

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ESTATE OF RICHARD BYRD,

Plaintiff,

vs.

ATWATER RESERVE OFFICER
MICHAEL TEATER, et al.,

Defendant.

No. CV-F-06-900 OWW/GSA

MEMORANDUM DECISION GRANTING
DEFENDANT GORDON SPENCER'S
MOTION FOR JUDGMENT PURSUANT
TO RULE 54(b), FEDERAL RULES
OF CIVIL PROCEDURE (Doc.
149), VACATING ORAL ARGUMENT
SET FOR FEBRUARY 2, 2009,
AND DIRECTING CLERK OF COURT
TO ENTER JUDGMENT FOR
DEFENDANT GORDON SPENCER AND
AGAINST PLAINTIFF

Defendant Gordon Spencer, in his official capacity as Merced County District Attorney and in his personal capacity moves for entry of judgment pursuant to Rule 54(b), Federal Rules of Civil Procedure.

Plaintiff, represented by Kevin Little, has not filed an opposition or statement of non-opposition within the time required by Rule 78-230(c), Local Rules of Practice.

By Memorandum Decision and Order filed on February 21, 2008,

1 (Doc. 79), the Court ruled as follows:

2 • The Court granted Defendant Spencer's motion to
3 dismiss Plaintiff's Section 1983 claims based on
4 Plaintiff's alleged false arrest and prosecution, on
5 delay in the criminal proceedings against Plaintiff,
6 and on the sentence imposed pursuant to *Heck v.*
7 *Humphrey*, but denied dismissal to the extent the
8 Section 1983 claim was based on excessive bail;

9 • The Court held that Defendant Spencer was
10 entitled to absolute prosecutorial immunity
11 to the extent that Plaintiff sought monetary
12 relief for Spencer's actions as a prosecutor,
13 but denied dismissal to the extent Plaintiff
14 alleged that Spencer conspired to acquire
15 Plaintiff's real property and to the extent
16 Plaintiff sought equitable relief;

17 • The Court held that Defendant Spencer, in
18 his official capacity as Merced County
19 District Attorney, was not a "person" within
20 the meaning of Section 1983, but denied
21 dismissal to the extent the Complaint alleged
22 claims against Spencer in his individual
23 capacity which have not been barred by
24 absolute prosecutorial immunity;

25 • The Court dismissed Plaintiff's state law
26 claims for damages and equitable relief
against Defendant Spencer because of
Plaintiff's failure to comply with the
California Tort Claims Act for actions taken
by Spencer in his capacity as Merced County
District Attorney, but denied dismissal of
the state law claims for damages and
equitable relief arising out of Spencer's
acquisition of Plaintiff's real property;

 • The Court dismissed Plaintiff's state law
claims based on prosecutorial immunity set
forth in California Government Code § 821.6,
except for Plaintiff's claim that Spencer
wrongfully acquired an interest in
Plaintiff's real property.

 After Plaintiff filed a First Amended Complaint, Defendant
Spencer moved for summary judgment on all remaining claims
alleged against him. Plaintiff filed a statement of non-

1 opposition. By Memorandum Decision and Order filed on September
2 9, 2008, (Doc. 134), Defendant Spencer's motion for summary
3 judgment was granted.

4 In addition, the Court has dismissed with prejudice or
5 granted judgment on the pleadings and/or summary judgment in
6 favor of all other Defendants in connection with Plaintiff's
7 claims for relief based on alleged violations of his
8 constitutional rights pursuant to 42 U.S.C. § 1983. The only
9 claims remaining in this action are state law claims against
10 Defendants Carl Campodonica, William and Lillian Campodonica
11 Trust, John Julius, Garth Pecchenino, David Gresham, Hostetler
12 Investments, LLC, and Bellevue Road Partners, LLC. Plaintiff has
13 moved to dismiss the remaining state law claims pursuant to 28
14 U.S.C. § 1367(c)(3). This motion to dismiss was granted by
15 Memorandum Decision and Order filed on September 24, 2008, (Doc.
16 143), conditioned on Plaintiff's counsel's timely compliance with
17 the August 7, 2008 Order compelling Plaintiff to provide discovery
18 and pay a monetary sanction. Mr. Little has provided the
19 required discovery but has sought more time to pay the monetary
20 sanction, which request is pending before the Court.

21 Rule 54(b) provides:

22 When an action presents more than one claim
23 for relief ... or when multiple parties are
24 involved, the court may direct entry of a
25 final judgment as to one or more, but fewer
26 than all, claims or parties only if the court
expressly determines that there is no just
reason for delay. Otherwise, any order or
other decision, however designated, that
adjudicates fewer than all the claims or the

1 rights and liabilities of fewer than all the
2 parties does not end the action as to any of
3 the claims or parties and may be revised at
4 any time before the entry of a judgment
5 adjudicating all the claims and all the
6 parties' rights and liabilities.

7 Defendant Spencer's motion for entry of an order directing
8 entry of judgment in his favor and against Plaintiff pursuant to
9 Rule 54(b) is GRANTED. All claims against Defendant Spencer have
10 been resolved in Defendant Spencer's favor. Mr. Little has been
11 extremely dilatory in prosecuting this action and, as noted, has
12 sought additional time to comply with a Court-ordered monetary
13 sanction. It is unclear whether or when this action will be
14 finally resolved as to the remaining Defendants in this action.
15 Plaintiff has not opposed this motion. The Court expressly finds
16 that there is no just reason to delay the entry of judgment in
17 favor of Defendant Gordon Spencer and against Plaintiff.

18 For the reasons stated:

19 1. Defendant Gordon Spencer's motion for entry of judgment
20 pursuant to Rule 54(b), Federal Rules of Civil Procedure, is
21 GRANTED;

22 2. Oral argument set for February 2, 2009 is VACATED;

23 3. The Clerk of the Court is directed to ENTER JUDGMENT IN
24 FAVOR OF DEFENDANT GORDON SPENCER AND AGAINST PLAINTIFF PURSUANT
25 TO RULE 54(b), FEDERAL RULES OF CIVIL PROCEDURE.

26 IT IS SO ORDERED.

Dated: January 29, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE