

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 07 2021

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

JASPER CROOK,

Plaintiff - Appellant,

v.

ROBIN SHEA,

Defendant - Appellee.

No. 20-56269

D.C. No. 5:20-cv-01154-JGB-SHK

U.S. District Court for Central
California, Riverside

MANDATE

The judgment of this Court, entered March 09, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Quy Le
Deputy Clerk
Ninth Circuit Rule 27-7

29 of 31

UNITED STATES COURT OF APPEALS

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FOR THE NINTH CIRCUIT

JUN 29 2021

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

JASPER CROOK,

No. 20-56269

Plaintiff-Appellant,

D.C. No. 5:20-cv-01154-JGB-SHK

v.

Central District of California,
Riverside

ROBIN SHEA,

ORDER

Defendant-Appellee.

Before: M. SMITH, BADE, and BUMATAY, Circuit Judges.

Appellant has filed a combined motion for reconsideration and motion for reconsideration en banc (Docket Entry No. 8).

The motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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MAR 9 2021

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

JASPER CROOK,

Plaintiff-Appellant,

v.

ROBIN SHEA,

Defendant-Appellee.

No. 20-56269

D.C. No. 5:20-cv-01154-JGB-SHK
Central District of California,
Riverside

ORDER

Before: M. SMITH, BADE, and BUMATAY, Circuit Judges.

Upon a review of the record, the response to the order to show cause, and the opening brief received on February 3, 2021, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

DISMISSED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **EDCV 20-1154 JGB (SHKx)**

Date **October 29, 2020**

Title **WELSH, ROBERTA L. vs. A**

Present: The Honorable **JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE**

MAYNOR GALVEZ

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

**Proceedings: Order (1) DENYING Plaintiff's Motion for Reconsideration (Dkt. No. 26); and
(2) VACATING November 2, 2020 Hearing (IN CHAMBERS)**

Before the Court is Plaintiff's motion for reconsideration. ("Motion," Dkt. No. 26.) The Court determines this matter is appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After reviewing the parties' submissions, the Court DENIES Plaintiff's Motion, and VACATES the November 2, 2020 hearing.

I. BACKGROUND

On June 8, 2020, Plaintiff Jasper Crook filed a Complaint against Robin Shea ("Defendant"). ("Complaint," Dkt. No. 1.) The Complaint alleges one cause of action: damages resulting from libel defamation. (Id. ¶ 25.) Jurisdictional allegations include that the action is for damages in excess of \$75,000 and that both Plaintiff and Defendant are citizens of California. (Id. ¶¶ 1, 3.)

Plaintiff filed two deficient requests for entry of default, and the Clerk directed him to resubmit the requests. (Dkt. Nos. 12, 13, 17, 18.) On July 16, 2020 Plaintiff filed a third request for entry of default, (Dkt. No. 19), which the Clerk granted on July 20, 2020. ("Entry of Default," Dkt. No. 20.)

Plaintiff filed a Motion for Default Judgment on July 10, 2020, prior to the Clerk's entry of default against Defendant. (Dkt. Nos. 14-16.) The Court denied the Motion for Default

Judgment on August 7, 2020, and ordered Plaintiff to show cause by August 31, 2020, why the action should not be dismissed for lack of subject matter jurisdiction. (Dkt. No. 21.) On September 3, 2020, Plaintiff filed a Response to the OSC. (Dkt. No. 23.) Defendant filed a Motion to Set Aside Default on August 21, 2020. (Dkt. No. 22.)

On September 30, 2020, the Court issued an Order dismissing the case for lack of subject matter jurisdiction, and denying as moot the Motion to Set Aside Default. ("September 30 Order," Dkt. No. 25.) Plaintiff filed this Motion for Reconsideration on October 16, 2020, (Mot.), followed by a Declaration of Jasper Crook, ("Crook Declaration," Dkt. No. 27). Defendant filed an Opposition on October 23, 2020. ("Opposition," Dkt. No. 28.)

II. LEGAL STANDARD

Rule 60(b) provides for relief from a final judgment, order, or proceeding upon a showing of the following:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

In this district, motions for reconsideration are also governed by Central District Local Rule 7-18. "Courts in this district have interpreted Local Rule 7-18 to be coextensive with Rules 59(e) and 60(b)." Tawfilis v. Allergan, Inc., 2015 WL 9982762, at *1 (C.D. Cal. Dec. 14, 2015). Local Rule 7-18 provides that a motion for reconsideration of the decision on any motion may be made only on the grounds of:

(a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

L. R. 7-18. "Unhappiness with the outcome is not included within the rule; unless the moving party shows that one of the stated grounds for reconsideration exists, the Court will not grant a

reconsideration.” Roe v. LexisNexis Risk Sols. Inc., 2013 WL 12134002, at *2 (C.D. Cal. May 2, 2013).

III. DISCUSSION

Plaintiff moves the Court to reconsider its Order dismissing the case for lack of subject matter jurisdiction. (See September 30 Order.) The Court finds that Plaintiff’s Motion fails to show any cognizable grounds to alter that Order.

Plaintiff repeats many of the arguments from his Response to the OSC, which the Court has already considered and rejected. Plaintiff argues that “[t]he federal court has jurisdiction over all matters in law and equity including common law within the United States borders involving United States citizens.” (Mot. at 4.) That is incorrect. As the Court pointed out in its Order, “[f]ederal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute.” Gunn v. Minton, 568 U.S. 251, 256 (2013). That is in keeping with Article 3 of the U.S. Constitution, which does not establish broad federal jurisdiction over all cases, as Plaintiff suggests, but instead empowers federal courts to handle controversies over federal law and enumerated areas that do not apply here.

Thus, contrary to his claims, Plaintiff is not entitled to bring his case in federal court simply by virtue of being “a United States citizen, beneficiary, and administrator of these lands.” (Mot. at 4.) Nor can Plaintiff create federal jurisdiction by paying the required filing fee of \$400.00. (Mot. at 4.) This filing fee does not buy federal jurisdiction. Rather, for a federal court to have jurisdiction over a matter, there must be (1) a federal question, or (2) diversity of citizenship between the parties and a controversy exceeding \$75,000. See 28 U.S.C. §§ 1331, 1332. As the Court explained in its Order, neither exists here. (See generally September 30 Order.) Instead, Plaintiff appears to assert libel claims, which arise out of state law. Mayes v. Wells Fargo Bank, 2012 WL 12897433, at *1 (C.D. Cal. Aug. 1, 2012); Opp’n at 3-4. Plaintiff cannot manufacture a federal question by asserting general Constitutional rights that do not apply to the facts alleged in the Complaint nor substantiate Plaintiff’s claim of libel.

Plaintiff’s argument about the timeliness of Defendant’s filings is also unavailing. As the Court explained, pursuant to the Federal Rules of Civil Procedure, “[i]f 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). After considering Plaintiff’s Complaint and Response to the OSC, the Court found that it lacks subject matter jurisdiction.

While Plaintiff may be unhappy with the Court’s determination (and the limits of federal jurisdiction more broadly), unhappiness with the outcome is not grounds for reconsideration. Roe v. LexisNexis Risk Sols. Inc., 2013 WL 12134002, at *2 (C.D. Cal. May 2, 2013). The Court DENIES Plaintiff’s Motion.

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IV. CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiff's motion for reconsideration.

IT IS SO ORDERED.

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **EDCV 20-1154 JGB (SHKx)** Date **September 30, 2020**

Title ***Jasper Crook v. Robin Shea***

Present: The Honorable **JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE**

MAYNOR GALVEZ

Not Reported

Deputy Clerk

Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Present

None Present

Proceedings: Order (1) DISMISSING Case for Lack of Subject Matter Jurisdiction; and (2) DENYING AS MOOT Defendant's Motion to Set Aside Default (Dkt. No. 22) (IN CHAMBERS)

On August 7, 2020, the Court ordered Plaintiff Jasper Crook to show cause why this action should not be dismissed for lack of subject matter jurisdiction. ("OSC," Dkt. No. 21.) Plaintiff responded to the OSC on September 3, 2020. ("Response to OSC," Dkt. No. 23.) For the reasons that follow, the Court finds that it does not have subject matter jurisdiction and DISMISSES the case without prejudice to Plaintiff filing the case in state court. The Court DENIES AS MOOT Defendant's Motion to Set Aside Default (Dkt. No. 22).

I. BACKGROUND

On June 8, 2020, Plaintiff Jasper Crook filed a Complaint against Robin Shea ("Defendant"). ("Complaint," Dkt. No. 1.) The Complaint alleges one cause of action: damages resulting from libel defamation. (*Id.* ¶ 25.) Jurisdictional allegations include that the action is for damages in excess of \$75,000 and that both Plaintiff and Defendant are citizens of California. (*Id.* ¶¶ 1, 3.)

Plaintiff filed two deficient requests for entry of default, and the Clerk directed him to resubmit the requests. (Dkt. Nos. 12, 13, 17, 18.) On July 16, 2020 Plaintiff filed a third request for entry of default, (Dkt. No. 19), which the Clerk granted on July 20, 2020. ("Entry of Default," Dkt. No. 20.)

Plaintiff filed a Motion for Default Judgment on July 10, 2020, prior to the Clerk's entry of default against Defendant. (Dkt. Nos. 14-16.) The Court denied the Motion for Default Judgment on August 7, 2020, and ordered Plaintiff to show cause by August 31, 2020 why the action should not be dismissed for lack of subject matter jurisdiction. (Dkt. No. 21.) On September 3, 2020, Plaintiff filed his Response to the OSC.

Defendant filed a Motion to Set Aside Default on August 21, 2020, with an accompanying Motion to Dismiss, challenging the Clerk's Entry of Default and the underlying defects with the Complaint. (Dkt. No. 22.) Plaintiff did not file an opposition.

II. LEGAL STANDARD

"Federal courts are courts of limited jurisdiction, possessing only that power authorized by Constitution and statute." Gunn v. Minton, 568 U.S. 257, 256 (2013). As such, federal courts only have original jurisdiction over civil actions in which (1) a federal question exists, or (2) complete diversity of citizenship between the parties exists and the amount in controversy exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332. A plaintiff properly invokes federal question jurisdiction when she pleads a colorable claim "arising under" the Constitution or laws of the United States. See Bell v. Hood, 327 U.S. 678, 681-85 (1946). Federal courts have a duty to examine their jurisdiction sua sponte. See FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231 (1990); United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004). "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).

III. DISCUSSION

Plaintiff's Response to the OSC argues that the Court has subject matter jurisdiction because the case concerns several constitutional rights and federal statutes. For the reasons described below, this Response is insufficient to confer subject matter jurisdiction on this Court.

A. Diversity Jurisdiction

In the OSC, the Court explained that the Complaint did not adequately allege the requirements of diversity jurisdiction. To establish diversity jurisdiction, the parties must be citizens of different states, and the matter in controversy must exceed \$75,000. See 28 U.S.C.A. § 1332(a). However, according to the Complaint, both Plaintiff and Defendant are citizens of the State of California. (Compl. ¶¶ 1-4.) In his Response to the OSC, Plaintiff does not refute that both parties are California citizens, but rather states that he is "unaware if Defendant has residency in other states." (Response to OSC at 3.) This does not meet the requirements of diversity of citizenship. Therefore, there is no subject matter jurisdiction pursuant to Section 1332.

B. Federal Question Jurisdiction

As the Court explained in the OSC, although the Complaint asserts jurisdiction “under the Seventh Amendment” and Fed. R. Civ. P. 38, (Compl. ¶ 5), these sources involve the right to a jury trial and are not bases for federal court jurisdiction. In response, Plaintiff asserts that Defendant violated three federal statutes: 18 U.S.C. §§ 1038 (false information and hoaxes), 1623 (false declarations before grand jury or court), and 876 (mailing or threatening communications). None of these allegations are legally tenable.

Plaintiff may not bring a claim under 18 U.S.C. § 1623 because “that provision is a criminal statute and does not create, explicitly or implicitly, any civil liability.” Fabbri v. Sheraton Plaza La Reina Hotel, 956 F.2d 1166 (9th Cir. 1992); see also Norwood v. Calle, 2014 WL 12617346, at *1 (C.D. Cal. Mar. 21, 2014) (finding that court had no subject matter jurisdiction over Section 1623 claim because it is a “criminal law[], and do[es] not provide Plaintiff a private right of action”). Similarly, “Section 876 is a criminal statute which does not provide a private cause of action.” Manuel v. Thomas, 967 F.2d 588 (9th Cir. 1992). A claim under 18 U.S.C. § 1038 similarly fails. Section 1038 authorizes “criminal and civil penalties when a person provides false information or conducts a hoax with respect to crimes ... [of a particular military or defense nature].” Cohen v. Nevada, 2007 WL 4458174, at *2 n.2 (D.Nev. Dec. 13, 2007). However, section 1038 is limited to hoaxes regarding a narrow range of military and infrastructure-related threats. Jianjun Xie v. Oakland Unified Sch. Dist., 2012 WL 5869707, at *7 (N.D. Cal. Nov. 19, 2012). Therefore, it is inapplicable to the allegations here.

Plaintiff also asserts several constitutional rights. Plaintiff alleges that he has “a right protected under and recognized by the 9th amendment and the 10th amendment, to retain his right to his good name and reputation free from erroneous printed libel.” (Response to OSC at 1.) Plaintiff also alleges Sixth, Ninth, Tenth, and Fourteenth Amendment rights to bring this action. (Id. at 2.) But none of these amendments apply to the facts alleged in Plaintiff’s Complaint, nor does Plaintiff explain how these constitute cognizable causes of action over which the Court has original jurisdiction.¹ These claims cannot support subject matter jurisdiction in this case.

Plaintiff instead appears to assert libel claims, which arise out of state law rather than federal law. Mayes v. Wells Fargo Bank, 2012 WL 12897433, at *1 (C.D. Cal. Aug. 1, 2012) (“An action for libel arises under state law.”). Thus, there is no subject matter jurisdiction pursuant to Section 1331.

¹ Plaintiff cites to Noonan v. Staples, seemingly to support a Constitutional libel claim, but his own excerpt acknowledges that the case “appl[ies] Massachusetts law.” (Response to OSC at 1-2.)

IV. CONCLUSION

The Court concludes that subject matter jurisdiction does not exist and DISMISSES the case without prejudice to Plaintiff filing this matter in state court.

Defendant's Motion to Set Aside Default is DENIED AS MOOT.

IT IS SO ORDERED.