

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HADIZA WADA,

Plaintiff,

vs.

Case No. 08-CV-13277
HON. GEORGE CARAM STEEH

UNITED STATES SECRET SERVICE,
BANK OF AMERICA, and
BILL LEONARD,

Defendant.

_____/

ORDER GRANTING DEFENDANT U.S. SECRET SERVICE'S
MOTION TO DISMISS (#7) AND DISMISSING PLAINTIFF'S REMAINING CLAIMS AS
ALLEGED AGAINST BANK OF AMERICA AND LEONARD
ON FAILURE TO SHOW CAUSE (# 5)

On October 9, 2008, plaintiff Hadiza Wada was ordered to show cause by October 24, 2008 why her remaining claims should not be dismissed for failure to prosecute, and for failure to serve defendant Bill Leonard. Wada filed a "Motion Opposing Order to Dismiss for Lack of Prosecution" on October 24, 2008. On October 15, 2008, defendant United States Secret Service (USSS) filed a motion to dismiss. Wada has not filed a response to the motion, which was due on November 10, 2008. See E.D. Mich. LR 7.1(d)(1)(B); Fed. R. Civ. P. 6(d).

The United States District Court for the District of Columbia ordered this matter transferred here on November 13, 2007. Wada v. United States Secret Service, 07-442 (CKK), at 14, 24 (D.D.C. Nov. 13, 2007) (memorandum opinion). The case was assigned

to this court as a companion case to a pending forfeiture action, United States v. Bank of America Account XXXXXXXX6055, 07-CV-12269 (E.D. Mich. May 25, 2007). The forfeiture action is now on appeal before the Sixth Circuit. See id., May 15, 2008 Notice of Appeal (Docket No. 20).

As set forth in this court's October 9, 2008 show cause order:

Prior to transferring the case here, the District of Columbia district court granted in part plaintiff USSS's motion to dismiss Wada's claims challenging USSS's seizure of \$354,144.44 from Bank of America Account XXXXXXXX6055 in the name of Latest Technology International (LTI) for lack of jurisdiction, finding this court acquired exclusive jurisdiction over the funds in the forfeiture action. Wada, 07-442 (CKK), at 14-16 (mem. op.). The district court denied USSS's motion to dismiss to the extent Wada alleges claims "beyond her challenge to the forfeiture," and declined to consider whether Wada's remaining allegations – that USSS and non-party USSS Agent Spivey have engaged in "a pattern of financial harassment . . . since [Wada] filed a Civil Rights employment related Claim . . . in 2003 against an Agency of the Federal Government" – may state a claim on which relief may be granted. Id. at 17, 19. The district court denied defendant Bank of America's (BOA) motion to dismiss on interpreting Wada's "Claims for Relief" document filed in opposition to BOA's motion to dismiss as an Amended Complaint alleging breach of a fiduciary duty. Id. at 22. The District of Columbia district court also granted BOA's motion to stay discovery, allowing that "[t]he parties may pursue discovery, if appropriate, upon transfer of this action to the Eastern District of Michigan." Id. at 24. Defendant Bill Leonard has never been served, and the 120-day period for accomplishing service has long since expired considering Wada filed her complaint on March 6, 2007. See Fed. R. Civ. P. 4(m).

October 9, 2008 Order, at 2. With the exceptions of Wada's October 24, 2008 response to the Order, and the defendant USSS's October 15, 2008 motion to dismiss, there has been no docket activity since the matter was ordered transferred here on November 13, 2007.

In responding to the show cause order, Wada notes that the record was not transferred from the District of Columbia until July 30, 2008, seven months after the district

court entered its order transferring the case to the Eastern District of Michigan. Wada asserts that Bank of America should be sanctioned for failing to respond to her complaint, and that USSS has not supplied her with any evidence. Wada also summarizes the District of Columbia district court's November 13, 2007 memorandum opinion.

Wada has not addressed her failure to serve defendant Bill Leonard since filing her complaint on March 6, 2007. See Fed. R. Civ. P. 4(m). Leonard is entitled to dismissal as a matter of law. Id. Wada has not shown cause why she did not move for Bank of America's or USSS's default after being served with the November 13, 2007 memorandum opinion approximately one year ago. See Fed. R. Civ. P. 12(a)(4)(A); Fed. R. Civ. P. 55(a). Wada has not pursued discovery, and not responded to USSS's motion to dismiss. Absent a response, the court is persuaded USSS is entitled to dismissal of Wada's remaining claim that USSS and an Agent Spivey engaged in "a pattern of financial harassment . . . since [Wada] filed a Civil Rights employment related Claim . . . in 2003 against an Agency of the Federal Government." To survive the Rule 12(b)(6) motion to dismiss, Wada's pleading for relief was required to provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Ass'n of Cleveland Fire Fighters v. City of Cleveland, 502 F.3d 545, 548 (6th Cir. 2007) (Bell Atlantic Corp. v. Twombly, ___ U.S. ___, 127 S. Ct. 1955, 1964-65 (2007)) (citations and quotations omitted). USSS is also entitled to dismissal based on sovereign immunity. See Blakely v. United States, 276 F.3d 853, 870 (6th Cir. 2002).

In summary, Wada has failed to show cause why she has failed to prosecute this lawsuit since the District of Columbia district court issued its November 13, 2007 opinion. Wada never served Leonard, and has failed to pursue any relief from either this court or

the District of Columbia district court for over a year. Wada did not oppose USSS's motion to dismiss. Accordingly, and for the reasons set forth above,

Plaintiff Wada's claims as alleged against defendants Bank of America and Bill Leonard are hereby DISMISSED without prejudice. Defendant USSS's motion to dismiss is hereby GRANTED, and Wada's claims as alleged against USSS are hereby DISMISSED with prejudice.

SO ORDERED.

Dated: November 17, 2008

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on November 17, 2008, by electronic and/or ordinary mail.

s/Josephine Chaffee
Deputy Clerk