FILED
United States Court of Appeals
Tenth Circuit

December 18, 2018

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LESLIE LYLE CAMICK,

Plaintiff - Appellant,

v.

HARRY R. HOLLADAY, ESQ.; KAITRAXX, LLC; EVELYN A. WATTLEY,

Defendants - Appellees.

No. 18-3065
(D.C. No. 6:17-CV-01110-EFM-GEB)
(D. Kan.)

LESLIE LYLE CAMICK,

Plaintiff - Appellant,

v.

E.A. WATTLEY,

Defendant - Appellee.

No. 18-3074
(D.C. No. 6:17-CV-01286-EFM-GEB)
(D. Kan.)

ORDER AND JUDGMENT*

Before **LUCERO**, **KELLY**, and **PHILLIPS**, Circuit Judges.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of these appeals. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The cases are therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

In these consolidated appeals Leslie Lyle Camick, appearing pro se, appeals the dismissal of his two civil suits against Evelyn A. Wattley, a former business partner with whom he was also romantically involved; Harry A. Holladay, an attorney and relative of Wattley; and KaiTraxx, LLC, the business entity formed by Camick and Wattley. In his two suits, Camick alleged violation of a federal trade secret statute, violation of his constitutional rights, and various state tort claims, all of which were dismissed under Fed. R. Civ. P. 12(b)(6). Exercising jurisdiction under 28 U.S.C. § 1291,[1] we affirm the dismissal of both complaints.

I. Background.

We only provide a brief background, because the district court provided detailed explanations of the factual circumstances in both orders. *See Camick v. Holladay*, No. 17-1110-EFM-GEB, 2018 WL 1523099, at *1-3 (D. Kan. Mar. 28, 2018); *Camick v. Wattley*, No. 17-1286-EFM-GEB, 2018 WL 1638449, at *1-3 (D. Kan. Apr. 5, 2018). Camick, a Canadian citizen, entered the United States in

[1] Wattley moved to dismiss No. 18-3074 for lack of jurisdiction, arguing the district court's April 5, 2018 order of dismissal was not final because of a pending request for filing restrictions against Camick, which the district court ultimately granted in orders issued on May 14, 2018 and June 12, 2018. The district court entered a separate judgment under Fed. R. Civ. P. 58 on June 12, 2018. We deny this motion because the district court's April 5 order finally resolved all causes of action and a separate Rule 58 judgment is not required to render an order final. *Constien v. United States*, 628 F.3d 1207, 1210 (10th Cir. 2010). Further, Wattley's pending motions for filing restrictions do not affect finality, as sanctions and filing restrictions are generally considered collateral to the merits. *See Cooter & Gell v. Hartmarx Corp*., 496 U.S. 384, 396 (1990), and *Lundahl v. Halabi*, 600 F. App'x 596, 605 (10th Cir. 2014).

2000 using the identity of his dead brother, Wayne. He became professionally and romantically involved with Wattley in 2004, and they formed a business relationship operating as KaiTraxx. Wattley was KaiTraxx's owner, president and CEO, but she agreed to share KaiTraxx's profits equally with Camick. Holladay was KaiTraxx's legal advisor. Camick and Wattley ended their relationship in the summer of 2011. The end of their relationship was the start of Camick's litigation.

Camick developed several inventions during the years he and Wattley were partners, including a cable protector, secure manhole system ("manhole security cover"), pole line hardware ("pole crab"), and a squirrel guard for aerial fiber optic and copper cables. He alleges he told Wattley he would not assign his trade secret or patent rights to these inventions to KaiTraxx. But at each of KaiTraxx's annual meetings from 2007 through 2011, Wattley recorded a statement that Camick had assigned his patent rights to KaiTraxx. Camick demonstrated a prototype manhole security cover, with Wattley present, in California to AT&T in April 2010. In the summer of 2010, Wattley entered Camick's technical data and manual about this prototype into a word document (the Manhole Security System Document).

Camick alleges that after he and Wattley ended their relationship, she filed a false police report in July 2011 alleging he had stolen a vehicle. Camick was arrested in three states based on that report, but all the state charges were dismissed. Wattley retrieved the vehicle when it was impounded, and inside was the Manhole Security System Document, and the prototype "pole crab." Wattley also complained to a U.S. Representative about Camick, whose office contacted immigration officials about

him. That led to federal investigations of Camick, who was ultimately convicted of mail fraud, wire fraud, material false statement to the U.S. Patent Office, and three counts of aggravated identity theft, all stemming from his unlawful use of his deceased brother's name and identity.

Camick was also convicted of obstruction of justice for filing a 42 U.S.C. § 1983 civil rights lawsuit against Wattley. Camick had been released on bond with a condition that he avoid all contact with any potential victims or witnesses, specifically including Wattley. But while out on bond, Camick filed a § 1983 complaint alleging Wattley's stolen-vehicle report was false. His suit was dismissed for failure to state a claim. He was convicted for obstruction of justice based on evidence that he filed the § 1983 suit against Wattley with the intent to retaliate against her for cooperating with law enforcement. *See United States v. Camick*, 796 F.3d 1206, 1219-23 (10th Cir. 2015). On appeal, all of Camick's convictions were reversed except the obstruction of justice conviction. *Id*. at 1224. After his release from prison, he filed these two lawsuits. Camick was removed to Canada by immigration officials. *See Camick v. Sessions*, 891 F.3d 1101, 1109 (8th Cir. 2018) (denying Camick's petitions for review of the decisions of the Board of Immigration Appeals).

A. Appeal No. 18-3065. Camick filed a 62-page amended complaint in May 2017 alleging (1) violation of the Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, 130 Stat. 376 (May 11, 2016) (DTSA); (2) violation of the Kansas Uniform Trade Secrets Act (KUTSA), Kan. Stat. Ann. § 60-3320 to 3322; (3) tortious

interference with prospective business relationship; (4) breach of fiduciary duty (against Holladay); (5) violation of the Racketeer Influenced and Corrupt Organizations Act (RICO); and (6) breach of contract (against Wattley).

1. DTSA. Camick alleged that Holladay, Wattley and KaiTraxx violated the DTSA and the KUTSA because Wattley, on her own or through KaiTraxx, and with Holladay's knowledge, unlawfully acquired his trade secret information in 2011 relating to the manhole security cover and the pole crab. Camick alleged Wattley took his trade secrets in July 2011, when she retrieved the vehicle containing the Manhole Security System Document and the prototype "pole crab." He alleges Wattley refused his October 2011 request that she return these items. The district court ruled that Camick failed to state a DTSA claim because it only applies to misappropriations of trade secrets after DTSA's May 11, 2016 enactment date, and Camick's allegations regarding the acquisition of trade secrets clearly occurred in 2011, well before DTSA was enacted. The court ruled that Camick did not allege any acts of acquisition, disclosure, or use of trade secrets after May 11, 2016.

2. Remaining Claims. Camick alleged that Wattley, KaiTraxx, and Holladay tortiously interfered with his prospective business relationship with AT&T regarding the manhole cover in 2010; that Holladay breached fiduciary duties owed him by not properly advising Wattley about unlawful and unethical conduct; that all the defendants violated RICO by conspiring to defraud him of his assets by wire or mail fraud by fraudulently reporting in the KaiTraxx annual meeting minutes that Wattley had a claim to his intellectual property and knowingly transporting his trade secrets

across state lines with Holladay's acquiescence in 2011; and that Wattley breached contracts with him by wrongly claiming that he assigned patent rights to KaiTraxx and quieted titled to their home on November 15, 2011 in her name.

The district court ruled that all of these claims, and the KUTSA claim, were time-barred by the applicable statutes of limitations. It rejected Camick's argument that these limitations periods should be equitably tolled under Kan. Stat. § 60-515(a), which tolls limitations periods for certain incapacitated or imprisoned persons.

B. Appeal No. 18-3074. In this suit solely against Wattley, Camick alleged (1) conspiracy to violate his civil rights under 42 U.S.C. § 1985(3); (2) misuse of judicial process; (3) malicious prosecution; (4) defamation; (5) the "tort of prima facie"; and (6) the tort of outrage. These claims were based on Camick's allegation that Wattley wrongly filed federal criminal proceedings against him that led to his convictions and wrongful imprisonment. In his § 1985(3) claim—the only federal cause of action—Camick claimed Wattley acted with government employees to deny him his civil rights. In his misuse of judicial process and malicious prosecution claims, he alleged Wattley devised a plan to have federal law enforcement officials have him convicted of a felony to make him removable from the United States. His defamation claim alleged Wattley posted defamatory statements about him on websites and court pleadings. In his claims for the "tort of prima facie" and the tort of outrage, Camick alleged Wattley expressed an intent to harm him and her behavior was outrageous.

The district court dismissed the § 1985(3) claim for failure to state a claim because Camick did not allege that he was a member of a protected class or that Wattley acted with any discriminatory animus, which are essential elements of a § 1985 claim. *See Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971) (holding that § 1985(3) applies only to conspiracies motivated by some racial or class invidious discriminatory animus). The district court then declined to exercise supplemental jurisdiction over any of the remaining state claims.

II. Analysis.

A. Standard of Review. We review the Rule 12(b)(6) dismissals de novo, evaluating whether the complaints' "factual allegations plausibly suggest the defendant[s are] liable." *Mocek v. City of Albuquerque*, 813 F.3d 912, 921 (10th Cir. 2015) (internal quotation marks omitted). Because Camick is proceeding pro se, "we construe his pleadings liberally." *Ledbetter v. City of Topeka*, 318 F.3d 1183, 1187 (10th Cir. 2003).

B. Appeal No. 18-3065. Camick asserts the district court erred in dismissing his DTSA claim, arguing that Wattley's continued possession of his trade secrets after enactment of the DTSA constitutes misappropriation under the DTSA. We disagree. The DTSA only applies to "any misappropriation of a trade secret, (as defined in [the DTSA]) for which any act occurs *on or after* the date of the enactment of [the] Act" on May 11, 2016. DTSA, 130 Stat. at 381-82 (emphasis added). The DTSA defines "misappropriation" as the "acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by

improper means"; or the "disclosure or use of a trade secret" without the consent of the owner. 18 U.S.C. §§ 1839(5)(A)-(B).

Camick is correct that courts have interpreted the DTSA to apply to misappropriations that began prior to the DTSA's enactment, but only if an act of misappropriation continues to occur after the enactment date. *See, e.g., Teva Pharm. USA, Inc. v. Sandhu*, 291 F. Supp. 3d 659, 674-75 (E.D. Pa. 2018) (observing that "one who acquired and used a trade secret before enactment of the DTSA and *continues to use* it after enactment is liable" (emphasis added)); *Yeiser Research & Dev. LLC v. Teknor Apex Co*., 281 F. Supp. 3d 1021, 1057 (S.D. Cal. 2017) (holding that the DTSA applies to the misappropriation of trade secrets before its enactment date "as long as the misappropriation continues to occur after the enactment date"). But here, there is no factual allegation in Camick's complaint that any misappropriation continued after DTSA's enactment. As the district court correctly held, Camick's complaint does not allege *any act* of acquisition, disclosure, or use of trade secrets occurring after DTSA's May 11, 2016 enactment date. Camick alleges that Wattley still possesses his trade secrets, but an allegation that a defendant merely continues to possess a trade secret is not an allegation the defendant acquired, disclosed, or used a trade secret—the DTSA's definitions of misappropriation—after the DTSA's enactment. Camick's conclusory allegations of "past and present" misappropriation, devoid of any supporting factual allegation, are insufficient to withstand a motion to dismiss under Rule 12(b)(6). "A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not

do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (alteration, citation, and internal quotation marks omitted). Even giving Camick's complaint a generously liberal construction, it wholly fails to comply with the requirements of *Iqbal*, *id*. We agree that Camick failed to state a DTSA claim against defendants.

Next, as to all the remaining claims that were dismissed as time-barred, Camick argues the district court erred in not tolling the limitations period under Kan. Stat. Ann. § 60-515(a). The district court's order correctly analyzed the relevant dates and limitations periods for each claim, and Camick does not argue on appeal that any statute of limitations was incorrectly applied by the district court. Section 60-515(a) permits a statute of limitations to be tolled for any person who is incapacitated or imprisoned at the time the cause of action accrues or at any time during the period the statute of limitations is running. Camick argues this tolling provision applies to him simply because the district court judge presiding over his criminal trial warned him against filing retaliatory lawsuits against Wattley. But that court denied the government's motion to enjoin Camick from filing retaliatory suits against Wattley, and only warned Camick that it *might* grant the government's request for injunctive relief in the future if Camick filed further retaliatory litigation. Thus, the district court in the criminal proceedings never enjoined Camick from filing suit nor otherwise denied him access to the courts. By its express terms, § 60-515(a) does not apply to an incarcerated person who "has access to the court for purposes of bringing an action." *Id*. Camick has not alleged any facts that plausibly

suggest he did not have access to the courts when his claims accrued or while the limitations periods were running. The district court correctly ruled the limitations periods were not tolled under § 60-515(a). We affirm the dismissal of these claims.

C. Appeal No. 18-3074. Camick contends the district court erred in dismissing his § 1985(3) complaint, arguing that his complaint stated that he is a Canadian and that Wattley conspired to have him removed to Canada, and these allegations, by logical inference, imply that Wattley acted with invidious discrimination against him because he is Canadian. We are not persuaded. First, Camick did not raise this argument before the district court in response to Wattley's motion to dismiss. We generally do not consider issues that were not raised before the district court. *See Richison v. Ernest Grp., Inc*., 634 F.3d 1123, 1127-28 (10th Cir. 2011). Second, we agree with the district court that Camick's complaint wholly lacks any facts plausibly alleging that Wattley acted "because of" any racial or class-based discriminatory animus towards him. Thus, the district court properly dismissed Camick's § 1985(3) claim for failure to state a claim under the standards established in *Iqbal*, noted above. *Cf. Iqbal*, 556 U.S. at 681 (holding that plaintiff's allegations that defendants designated him as being "of high interest" because of his race, religion, or national origin were insufficient in light of "more likely explanations" (internal quotation marks omitted)).

Camick next argues the district court erred in not permitting him to amend his complaint. It does not appear from the record, however, that Camick ever filed a motion seeking to amend his complaint, nor does he cite to such a motion in his

appellate briefs. In the absence of a request to amend, the district court could dismiss the action rather than grant leave to amend on its own initiative. *See Calderon v. Kan. Dep't of Soc. & Rehab. Servs*., 181 F.3d 1180, 1186 (10th Cir. 1999) ("[A] court need not grant leave to amend when a party fails to file a formal motion.").

III. Conclusion.

We deny Wattley's motion to dismiss No. 18-3074 for lack of jurisdiction. We deny Camick's request in No. 18-3065 to enlarge the record on appeal. We affirm the judgments underlying Nos. 18-3065 and 18-3074.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge