

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICHAEL CRAIG CLARK	:	
Plaintiff	:	
	:	
v.	:	CIVIL ACTION NO.
	:	3-00-cv-1016 (JCH)
	:	
TOSCO CORPORATION, ET AL	:	OCTOBER 17, 2000
Defendant	:	

RULING ON DEFENDANTS' MOTIONS TO DISMISS [DKT. NOS. 10, 14, 17, 21, 23, 28, 30] AND DEFENDANT NEW HAVEN CHURCH OF CHRIST'S MOTION TO JOIN IN CO-DEFENDANT'S MOTION TO DISMISS [DKT. NO. 26]

On September 14, 2000 the court issued an "Order of Notice" to the pro se plaintiff in this case informing him that, unless he filed by October 2, 2000 a memorandum in opposition to the motion to dismiss filed by defendant Apostles of the Sacred Heart of Jesus, the case would be dismissed pursuant to Local Rule 9(a) D. Conn. Loc. Civ. R. The plaintiff has failed to file a memorandum in opposition.

Subsequent to the court's Notice, other defendants in this case have filed further motions to dismiss which rely on similar arguments to that of defendant Apostles. Plaintiff has filed no opposition to these motions either. The court thus addresses the common arguments and then states the ruling as to each motion.

The court denies the motions to dismiss filed pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. The court is bound to construe pro se complaints liberally. See Branham v. Meachum, 77 F.3d 626, 628-29 (2d Cir. 1999). Based on the complaint, the court construes the plaintiff's claim to be a cause of action for deprivation of property under the fifth and fourteenth amendments brought pursuant to 42 U.S.C. § 1983.¹ The court thus has federal question subject matter jurisdiction under 28 U.S.C. § 1331.

However, the court grants the motions to dismiss filed pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief could be granted. First, even accepting the factual allegations of the complaint as true, the plaintiff's complaint does not allege any conduct at all on the part of a particular defendant. “[C]onclusory allegations that fail to give a defendant notice of the material elements of a claim are insufficient as a matter of law to state a claim.” Abbasi v. Herzfeld & Rubin, P.C., 863 F.Supp. 144, 146 (S.D.N.Y. 1994). While Fed. R. Civ. P. 8 is liberal and does not require a party to plead “ultimate facts,” or “facts sufficient to

¹ The court is unable to construe the complaint as asserting any other federal cause of action. The court notes that the plaintiff has not alleged facts sufficient to establish that the parties are diverse for the purposes of 28 U.S.C. § 1332.

constitute a cause of action,” the complaint must plead facts sufficient to give the defendant “fair notice” of the claims against him. 2 Moore’s Federal Practice, § 8.04[1] (3d ed.), citing Kelly v. Schmidberger, 806 F.2d 44 (2d Cir. 1986). In this case, the complaint states that the “defendants” have illegally used plaintiff’s property or accessed his property records. It does not provide any information that would give any one of the defendants notice of the specific allegations against it, does not specify what actions each defendant took in relation to the plaintiff, and does not specify what property of the plaintiff was affected or when. Therefore, the complaint fails to state a claim.

Second, the complaint does not allege that the non-Connecticut defendants are state actors. In order to state a claim under section 1983 of Title 42 of the United States Code, a plaintiff must allege a violation of a right protected by federal law or the United States Constitution, and that such violation was committed by a person acting under color of state law. See, e.g., Rendell-Baker v. Kohn, 457 U.S. 830, 837-38 (1982); Kern v. City of Rochester Fire Dept., 93 F.3d 38, 42-43 (1996). Similarly, the fifth and fourteenth amendments only protect against deprivations caused by the federal or state governments. See U.S. Const. amend. V

("No person shall . . . be deprived of life, liberty, or property, without due process of law."); U.S. Const. amend. XIV, § 1 ("No State shall . . . deprive any person of life, liberty, or property, without due process of law.") (emphasis added). The plaintiff has failed to allege that any of churches or corporations who are defendants in this action are state actors or that any one of them participated in a conspiracy that might transform private persons into state actors. See Adickes v. Dress & Co., 398 U.S. 144, 150-52 (1970); Dennis v. Sparks, 449 U.S. 24, 27-29 (1980). Therefore, the plaintiff has failed to state a claim upon which relief could be granted with respect to these defendants.

The court also grants the State of Connecticut's motion to dismiss. While the State of Connecticut and its officials are state actors for the purposes of 42 U.S.C. § 1983, the eleventh amendment prohibits a party from suing a state for monetary relief in federal court. See Edelman v. Jorden, 415 U.S. 651, 662-63 (1974); see also Fitzpatrick v. Bitzer, 427 U.S. 445 (1976). In addition, a suit against a state official in his or her official capacity is in reality a suit against the state and thus subject to the eleventh amendment. See Kentucky v. Graham, 473 U.S. 159, 165-66 (1985). The plaintiff has named in the caption in this case the Connecticut State

Government, Office of the Attorney General and the Connecticut State Government, Governor's Office. Whether the plaintiff intends by these captions to name the State of Connecticut directly or to name the Attorney General and the Governor, the action is barred by the eleventh amendment. The plaintiff names the Attorney General and the Governor only in their official capacities, not as individuals, and the action seeks only money damages, not injunctive relief. Because a private person cannot seek money damages from the state or from a state official in his official capacity, the claim against the state is barred by the eleventh amendment and the motion to dismiss is granted.²

CONCLUSION

For the foregoing reasons, the court DENIES in part and GRANTS in part the motions to dismiss filed by Blessed Sacrament Church [Dkt. No. 28], Bethel Temple Church of God in Christ [Dkt. No. 21] , Tosco Corporation [Dkt. No. 17], Bible Gospel Center, Inc. [Dkt. No. 14], Apostles of the Sacred Heart of Jesus [Dkt. No. 10.]. The court denies these motions as to subject matter jurisdiction, but

² Because the court dismisses the action against the state under the eleventh amendment, at this time it is unnecessary for the court to address the additional arguments made by the state.

grants them as to failure to state a claim. Therefore, the case is dismissed in its entirety as to each of these defendants.

The court GRANTS defendant New Haven Church of Christ's Motion to Join in Co-Defendant's (Apostles of the Sacred Heart of Jesus) Motion to Dismiss [Dkt. No. 26]. The court thus dismisses the case against the New Haven Church of Christ for the same reasons the case against the Apostles of the Sacred Heart of Jesus was dismissed.

For the foregoing reasons, the court GRANTS the motion to dismiss for failure to state a claim filed by defendant Calvary Baptist Church [Dkt. No. 30].

For the foregoing reasons, the court GRANTS the motion to dismiss filed by the Governor and the Attorney General of the State of Connecticut [Dkt. No. 23].

If there is a factual and legal basis to do so, the plaintiff may replead the dismissed claims by filing a properly amended complaint. The court notes that, if the plaintiff chooses to file a repleaded complaint, he must remedy the defects and comply with all requirements as identified in this ruling. An amended complaint containing merely "perfunctory or cosmetic changes may well be regarded by the court as a frivolous filing in violation of Fed. R. Civ. P. 11." Economic

Opportunity Commission v. County of Nassau, 47 F. Supp.2d 353, 371 (E.D.N.Y. 1999) (quotations and citations omitted). Under Rule 11, any pleading signed by a pro se party or counsel must have a reasonable basis in fact and law. If it does not, the signer will be subject to sanctions.

SO ORDERED.

Dated at Bridgeport, Connecticut this 17th day of October, 2000.

_____/s/_____
Janet C. Hall
United States District Judge