, 510 U.S. 4 (1993); Sassower v. Sansverie, 885 F.2d 9 (1989); see also generally, In Re McDonald, 489 U.S. 180, 184 (1988). This second warning is necessary in light of plaintiff 's failure to heed the Court's first warning against the continued filing of complaints seeking review of the state court's QDRO, resulting in the abuse of judicial resources.

CONCLUSION

Thus, according this *pro se* complaint the close and sympathetic reading to which it is entitled, Haines, 404 U.S. at 520-21, it reveals no basis for the exercise of subject matter jurisdiction over the underlying suit. Fed. R. civ. P. 12(b)(1) and 12(h)(3). The complaint must therefore be dismissed. See Fitzgerald v. First East Seventh Tenants Corp., 221 F.3d 362, 363 (2d Cir. 2000) (per curiam) (holding that a district court may dismiss a frivolous complaint sua sponte even when the plaintiff has paid the required filing fee); Pillay v. Immigration and Naturalization Service, 45 F.3d 14, 16 (2d Cir. 1995). Although plaintiff paid the requisite filing fee to bring this action, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that, for the purpose of an appeal, any appeal from this order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED

LEONARD B. SAND
United State District Judge

Dated: MAR 06 2009
New York, New York