

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICHARD C. CURTISS,

Plaintiff,

-v-

11-CV-6006L

ORDER

FEDERAL, STATE, COUNTY, CITY
GOVERNMENTS-USA THEIR EMPLOYEES,
THEIR UNIONS, et al.,

Defendants.

Plaintiff has filed a motion requesting that the Court reconsider its Orders dismissing the complaint with prejudice (Docket No. 2) and denying as moot, plaintiff's request that summonses be issued for service of the complaint (Docket No. 5). Plaintiff has also filed a motion requesting an extension of time for service of the complaint (Docket No. 7). For the reasons discussed below, plaintiff's motions are denied.

MOTION FOR RECONSIDERATION

Fed.R.Civ.P. 60(b) provides for relief from a final judgment, order, or proceeding when, for example, there has been a mistake, inadvertence, surprise, excusable neglect, or newly discovered evidence which by due diligence could not have been discovered in time. According to the Second Circuit Court of Appeals:

Rule 60(b) sets forth the grounds on which a court, in its discretion, can rescind or amend a final judgment or order. . . . Properly applied, Rule 60(b) strikes a balance between serving the ends of justice and preserving the finality of judgments. . . . In other words it

should be broadly construed to do "substantial justice," . . . , yet final judgments should not "be lightly reopened." . . . The Rule may not be used as a substitute for a timely appeal. . . . Since 60(b) allows extraordinary judicial relief, it is invoked only upon a showing of exceptional circumstances.

Nemaizer v. Baker, 793 F.2d 58, 61 (2d Cir. 1986) (citations omitted).

Nothing in plaintiff's motion for reconsideration allows the Court to grant relief from the Order dismissing the complaint with prejudice under Fed.R.Civ.P. 60(b). The complaint was dismissed due to the Court's finding that the claims were factually frivolous (Docket No. 2). Plaintiff does not demonstrate that there has been a mistake, inadvertence, surprise, excusable neglect, or newly discovered evidence which by due diligence could not have been discovered in time, nor does he show that his claim should be reopened in the interest of justice. Accordingly, plaintiff's motion for reconsideration is hereby denied.

MOTION FOR EXTENSION OF TIME TO SERVE COMPLAINT

This action was previously dismissed with prejudice by Order dated March 2, 2011 (Docket No. 2). Plaintiff then filed a motion requesting that the Court issue summonses for service of the complaint (Docket No. 4). This request was denied as moot (Docket No. 5). Accordingly, plaintiff's pending motion requesting an extension of time to serve the complaint is also denied as moot, as this action has already been dismissed with prejudice.

FUTURE FILINGS IN THIS CASE

Plaintiff was directed by the Court, in its Order dated May 9, 2011, to stop sending letters to District Court Judges and the Clerk of the Court requesting issuance of the summonses because the case had already been dismissed with prejudice. Plaintiff is now advised that he may not file any additional pleadings in this case and that his time to appeal from this Court's Order has expired. See Fed. R. App. P. 4(a)(1). Further attempts to file any other pleadings in this case may subject plaintiff to potential sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. The Clerk of the Court is directed to not accept any further filings from plaintiff in this case.

SO ORDERED.

s/ Michael A. Telesca
MICHAEL A. TELESCA
United States District Judge

Dated: Rochester, New York
May 23, 2011