

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

ERNEST C. ALDRIDGE, No. CIV S-10-1045-FCD-CMK

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

J. GARCIA,

Defendant.

Plaintiff, who is proceeding pro se, brings this civil action relating to a notice of eviction posted on real property incident to a foreclosure order. Pending before the court is defendant's unopposed motion to dismiss (Doc. 5), which was submitted for decision without oral argument.

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I. BACKGROUND

This action proceeds against defendant J. Garcia, who is a Deputy United States Marshal. Defendant recites the following general background, which plaintiff has not opposed:

Aldridge alleges that Deputy Garcia “seize[d] property owned by Plaintiff without warrant or cause or lawful court process,” violating his Fourth Amendment rights, by posting on certain real properties documents entitled “Notice of Opportunity to State Claim of Right to Possession.” This case is the latest collateral litigation regarding the United States’ collection of unpaid federal taxes owed by Michael and Leone Carey. A brief explanation of the underlying case is necessary.

In 2005, the United States brought suit against Michael and Leone Carey and the trustees of two purported trusts – the Ranch Holding Trust and the Hidden Meadows Holding Trust. The action sought to foreclose federal tax liens on three pieces of real property. The real properties are located at 22510 Heartwood Lane, Palo Cedro, California, 96073; 3041 Lawrence Road, Redding, California, 96002; and 23658 Highway 299E, Bella Vista, California 96008. The United States alleged that while the properties were nominally owned by the two purported Trusts, Michael and Leone Carey were the true and beneficial owners and had transferred the properties to the purported Trusts in order to prevent the United States from collecting lawful tax debts.

On July 5, 2007, the District Court entered judgment in favor of the United States and against Michael and Leone Carey and the trustees of the purported Trusts. It held that the trusts are “sham entities” that Michael and Leone Carey used “in an attempt to shield . . . properties from the reach of their creditors.” The Ninth Circuit affirmed. Aldridge is the present Trustee of the sham Trusts.

After judgment was entered, the United States moved to enforce the judgment through an order foreclosing the tax liens. The Court granted the motion on February 11, 2008, issuing an order permitting the United States to enforce its tax liens against the real properties. The order further stated:

All persons occupying the Palo Cedro, Redding, and Bella Vista properties shall leave and vacate the properties permanently within 30 days of the date of this Order If any person fails or refuses to leave and vacate the property by the time specified in this Order, the United States Marshal's Office, alone, is authorized to take whatever action they deem appropriate to remove such person from the premises. . . .

This order is referred to below as the “February 11, 2008, Order.”

Pursuant to the Court's Order, Deputy United States Marshals posted eviction notices on each of the properties. Plaintiff sued them [in case no. CIV-S-09-1737-GEB-CMK], alleging that they had unlawfully seized his property. On the United States' motion, the case was dismissed. The Ninth Circuit summarily affirmed.

1 On March 12, 2010, the United States filed a motion for an order
2 of ejectment in the District Court suit, *United States v. Carey*. The motion
3 requested that the Court order the eviction of everyone occupying the
4 properties, and gave the occupants notice of the motion in order to permit
5 them to contend that they had a right to remain. The United States
6 Marshal Service posted the Motion and its supporting documents on each
7 of the properties. The documents attached to Aldridge's Complaint, titled
8 "Notice of Opportunity to State Claim of Right to Possession," were
9 among the documents posted.

10 Aldridge claims that by serving the Notices of Opportunity and the
11 associated documents, Deputy Garcia "seized" his property. He
12 acknowledges in his complaint that Deputy Garcia was acting in his
13 capacity as a Deputy United States Marshal. He also acknowledges that
14 the United States is the real party in interest.

15 As defendants notes, plaintiff admits that defendant acted pursuant to court order in furtherance
16 of his official duties as a Deputy United States Marshal.

17 II. DISCUSSION

18 Defendants argues, among other things, that this action should be dismissed, with
19 prejudice, because: (1) he is entitled to quasi-judicial immunity; and (2) the action is barred by
20 sovereign immunity. The court agrees with defendant that, as with Aldridge's prior action in
21 case no. CIV-S-09-1737-GEB-CMK, the instant action must also be dismissed for these reasons.¹

22 A. Quasi-Judicial Immunity

23 In Fayle v. Stapley, the Ninth Circuit concluded that certain government officers
24 were immune from civil rights liability for actions authorized by a court order. See 607 F.2d
25 858, 862 & n.4 (9th Cir. 1979). In two other cases, the Ninth Circuit stated in dicta that those
26 who execute court orders are shielded from liability in civil rights actions by the doctrine of

27 ¹ On September 16, 2010, the court issued findings and recommendations that this
28 action be dismissed as a sanction for plaintiff's failure to appear at the September 9, 2010, initial
29 scheduling conference. In response to the findings and recommendations, defendant has
30 requested the court to rule on the merits of his pending unopposed motion to dismiss. This
31 request is granted. Upon expiration for the time to file objections to these findings and
32 recommendations, both will be presented to the District Judge as independently adequate reasons
33 to dismiss this action.

1 quasi-judicial immunity. See Gregory v. Thompson, 500 F.2d 59, 65 n.6 (9th Cir. 1974);
2 Gillibeau v. City of Richmond, 417 F.2d 426, 429 (9th Cir. 1969). In Coverdell v. Department of
3 Social Services, the Ninth Circuit joined several other circuits in holding that “persons who
4 faithfully execute valid court orders are absolutely immune from liability. . . .” 834 F.2d 758,
5 764-65 (9th Cir. 1987). In that case, the court concluded that a social service worker executing
6 an order to place Coverdell’s child in protective custody enjoyed absolute quasi-judicial
7 immunity. See id. at 765. In so holding, the court stated:

8 Coverdell had an opportunity to challenge the court’s order that
9 Christina be apprehended and placed in temporary shelter care. That order
10 became final long ago and it is not at issue on this appeal. Coverdell has
11 neither alleged nor shown that in executing the order, McLaughlin
12 exceeded its scope or acted improperly in any other way. Coverdell’s
13 complaint, at bottom, is that McLaughlin apprehended Christina without
14 notice shortly after the child’s birth, while mother and child were still
15 recuperating at the hospital. McLaughlin’s act, however, was plainly
16 authorized by the court’s order, which expressly directed the immediate
17 apprehension of the child from the hospital. . . .

18 Id.

19 The court agrees with defendants that, accepting the allegations in the complaint
20 as true, he is entitled to absolute immunity because he was performing the ministerial act of
21 enforcing the court’s foreclosure order and there is no allegation that he exceeded his authority in
22 doing so.

23 B. **Sovereign Immunity**

24 The United States, as a sovereign, may not be sued without its consent.
25 See Unites States v. Dalm, 494 U.S. 596 608 (1990). Where the government has not consented
26 to suit, the district court lacks subject matter jurisdiction and the action must be dismissed. See
Hutchinson v. United States, 677 F.2d 1322, 1327 (9th Cir. 1982). The doctrine of sovereign
immunity extends to agents and officers of the United States who are sued in their official
capacities. See Spalding v. Vilas, 161 U.S. 483, 498-99 (1896); see also Hutchinson, 677 F.2d at
1322. In this case, plaintiff alleges that the individual defendant was acting in his official

1 capacity as a Deputy United States Marshal. He also asserts, as defendant observes, that the
2 United States is the real party in interest as the employer and surety for defendant. From these
3 allegations, it is clear that plaintiff has sued defendant in his official capacity as an agent and
4 officer of the United States. Because the government has not consented to be sued, this court
5 lacks subject matter jurisdiction and the action must be dismissed with prejudice.

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7 **III. CONCLUSION**

8 Based on the foregoing, the undersigned recommends that:

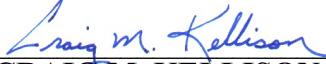
- 9 1. Defendant's motion to dismiss (Doc. 5) be granted; and
10 2. This action be dismissed with prejudice.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
13 after being served with these findings and recommendations, any party may file written
14 objections with the court. Responses to objections shall be filed within 14 days after service of
15 objections. Failure to file objections within the specified time may waive the right to appeal.

16 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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18 DATED: November 9, 2010

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20 CRAIG M. KELLISON
21 UNITED STATES MAGISTRATE JUDGE