

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

DRUG FREE GANG FREE, INC.,)
)
Plaintiff,)
)
v.)
)
HOMEBOY INDUSTRIES, INC.,)
)
Defendant.)
_____)

NO. 5:16-CV-842-FL

DRUG FREE GANG FREE, INC.,)
)
Plaintiff,)
)
v.)
)
HOMEBOY INDUSTRIES, INC.,)
)
Defendant.)

NO. 5:17-CV-212-FL

These matters involving alleged copyright infringement are before the court on its own initiative and plaintiff’s motion for leave to proceed in forma pauperis under 28 U.S.C. § 1915 in civil action NO. 5:17-CV-121-FL (“Drug Free II”). For the reasons that follow, civil action NO. 5:16-CV-842-FL (“Drug Free I”) is dismissed with prejudice and the motion to proceed in forma pauperis in Drug Free II is denied.

BACKGROUND

Plaintiff filed Drug Free I October 7, 2016, and was denied leave to proceed in forma

pauperis. (Drug Free I, Feb. 28, 2017, text order). Pursuant to Local Civil Rule 3.2, plaintiff was allowed 30 days to retain counsel and pay the filing fee, which deadline elapsed April 25, 2017. No counsel has appeared on plaintiff's behalf nor has plaintiff paid the filing fee.

On May 5, 2017, plaintiff filed Drug Free II, asserting the same claims of copyright infringement raised in Drug Free I. (Drug Free II, DE 1). Again, plaintiff moved to proceed in forma pauperis. (Id.).

DISCUSSION

Under Federal Rule of Civil Procedure 41(b), if a plaintiff fails to prosecute, the court on its own motion may dismiss the action. Link v. Wabash R. Co., 370 U.S. 626, 630 (1962) (citing Fed. R. Civ. P. 41(b)). A penalty dismissal under Rule 41(b) "operates as an adjudication on the merits." Fed. R. Civ. P. 41(b). By its failure to retain counsel and pay the filing fee within the required deadline, plaintiff has failed to prosecute Drug Free I. Accordingly, that matter is dismissed.

Turning now to plaintiff's motion to proceed in forma pauperis in Drug Free II, again, a corporation cannot proceed in forma pauperis under 28 U.S.C. § 1915. See Rowland v. Cal Men's Colony Unit II Men's Advisory Council, 506 U.S. 194, 201–02 (1993). "[A] corporation may appear in the federal courts only through licensed counsel." Id. (citations omitted). Therefore, where plaintiff is a corporation, its motion to proceed in forma pauperis, as before, must be and is denied.

Again, pursuant to Local Civil Rule 3.2, plaintiff is allowed 30 days to retain counsel to enter an appearance in this matter and pay the filing fee. Failure to retain counsel or pay the filing fee within the deadline will result upon these repeated filings in dismissal with prejudice.

CONCLUSION

Drug Free I, civil action NO. 5:16-CV-842-FL is DISMISSED. The clerk is DIRECTED to close the case. Plaintiff's motion to proceed in forma pauperis in Drug Free II, civil action NO. 5:17-CV-121-FL, is DENIED. Plaintiff is ALLOWED 30 days from date of entry of this order within which to pay the filing fee and retain counsel to enter an appearance in this matter. If 30 days elapse with no filing fee being paid and notice of counsel being filed, this action shall be dismissed with prejudice.

SO ORDERED, this the 23rd day of May, 2017.



LOUISE W. FLANAGAN
United States District Judge