IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID MARTIN PRICE, et al., Plaintiffs, vs. SEVENTH CIRCUIT COURT OF APPEALS, et al., Defendants.	Case No. 06-cv-03751 Honorable James B. Zagel

DEFENDANT ALCOA, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Defendant Alcoa, Inc. ("Alcoa") respectfully submits this Memorandum of Law in Support of its Motion to Dismiss for Failure to State a Claim pursuant to Fed. R. Civ. P. 8(a) and Fed. R. Civ. P. 12(b)(6).

Preliminary Statement

This lawsuit, a purported civil rights action under 42 U.S.C. § 1983, is little more than a disjointed collection of ravings that marks the latest effort by Plaintiff Michael Lynch ("Lynch") and his associates to abuse the judicial process in an effort to stave off the effects of Lynch's personal bankruptcy and harass the Defendants.[1] Even construed liberally, it provides no factual or legal basis for a claim of any sort against Alcoa. It should, therefore, be dismissed.

[1] Lynch, together with co-Plaintiffs Kimberlee Lynch and Kevin Lynch (the "Lynch Plaintiffs") have voluntarily moved to dismiss their claims against the Defendants on the basis that they were "misjoined in this case". (See Docket # 168.) It is unclear on what basis the Lynch Plaintiffs contend they were "misjoined", inasmuch as they each signed the Complaint. (See Complaint, p. 60.) It is also unclear from the Complaint what the alleged basis for Plaintiff Price's involvement in this litigation is or, indeed, why he even has standing to bring this Complaint. The Complaint alleges only that Price is an "associate" of Lynch. (See Complaint, ¶ 169.) Notably, Price is the respondent in a pending action brought by the Attorney General of the State of Kansas alleging that he has engaged in the unauthorized practice of law. See State of Kansas v. Price, et al., No. 06-4082-JAR (Dist. Kan. July 26, 2006) (Petition in Quo Warranto).

First, it is unclear from the face of the Complaint what rule of law Alcoa is alleged to have violated. The Complaint thus does not comply with Fed. R. Civ. P. 8(a)'s standard for notice pleading.

Second, to the extent the Complaint styles itself as a claim under 42 U.S.C. § 1983, it cannot, as a matter of law, state a claim against Alcoa, which is a for-profit corporation and not a state actor.

Third, to the extent the Complaint is construed liberally to allege a conspiracy to violate the Plaintiffs' civil rights under 42 U.S.C. § 1985, it does not contain the requisite factual or legal elements of such a claim, including any allegation that the Defendants were motivated by class-based or racially discriminatory animus.

For these reasons, the Complaint should be dismissed for failure to comply with the notice pleading requirement of Fed. R. Civ. P. 8(a) and failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6).

Background

This Complaint represents the latest attempt by Plaintiff Michael Lynch and his associates to abuse the judicial process in support of Lynch's continuing harassment of Alcoa and other Defendants. That harassment began some seven years ago, shortly after a group of investors headed by Lynch purchased an aluminum smelting plant in McCook, Illinois from the Reynolds Metals Co. ("Reynolds"). In June, 1999, the limited liability company headed by Lynch, McCook Metals LLC ("McCook Metals"), sued Alcoa in federal district court in Chicago, asserting claims of patent invalidity, tortious interference with contract and antitrust violations. See McCook Metals, L.L.C. v. Alcoa, Inc., No. 99-cv-3856 (N.D. Ill. June 11, 1999) (complaint). The complaint was later withdrawn by Joseph Baldi, the United States Trustee

appointed to administer the estate of McCook Metals during bankruptcy proceedings. See id., No. 99-cv-3856 (N.D. Ill. May 16, 2002) (stipulation of dismissal with prejudice). That same year, after Alcoa announced its agreement to acquire Reynolds, McCook Metals challenged the acquisition before regulators from the European Union and the United States Department of Justice. Ultimately, McCook Metals was able to persuade European Union officials to require the divestiture of a minority stake in an aluminum smelting plant owned by Reynolds in Longview, Washington as a condition of permitting the acquisition to proceed. Not satisfied with that result, however, Lynch, acting through McCook Metals, also sought to block the Reynolds acquisition by filing an antitrust action against Alcoa in the United States District Court for the District of Columbia in May, 2000. See McCook Metals, L.L.C. v. Alcoa, Inc., No. 00-cv-1011 (D.C. Dist. May 8, 2000) (complaint). The case was withdrawn in 2001, after Alcoa agreed to sell the Longview smelting plant to another limited liability company controlled by Lynch, Longview Aluminum LLC ("Longview Aluminum"). See id., No. 00-cv-1011 (D.C. Dist. March 7, 2001) (stipulation of dismissal with prejudice).

Later in 2000, McCook Metals filed another action against Alcoa in federal district court in Chicago, again asserting claims of patent invalidity and tortious interference with contract. See McCook Metals, L.L.C. v. Alcoa, Inc., No. 00-cv-6782 (N.D. Ill. Oct. 31, 2000) (complaint). The case was dismissed for lack of a case or controversy in March 2001. See id., No. 00-cv-6782 (N.D. Ill. March 13, 2001) (memorandum opinion dismissing case pursuant to Fed. R. Civ. P. 12(b)(1)). McCook Metals promptly appealed the decision, but the appeal was withdrawn by the company's bankruptcy trustee in 2002. See id., No. 00-cv-6782 (N.D. Ill. May 20, 2002) (order dismissing appeal). Lynch filed yet another action against Alcoa in 2003, through Longview Aluminum, seeking declaratory and injunctive relief preventing Alcoa from

terminating a lease for property underlying the Longview smelter after Longview Aluminum failed to operate the plant, as it was contractually obligated to do. See Longview Aluminum, L.L.C. v. Alcoa, Inc., No. 03-cv-0709 (N.D. Ill. Jan. 31, 2003) (complaint). That suit was later withdrawn. See id., No. 03-cv-0709 (N.D. Ill. Feb. 14, 2003) (notice of dismissal). All told, Lynch's lawsuits—while uniformly frivolous—have resulted in enormous costs to Alcoa, both in terms of legal expenses and wasted time.

Lynch's ventures in the aluminum industry, meanwhile, proved unsuccessful. McCook Metals entered Chapter 11 bankruptcy proceedings in August 2001.[2] See In re: McCook Metal LLC, No. 01 B 27326 (Bankr. N.D. Ill. Aug. 6, 2001) (voluntary Chapter 11 petition). Longview Aluminum followed McCook Metals into bankruptcy in March 2003. See In re: Longview Aluminum LLC, No. 03-10642 (Bankr. D. Del. March 4, 2003) (voluntary Chapter 11 petition).[3] In August 2005, Lynch entered personal bankruptcy. See In re: Michael W. Lynch, No. 05-32440 (Bankr. N.D. Ill. Aug. 17, 2005) (voluntary Chapter 11 petition).

Even in bankruptcy, Lynch and his associates have continued to use the judicial process to harass those who have had the misfortune to cross Lynch's path. In addition to Alcoa, their targets have now expanded to include, among others, the courts that have presided over the many cases spawned by Lynch's and his companies' bankruptcies, the various lawyers and law firms that have represented Lynch and his companies in those proceedings, and even some of Lynch's former business partners. This lawsuit names all those parties among its nearly five dozen Defendants. Notably, this Court recently dismissed as frivolous, and then sealed, a lawsuit

[2] The case was converted to a Chapter 7 proceeding in February 2003. See In re: McCook Metals LLC, No. 01 B 27326 (Bankr. N.D. Ill. Feb. 13, 2003) (order converting proceeding to Chapter 7).

brought by Lynch's co-Plaintiff, David Martin Price, against many of the same Defendants. See Price v. Seventh Circuit Court of Appeals, et. al, No. 06-cv-2500 (N.D. Ill. May 10, 2006) (docket entry) (attached to Complaint as "Attch. 4"). This Complaint was filed in the District of Kansas less than two weeks later, and subsequently transferred to this District.

Argument

I. THE COMPLAINT DOES NOT SATISFY THE RULE 8 NOTICE PLEADING STANDARD

In order to satisfy the rules of notice pleading, a complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief". Fed. R. Civ. P. 8(a)(2). "The primary purpose of [the rule] is rooted in fair notice: Under Rule 8, a complaint must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is." Vicom, Inc. v. Harbridge Merch. Servs., 20 F.3d 771, 775 (7th Cir. 1994) (citation and internal quotation marks omitted). Although courts must "construe complaints by pro se litigants liberally", a complaint that does not clearly articulate a valid grievance must be dismissed. See McCready v. eBay, Inc., Nos. 05-2450 & 05-2043, 2006 U.S. App. LEXIS 17101, at *16 (7th Cir. Jan. 19, 2006); Casio Computer Co. v. Noren, 35 Fed. Appx. 247, 250 (7th Cir. 2002) (refusing to excuse pro se litigant from failure to abide by Fed. R. Civ. P. 8 because "[p]ro se litigants are entitled to a limited degree of procedural protections as provided by statutes and case law, but they are not entitled to claim complete dispensation of procedural rules").

The instant Complaint is little more than "gobbledygook". McCready, Nos. 05-2450 & 05-2043, 2006 U.S. App. LEXIS at *16. It is a stream-of-consciousness narrative that

[3] The proceeding was transferred to the Northern District of Illinois in March 2003. See In re McCook Metal LLC, No. 01 B 27326 (Bankr. N.D. Ill. March 18, 2003) (order transferring venue of Longview Aluminum bankruptcy).

fails to allege any claim with specificity. Neither Alcoa, nor this Court, should be required to "try to fish a gold coin from a bucket of mud". United States v. Lockheed-Martin Corp., 328 F.3d 374, 378 (7th Cir. 2003) (citation and internal quotation marks omitted) (noting that "dismissal of a complaint on the ground that it is unintelligible is unexceptionable"). No matter how liberally the Complaint is read, it is simply not clear why Alcoa is named as a Defendant, alongside more than fifty other Defendants, including members of the federal and state judiciary, the U.S. Attorney's Office, numerous law firms, banks and investment firms, and former business partners of Plaintiff Michael Lynch. Even taken as true, the Complaint does not make clear what rule of law Alcoa is accused of violating and how it purportedly did so.

In such circumstances, permitting Plaintiffs to amend the Complaint would be a waste of time and money. Where a complaint is patently frivolous and granting a plaintiff leave to amend would be futile, amendment should not be permitted. See Moore v. State of Indiana, 999 F.2d 1125, 1128 (7th Cir. 1993) (denying plaintiff leave to amend Section 1983 complaint "when to do so would be futile"). That is particularly the case where, as here, this very Court only days before this lawsuit was filed dismissed as "frivolous" a suit by one of the same plaintiffs against many of the same Defendants, apparently arising out of the same purported circumstances. (See Complaint ¶ 184; Price v. Seventh Circuit Court of Appeals, et. al, No. 06-cv-2500 (N.D. Ill. May 10, 2006) (docket entry).

II. THE COMPLAINT DOES NOT STATE A CLAIM UNDER 42 U.S.C. § 1983 OR 42 U.S.C. § 1985

A court should grant a motion to dismiss for failure to state a claim if, after construing the pleadings in a light that is most favorable to the plaintiff and taking well-pleaded allegations in the complaint as true, the plaintiff "can prove no set of facts in support of his claim

which would entitle him to relief." McCready, Nos. 05-2450 & 05-2043, 2006 U.S. App. LEXIS at *9-*10.

A. The Complaint Does Not Allege that Alcoa Is a State Actor or Acted Under Color of State Law

Plaintiffs purport to bring the instant Complaint pursuant to 42 U.S.C. § 1983. (See Complaint, pp. 7, 11.) "A cause of action under § 1983 requires a showing that the plaintiff was deprived of a right secured by the Constitution or federal law, by a person acting under color of law." Thurman v. Village of Homewood, 446 F.3d 682, 687 (7th Cir. 2006). "[T]o act under color of state law for § 1983 purposes means to misuse power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law". Id. (citations, internal quotation marks and alterations omitted).

The Complaint does not, because it cannot, allege that Alcoa is a state actor or was acting under color of state law. Alcoa is a for-profit company. Its stock is traded on the New York Stock Exchange. To the extent that the Complaint is read to allege claims against Alcoa under 42 U.S.C. § 1983, it fails to state a claim and should be dismissed.

B. The Complaint Does Not Allege the Factual or Legal Elements of a Conspiracy Under Section 1985

To the extent the Complaint purports to bring claims under 42 U.S.C. § 1985(2)–(3) (see Complaint p. 7, 11), it should be dismissed because it does not allege the requisite legal or factual elements of such a claim. Section 1985(2)–(3) prohibits conspiracies that interfere with the administration of federal or state courts, that deprive "any person or class of persons equal protection under the laws", or that interfere with the duties of state officers or with the right to support candidates in federal elections. See 42 U.S.C. § 1985(2)–(3); see also Coleman v. Garber, 800 F.2d 188, 190 (8th Cir. 1986) (identifying types of claims under 42 U.S.C. § 1985(2)–(3)); Home Quest Mortg. LLC v. Am. Family Mut. Ins. Co., 340 F. Supp. 2d 1177,

1188 (D. Kan. 2004) (same). Section 1985 applies to conspiracies imbued with race-based, or class-based, discriminatory motives. See Roach v. City of Evansville, 111 F.3d 544, 547 (7th Cir. 1997) (affirming that plaintiff failed to state a Section 1985 claim because he "makes no claim that he was a member of a protected class or that the [defendant] had a class-based discriminatory animus"); Smith v. Haith, No. 92-1190, 1992 U.S. App. LEXIS 27554, *11 (7th Cir. 1992) (noting that the relevant statutory sections "rely on the existence of racial or other class-based invidious discriminatory animus"). The Complaint in this case does not, because it cannot, allege that the Plaintiffs belong to a common class, much less that the Defendants' purported actions were motivated by any class-based or racially discriminatory animus.[4] To the extent the Complaint purports to allege claims of witness intimidation, it consists entirely of conclusory statements and fails to provide any facts that would support such a claim. Accordingly, the Complaint cannot as a matter of law state a claim under Section 1985, and it should be dismissed.

[4] Even if the Complaint is liberally construed to allege animus based on the commercial interactions between Michael Lynch and Alcoa, it cannot state a claim on that basis. See, e.g., Grimes v. Smith, 776 F.2d 1359, 1365 (7th Cir. 1985) (noting that 42 U.S.C. § 1985 does "not reach conspiracies motivated by an economic or commercial bias").

For the foregoing reasons, the Complaint should be dismissed for failure to comply with the rules of notice pleading and failure to state a claim upon which relief can be granted .

Dated: August 7, 2006

Respectfully submitted,

ALCOA, INC.

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CERTIFICATE OF SERVICE

I, Courtney E. Barr, an attorney, certify that I caused true and correct copies of the foregoing **Memorandum of Law in Support of the Motion to Dismiss** to be served upon the parties identified below, by the delivery method so indicated, on this 7th day of August, 2006:

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