

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-7094

September Term, 2021

1:21-cv-01526-UNA

Filed On: December 3, 2021

John Berman,

Appellant

v.

Kristin Draper,

Appellee

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Tatel and Rao, Circuit Judges, and Sentelle, Senior Circuit Judge

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief and supplement filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and the motion to expedite, it is

ORDERED AND ADJUDGED that the district court's order, entered August 5, 2021, dismissing the case without prejudice be affirmed. The district court correctly concluded that appellant failed to state a claim. "To state a claim under RICO, [a plaintiff] must allege that [the defendant] engaged in a 'pattern of racketeering activity.'" Ctr. for Immigr. Stud. v. Cohen, 806 F. App'x 7, 8 (D.C. Cir. 2020) (affirming district court's dismissal for failure to state a claim) (internal citation omitted). "We've repeatedly said that it's 'virtually impossible' to identify such a pattern by alleging a 'single scheme, single injury, and few victims.'" Id. (citing Edmondson & Gallagher v. Alban Towers Tenants Ass'n, 48 F.3d 1260, 1263 (D.C. Cir. 1995)). Additionally, although appellant argues that the district court should not have dismissed his amended complaint without giving him a further opportunity to amend, appellant never actually sought leave to amend his complaint before the district court. See Qian Ibrahim Zhao v. Unknown Agent of CIA, 411 F. App'x 336, 337 (D.C. Cir. 2010) ("By failing to seek leave from the district court to amend his complaint after it was dismissed, appellant forfeited the right to seek leave to amend on appeal."). It is

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-7094

September Term, 2021

FURTHER ORDERED that the motion to expedite be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JULY 30, 2021

Clerk, U.S. District & Bankruptcy
Court for the District of Columbia

JOHN BERMAN,

Plaintiff,

v.

KRISTIN DRAPER,

Defendant.

Civil Action No. 1:21-cv-01526 (UNA)

MEMORANDUM OPINION

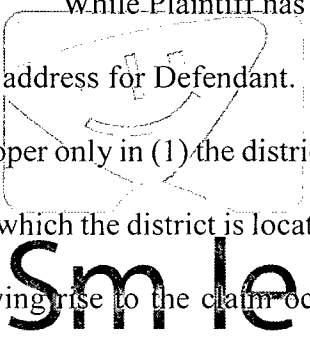
On June 3, 2021, Plaintiff filed a *pro se* complaint, Dkt. 1, and supporting declaration, Dkt. 5 (“Decl.”), a motion for injunctive relief, Dkt. 2, an application for leave to proceed in *forma pauperis* (“IFP”), and a motion for CM/ECF password, Dkt. 3. On June 10, 2021, another court in this District identified several deficiencies in Plaintiff’s filings. *See* Ord., Dkt. 5. Specifically, the Court advised Plaintiff that he (1) violated Federal Rule 11 by failing to sign the complaint, the motion for injunctive relief, the application for waiver of fees, and the declaration; (2) overlooked Local Civil Rule 5.1(c)(1) by providing only a post office box address without first requesting leave to do so, and; (3) requested CM/ECF password without including the information required by Local Civil Rule 5.4(b)(2). *Id.* at 1. Accordingly, the Court denied the motion for CM/ECF password without prejudice and provided Plaintiff with a 20-day extension to (1) submit amended filings bearing his signature; (2) either provide a full residence address, or file a motion to use a post office box as the mailing address, and; (3) renew his motion for CM/ECF password in accordance with Local Civil Rule 5.4(b). *Id.* at 2.

On June 14, 2021, Plaintiff filed an amended complaint, Dkt. 7 (“Am. Compl.”), a supplement to his application for leave to proceed IFP, Dkt. 8, and a renewed motion for CM/ECF

password, Dkt. 9. These filings are all signed and the motion for CM/ECF password contains the required supplemental information. *See generally, id.* In these filings, Plaintiff also supplies a “[t]emporary residence and mailing address [of] 319 Park Ave, Galt, CA 95632.” *See, e.g.,* Am. Compl. at p. 28. Plaintiff did not file anything to correct or otherwise supplant the deficient motion for injunctive relief. For the reasons explained below, this matter is dismissed, and the motions are denied.

Plaintiff sues an attorney, Kristin Draper of Shulman, Rogers, Gandal, Pordy & Ecker, P.A., *id.* at caption, ¶ 2, for RICO violations arising from alleged extortion and money laundering, *id.* at pp. 1–7, 9–25. Defendant apparently represented a trustee of revocable trust(s) once belonging to Plaintiff’s mother – and of which Plaintiff is a remainder beneficiary – in litigation that was filed in the Circuit Court for Montgomery County Maryland. *See id.* at pp. 3–19; *see also* Decl. Exs, Dkt. 5–1. The litigation involved the division and distribution of funds in these trust(s). *See id.* Plaintiff alleges that Defendant conspired with her law firm to unjustly withhold his portion of the trust(s)’ proceeds, *see* Am. Compl. ¶¶ 12–17, 32–3, 51–2, 62–3, 66–9, 76–7, withdrew unfair fees from the trust(s), *see id.* ¶¶ 13, 18–19, 30–6, 48, 55, 68, and “made three discrete attempts . . . to obtain Plaintiff’s consent to a ‘global’ resolution [of litigation]—extortion code for Plaintiff relinquishing some of his property—or rights . . . in trade for receiving that balance [of the trust(s)],” *id.* ¶ 71. He seeks unspecified damages and injunctive relief. *See id.* at pp. 20–1, 27–8.

While Plaintiff has now provided his own mailing address, he nonetheless fails to provide an address for Defendant. *See* Local Civil Rule 5.1(c)(1). Additionally, venue in a civil action is proper only in (1) the district where any defendant resides, if all defendants reside in the same state in which the district is located, (2) in a district in which a substantial part of the events or omissions giving rise to the claim occurred (or a substantial part of the property that is the subject of the

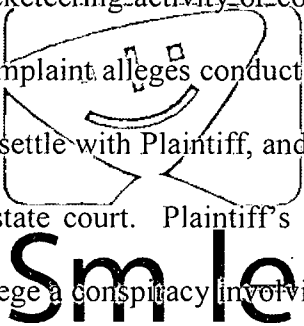


action is situated), or (3) in a district in which any defendant may be found, if there is no district in which the action may otherwise be brought. *See* 28 U.S.C. § 1391(b); *see also* 28 U.S.C. § 1406(a). Here, the trust(s) are located Maryland, Am. Compl. ¶¶ 1, 6, 29, the events giving rise to Plaintiff's claims occurred in Maryland, *see id.* ¶¶ 6, 10, 16, 18, 22, 30, 34, 37–8, 45, 54–6, and Plaintiff cites Maryland law repeatedly, *see, e.g.*, Am. Compl. ¶¶ 6, 9, 53, 62, 73–4.

Plaintiff attempts to tie his claims to the District of Columbia by noting that Defendant is barred in this District, and that Defendant's firm (although registered and headquartered in Maryland) maintains an office in the District. *See id.* ¶ 2. But neither fact supports venue here, as Defendant's law firm is not a party to this case, there is no indication that Defendant resides in the District, and Defendant's bar membership (standing alone) is not enough to establish venue.


Furthermore, Plaintiff's claims seek to interfere with estate administration proceedings before the Maryland the Montgomery County Circuit Court. *See id.* ¶¶ 6–7, 10, 18, 22, 55–9, 75; *see also* Decl. Exs. But district courts generally lack jurisdiction to intervene in state court proceedings. *See Richardson v. District of Columbia Court of Appeals*, 83 F.3d 1513, 1514 (D.C. Cir. 1996) (citing *District of Columbia v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)).

Finally, Plaintiff's allegations do not state a claim for relief. *See* Fed. R. Civ. P. 12(b)(6). To sustain a RICO claim, Plaintiff must allege that Defendant has engaged in a “pattern of racketeering activity or collection of unlawful debt.” *See* 18. U.S.C. § 1962. But the amended complaint alleges conduct that appears entirely lawful: that defendant represented a trustee, tried to settle with Plaintiff, and was bound by certain strictures of Maryland law and the directives of a state court. Plaintiff's amended complaint hardly suggests impropriety much less plausibly allege a conspiracy involving a pattern of racketeering activity.

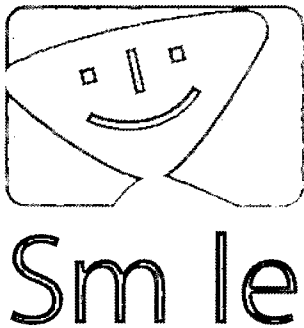


Consequently, the motion for leave to proceed IFP is granted, the motion for injunctive relief is denied, the renewed motion for CM/ECF password is denied as moot, and this matter is dismissed without prejudice. A separate order accompanies this memorandum opinion.

DATE: July 30, 2021



CARL J. NICHOLS
United States District Judge



United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-7094**September Term, 2021****1:21-cv-01526-UNA****Filed On: January 14, 2022**

John Berman,

Appellant

v.

Kristin Draper,

Appellee

BEFORE: Srinivasan, Chief Judge, Henderson, Rogers, Tatel, Millett,
Pillard, Wilkins, Katsas, Rao, Walker, and Jackson, Circuit
Judges, and Sentelle, Senior Circuit Judge

ORDER

Upon consideration of the petition for rehearing en banc and the supplement thereto, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk