

[Docket No. 5]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

MARK EL, d/b/a MARK SMITH,

Plaintiff,

v.

SGT. ROBERT KOOB, et al.,

Defendants.

Civil No. 20-2549 (RMB/KMW)

MEMORANDUM OPINION & ORDER

RENÉE MARIE BUMB, United States District Judge

This matter comes before the Court on the Motion to Dismiss pro se Plaintiff Mark El's Complaint, brought by Defendants Marylou McAdams Corson and Donald J. Lombardo (the "County Defendants"), [Docket No. 5], and joined by Defendants Robert Koob, Sean Donahue, and the City of Ocean City (the "City Defendants"), [Docket No. 9]. For the reasons expressed below, the Court will grant Defendants' Motion.

The allegations made by Plaintiff in his Complaint in this case are copied verbatim from his initial Complaint in a separate case. [Compare Docket No. 1-4, with El v. Koob, Case No. 19-17577, Docket No. 1.] "'As part of its general power to administer its docket,' a district court may dismiss a duplicative complaint." Fabrics v. City of New Brunswick, 629 F. App'x 196, 198 (3d Cir. 2015) (quoting Colorado River Water Conservation Dist. v. United

States, 424 U.S. 800, 817 (1976)). The Third Circuit has explicitly held that a plaintiff may not "maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant." Walton v. Eaton Corp., 563 F.2d 66, 70 (3d Cir. 1977) (en banc).

It cannot be disputed here that that is precisely what is happening: Plaintiff filed a Complaint in a separate case before this Court on September 3, 2019, that is almost exactly the same as the Complaint filed in this case. In the earlier case, this Court dismissed the Complaint without prejudice, at which point Plaintiff filed an Amended Complaint that was subject to this Court's screening. [See El v. Koob, Case No. 19-17577, Docket Nos. 2-4.] Nevertheless, Plaintiff then filed the Complaint in the present case on December 23, 2019, in New Jersey state court. [Docket No. 1-4.] Defendants removed the case to this Court on March 9, 2020. [Docket No. 1.] As a result, Plaintiff presently has "two separate actions involving the same subject matter at the same time in the same court and against the same defendant[s]." See Walton, 563 F.2d at 70. Plaintiff is precluded from maintaining both suits under Third Circuit precedent.

Therefore, **IT IS** this 31st day of March 2021, hereby:

ORDERED that Defendants' Motion to Dismiss [Docket No. 5] is **GRANTED**; and it is further

ORDERED that Plaintiff's Complaint [Docket No. 1-4] be
DISMISSED.

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge