

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

JAMES MACFARLANE	:	
	:	
v.	:	3:00 CV 1097(SRU)
	:	
DAVID BROCK, ET AL.	:	

**RULING ON MOTION TO DISMISS AND ORDER**

James MacFarlane, acting pro se, sued David Brock, Kenneth McHugh, Gloria Ann DeVito MacFarlane Faulkner, and Beryl Rich. MacFarlane seeks a declaratory judgment that a Connecticut Superior Court decree, holding that MacFarlane’s Mexican divorce from Faulkner was null and void, should be given full faith and credit nationwide. *See* Complaint (“Compl.”) ¶¶ 1, 15, 20, 21, 25, and 26. Brock, McHugh and Rich have moved to dismiss the action (Docs. ## 13, 15). MacFarlane has objected to those motions. (Doc. #18). The motions to dismiss are granted on the ground that this court lacks personal jurisdiction over Brock, McHugh and Rich.

**I. FACTS**

The court accepts the facts alleged in the complaint as true for the purposes of the present motion. MacFarlane is a citizen and resident of the State of Connecticut. Compl. at ¶ 2. Brock is a citizen and resident of the State of New Hampshire and is the Chief Justice of the New Hampshire Supreme Court. *Id.* at ¶ 3. McHugh is a citizen and resident of the State of New Hampshire and a Justice of the New Hampshire Superior Court, sitting temporarily by designation in the New Hampshire Supreme Court. *Id.* at ¶ 4. Rich is a subject and resident of the United Kingdom. *Id.* at ¶ 6.

MacFarlane and Faulkner were married in Connecticut. *Id.* at 21. Faulkner obtained an ex parte Mexican divorce. *Id.* at 20. Subsequently, MacFarlane and Rich were married. *Id.* at

22. On September 25, 1999, a Connecticut Superior Court issued a decree declaring Faulkner's Mexican divorce null and void. Id. at ¶ 1. MacFarlane sought to have the New Hampshire State Superior Court recognize the Connecticut decree in an action involving MacFarlane and Rich. Id. at ¶ 20. McHugh was the presiding judge and refused to recognize the Connecticut decree. Id. at ¶¶ 15, 23.

Thereafter, Brock conferred with McHugh about the status of MacFarlane's and Rich's underlying New Hampshire Superior court case, which "caused the Supreme Court of New Hampshire to 'decline' to accept" MacFarlane's appeal of McHugh's ruling. Id. at ¶ 24.

## **II. DISCUSSION**

Rich moved to dismiss MacFarlane's complaint on the grounds that the court lacks subject matter jurisdiction pursuant to the Rooker-Feldman doctrine, the court may not exercise personal jurisdiction over Rich, and MacFarlane has failed to state a claim. Memorandum in Support of Motion to Dismiss dated October 4, 2000 at 1. Brock and McHugh moved to dismiss MacFarlane's complaint on the grounds that the court lacks personal jurisdiction over Brock and McHugh, MacFarlane failed to serve McHugh, MacFarlane filed the action in an improper venue, the court lacks subject matter jurisdiction pursuant to the Rooker-Feldman doctrine and the domestic relations exception to federal jurisdiction, Brock and McHugh are entitled to absolute immunity, and this claim is barred by collateral estoppel. Memorandum of Law in Support of Motion to Dismiss dated October 11, 2000 at 4-10. Because the court concludes that it lacks personal jurisdiction over all three defendants, it is not necessary to address the alternate grounds for dismissal that the defendants raise.

When faced with a motion to dismiss under Rule 12(b)(2) of the Federal Rules of Civil Procedure, the plaintiff bears the burden of establishing that the court has personal jurisdiction. Metropolitan Life Insurance Co. v. Robertson-Ceco Corp., 84 F.3d 560, 566 (2d Cir.), *cert denied*, 519 U.S. 1006 (1996). When there has been no evidentiary hearing, the plaintiff must make a prima facie showing of personal jurisdiction by legally sufficient allegations of jurisdiction in his complaint, *id.*; Hagar v. Zaidman, 797 F. Supp. 132, 134 (D. Conn. 1992); or by affidavit and other supporting materials. Lambert v. Fiddler Gonzalez & Rodriguez, 171 F.3d 779, 784 (2d Cir. 1999) (citing Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 904 (2d Cir. 1981)).

MacFarlane's November 2, 2000 opposition to the motions to dismiss did not include an affidavit or other evidence on which the court could rely. Therefore, the court must rely on the allegations in the complaint to determine if personal jurisdiction exists. Combustion Engineering, Inc. v. NEI International Combustion, Limited, 798 F. Supp. 100, 103 (D. Conn. 1992) (prior to discovery a plaintiff may defeat a jurisdictional challenge by pleading legally sufficient allegations of jurisdiction in good faith) (citing Ball v. Metallurgie Hoboken-Overpelt, S.A., 902 F.2d 194, 197 (2d Cir.), *cert. denied*, 498 U.S. 854 (1990)).

When deciding a motion to dismiss for lack of personal jurisdiction, the court "must accept as true all the allegations in the pleadings and affidavits . . . and construe them in the light most favorable to the plaintiff." Titan Sports v. Inc. v. Hellwig, 199 WL 301695 at \* 5 (D. Conn. 1999) (citing A.I. Trade Finance, Inc. v. Petra Bank, 989 F.2d 76, 79-80 (2d Cir. 1993); Beacon Enterprises, Inc. v. Menzies, 715 F.2d 757, 768 (2d Cir. 1983)). Courts hold complaints prepared by pro se parties "to less stringent standards than formal pleadings drafted by lawyers." Boddie v. Schnieder, 105 F.3d 857, 860 (2d Cir. 1997) (quoting Haines v. Kerner, 404 U.S. 519, 520

(1972) (per curiam)).

MacFarlane alleges that the Brock, McHugh and Rich all reside outside of the state of Connecticut. “Whether personal jurisdiction may be exercised over a nonresident defendant is a question which depends, first of all, on the scope of the long arm statute of the forum state.” IMS Health, Inc. v. Vality Technology Inc., 59 F. Supp. 2d 454, 466 (E.D. Pa. 1999) (citing Fed. R. Civ. P. 4(e) as authorizing personal jurisdiction over non-resident defendants to the extent permitted by the law of the forum state in declaratory judgment action); *see also* Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez, 171 F.3d 779, 784 (2d Cir. 1999); Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 510 (2d Cir. 1994). If the state’s long arm statute authorizes personal jurisdiction, the court must then determine whether the existence of jurisdiction exceeds federal constitutional due process limitations. Bank Brussels Lambert, 171 F.3d at 784 (citing Robinson, 21 F.3d at 507); O’Brien v. Okemo Mountain, Inc., 17 F. Supp. 2d 98, 100 (D. Conn. 1998)).

The relevant statute is the Connecticut long arm statute, Conn. Gen. Stat. § 52-59(b), which governs jurisdiction over non-resident individuals. Conn. Gen. Stat. § 52-59(b) states, in relevant part:

(a) As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nonresident individual ... who in person or through an agent: (1) Transacts any business within the state; or (2) commits a tortious act within the state ...; or (3) commits a tortious act outside the state causing injury to person or property within the state, ... if he (A) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (B) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or (4) owns, uses or possesses any real property situated within the state.

Conn. Gen. Stat. § 52-59(b).

MacFarlane does not allege facts supporting personal jurisdiction under section 52-59(b). There are simply no allegations that could be construed in any way to suggest that Brock, McHugh or Rich had any contact with the state of Connecticut sufficient to confer jurisdiction over them. Therefore, section 52-59(b) does not authorize the exercise of personal jurisdiction over Rich, Brock or McHugh.<sup>1</sup> It is fundamental that a case must be dismissed if the court lacks personal jurisdiction over the defendants. Accordingly, this case is dismissed against Rich, Brock, and McHugh.

### **III. CONCLUSION**

The motions to dismiss filed by Rich, Brock and McHugh (Doc. ## 13 & 15) are granted.

In addition, it appears that it has been more than 120 days since the filing of the complaint in this case, but an executed return of service for Faulkner has not been filed pursuant to Federal Rule of Civil Procedure 4(m). Rule 4(m) provides that, if service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, after notice to the plaintiff, shall dismiss the action without prejudice or direct that service be effected within a specified time; provided that, if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Accordingly, it is hereby ordered that MacFarlane shall, within thirty (30) days of this ruling and order, report to the court on the status of service of process on Faulkner. In the

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<sup>1</sup> Because section 52-59(b) does not authorize the exercise of personal jurisdiction over Rich, Brock or McHugh, the court need not address federal constitutional due process limitations.

absence of satisfactory compliance with Rule 4(m), the court shall enter a dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

It is so ordered.

Dated at Bridgeport this \_\_\_\_ day of November 2000.

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Stefan R. Underhill  
United States District Judge