

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Theo Smith,

Civil No. 10-4655 (DWF/JJK)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Ghana Commercial Bank, Ltd.,
Attorney General/Government of
Ghana, and John A. Mills,

Defendants.

This matter is before the Court upon Plaintiff Theo Smith's ("Plaintiff") objections (Doc. No. 75) to Magistrate Judge Jeffrey J. Keyes's June 18, 2012 Report and Recommendation (Doc. No. 74) insofar as it recommends that: (1) Defendants' Motion to Dismiss be granted in part as follows: (a) the motion be granted to the extent it seeks dismissal for lack of subject matter jurisdiction on the claims against the Republic of Ghana, President John A. Mills, and Ghana's Attorney General; (b) the motion be granted to the extent it seeks dismissal for lack of personal jurisdiction on the claims against Ghana Commercial Bank; and (c) the motion be granted to the extent it requests that Plaintiff be enjoined from filing any future case against the Republic of Ghana, any of its government officials, and Ghana Commercial Bank relating to the subject matter of this suit without first obtaining leave of court to do so; (2) Plaintiff's Motion for Entry of Default and Default Judgment be denied as moot; and (3) Plaintiff's Motion for Summary

Judgment be denied as moot. Defendants filed a response to Plaintiff's objections on July 16, 2012. (Doc. No. 76.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of the parties, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Plaintiff's objections.

Having carefully reviewed the record, the Court concludes that Plaintiff's objections offer no basis for departure from the Report and Recommendation. Plaintiff appears to contend that Magistrate Judge Keyes erroneously determined that this Court lacks subject matter jurisdiction over Defendants Republic of Ghana, President John A. Mills, and Ghana's Attorney General on the basis of foreign sovereign and common law immunity and lacks personal jurisdiction over Defendant Ghana Commercial Bank. (*See* Doc. No. 75 at 3-8.) Plaintiff, however, has failed to establish that any exception to the Republic of Ghana's immunity from suit applies pursuant to the Foreign Sovereign Immunities Act ("FSIA"). *See* 28 U.S.C. § 1605. He has also failed to overcome the Court's determination that Defendants President John A. Mills and Ghana's Attorney General are entitled to common law immunity as foreign officials. *See Samantar v. Yousuf*, 130 S. Ct. 2278, 2292 (2010) (acknowledging that "[e]ven if a suit is not governed by the [FSIA], it may still be barred by foreign sovereign immunity under the common law" and that "it may be the case that some actions against an official in his official capacity should be treated as actions against the foreign state itself, as the state is

the real party in interest”). The Court further concludes, as did Magistrate Judge Keyes, that Plaintiff has failed to allege facts sufficient to establish personal jurisdiction over Defendant Ghana Commercial Bank in this case. *See Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1072-74 (8th Cir. 2004). Plaintiff’s complaint is thus rightfully dismissed. Consequently, the Court grants in part Defendants’ motion to dismiss and denies the remaining motions as moot.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Plaintiff Theo Smith’s objections (Doc. No. [75]) to Magistrate Judge Jeffrey J. Keyes’s June 18, 2012 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge Jeffrey J. Keyes’s June 18, 2012 Report and Recommendation (Doc. No. [74]) is **ADOPTED**.

3. Defendants’ Motion to Dismiss (Doc. No. [41]) is **GRANTED IN PART** and **DENIED IN PART** as follows:

a. The motion is **GRANTED** to the extent it seeks dismissal for lack of subject matter jurisdiction on the claims against the Republic of Ghana, President John A. Mills, and Ghana’s Attorney General;

b. The motion is **GRANTED** to the extent it seeks dismissal for lack of personal jurisdiction on the claims against Ghana Commercial Bank;

c. The motion is **GRANTED** to the extent it requests that Plaintiff be enjoined from filing any future case against the Republic of Ghana, any of its government officials, and Ghana Commercial Bank relating to the subject matter of this suit without first obtaining leave of court to do so; and

d. The motion is **DENIED** to the extent it requests that Plaintiff be ordered to show cause why he should not be sanctioned further.

4. Plaintiff's Motion for Entry of Default and Default Judgment (Doc. No. [16]) is **DENIED AS MOOT**.

5. Plaintiff's Motion for Summary Judgment (Doc. No. [32]) is **DENIED AS MOOT**.

6. Plaintiff's Motion [for] Leave to Amend a Clerical Error (Doc. No. [64]) is **DENIED AS MOOT**.

7. This action is **DISMISSED WITHOUT PREJUDICE**.
LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 17, 2012

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge