

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAY 31 2007

JAMES R. LARSEN, CLERK
DEPUTY
YAKIMA, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AVIS HAMLIN,

No. CV-07-3025-AAM

ORDER OF DISMISSAL

Plaintiff,

vs.

CLYDE ROBINSON and SHEILA
ROBINSON, and their marital
community, et al.,

Defendants.

The *pro se* Plaintiff has filed a Complaint in the captioned action in which she asserts the Defendants engaged in a scheme to deprive her of certain real properties in Yakima County by means of a default judgment fraudulently obtained from the Yakima County Superior Court in 1996. Plaintiff contends this fraud deprived her of her Fourteenth Amendment Due Process rights.

The Court takes judicial notice that the same claim was asserted against the identical Defendants in an "Amended Complaint" which the Plaintiff filed in CV-04-3117-FVS (Ct. Rec. 74 in CV-04-3117-FVS filed May 16, 2006). On September 11, 2006, the Honorable Fred Van Sickle dismissed this "Amended

1 Complaint” for lack of subject matter jurisdiction (Fed. R. Civ. P. 12(b)(1)) and
2 failure to state a claim upon which relief can be granted (Fed. R. Civ. P. 12(b)(6).
3 (Ct. Rec. 110 in CV-04-3117-FVS). Judge Van Sickle also denied Plaintiff’s
4 motion to file a “Second Amended Complaint.” On September 25, 2006, Plaintiff
5 filed a motion for reconsideration of Judge Van Sickle’s order. (Ct. Rec. 112 in
6 CV-04-3117-FVS). On April 19, 2007, Plaintiff filed a “Motion For Court
7 Action” on her motion for reconsideration. (Ct. Rec. 115 in CV-04-3117-FVS).
8 After receiving a notice from the District Executive that a notice of hearing needed
9 to accompany the “Motion For Court Action,” Plaintiff filed such a notice on May
10 25, 2007, noting the motion for hearing without oral argument on June 20, 2007
11 (Ct. Rec. 116 in CV-04-3117-FVS). At this juncture, Plaintiff’s motion for
12 reconsideration remains unadjudicated.

13 Coincidentally, the Complaint in the captioned matter (CV-07-3025-AAM)
14 was filed on May 14, 2007, most likely reflecting the Plaintiff’s dissatisfaction
15 with Judge Van Sickle’s order of dismissal and the fact that her motion for
16 reconsideration has not been ruled upon. This, however, does not give the
17 Plaintiff license to start over before another judicial officer of this district.¹ It
18 appears the litigation in CV-04-3117-FVS has not been concluded because of the
19 pending motion for reconsideration. When that motion is determined, Plaintiff
20 may have an opportunity for an appeal to the Ninth Circuit Court of Appeals.
21 When the litigation in CV-04-3117-FVS, including any appeal, is concluded, and
22 if Judge Van Sickle’s dismissal is affirmed on any appeal, the doctrine of res
23 judicata would prohibit this judicial officer from reconsideration of Plaintiff’s
24 claim. Claim preclusion “prevents litigation of all grounds for, or defenses to,
25 recovery that were previously available to the parties, regardless of whether they
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27 ¹ Plaintiff filed Motions For Recusal in CV-04-3117-FVS, but then asked to
28 withdraw them. Her motion to withdraw was granted and the motions for recusal
were deemed moot.

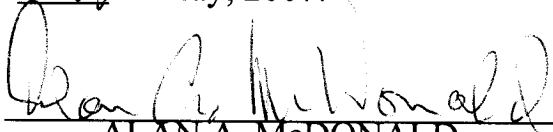
1 were asserted or determined in the prior proceeding.” *Americana Fabrics, Inc. v.*
2 *L & L Textiles, Inc.*, 754 F.2d 1524, 1529 (9th Cir. 1985), quoting *Brown v. Felsen*,
3 442 U.S. 127, 131, 99 S.Ct. 2205 (1979).

4 *Sua sponte* Fed. R. Civ. P. 12(b)(6) dismissals on the basis of *res judicata*
5 are authorized. *State of Arizona v. State of California*, 530 U.S. 392, 412, 120
6 S.Ct. 2304 (2000)(court may *sua sponte* dismiss action on *res judicata* grounds to
7 avoid “unnecessary judicial waste”). While at this juncture, application of *res*
8 *judicata* appears premature, a *sua sponte* dismissal of Plaintiff’s Complaint in the
9 captioned action for failure to state a claim upon which relief can be granted is
10 nevertheless appropriate because of the litigation pending in CV-04-3117-FVS.

11 Plaintiff’s Complaint (Ct. Rec. 1) and the captioned action (CV-07-3025-
12 AAM) are **DISMISSED** with prejudice. Plaintiff’s “Request For Leave Of Court
13 To Amend Complaint” (Ct. Rec. 7) and “Request For Injunctive And Declaratory
14 Relief” (Ct. Rec. 8) are rendered **MOOT**.

15 **IT IS SO ORDERED.** The District Executive shall enter judgment
16 accordingly and forward copies of this order and the judgment to Plaintiff, counsel
17 who have appeared of record, and to the Honorable Fred Van Sickle.

18 **DATED** this 3rd of May, 2007.

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20 ALAN A. McDONALD
21 Senior United States District Judge
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