

In the United States Court of Federal Claims

No. 11-10C

(Filed March 22, 2012)

NOT FOR PUBLICATION

JAMES HEDMAN CLARK,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

Plaintiff has filed a number of motions in the course of this litigation. As is frequently the case when a party litigates a matter in our court *pro se*, many of these motions are not rooted in a recognized jurisdictional grant or power of our court. After a review of the papers supporting these motions, as well as the government's responses, the motions shall be disposed of as described below.

On January 5, 2011, and in conjunction with his complaint, Mr. Clark filed a motion requesting that this Court relocate him to Puerto Rico, alleging this is necessary because he "has been enduring wire and electronic communication interceptions and interceptions of oral communications for over five years," Pl.'s Mot. for Relocation ("Pl.'s Mot. for Reloc.") at 2, ECF No. 4, and he has been monitored by aerial surveillance including "5-7 helicopters, drones and small engine airplanes," *id.* at 4-5. On February 8, 2012, Mr. Clark filed a renewed motion for relocation, reasserting the same claims in his January 5, 2011 motion. Pl.'s Mot. for J. on Reloc. ("Pl.'s Renewed Mot. for Reloc."), ECF No. 39. Plaintiff has not identified any money-mandating statute that would be implicated by these allegations, sufficient to provide us with jurisdiction over these matters under 28 U.S.C. § 1491. Nor does his requested relief fall within the narrow scope of our equitable powers. *See* 28 U.S.C. §§ 1491(a)(2), 1491(b)(1), 1507. Therefore, Mr. Clark's initial and renewed motions for relocation are **DENIED**.

On February 23, 2011, Mr. Clark filed a motion under Rule 6.1(b) of the Rules of the United States Court of Federal Claims ("RCFC") requesting an enlargement of time to file an amended complaint. In his motion he recognized that he had a limited time to file an amended complaint as a matter of course, but he acknowledged that he would likely need more time for reasons including: (1) a warrant for his arrest had allegedly been issued by the City of St. Louis

and he expected to be unable to submit his amended complaint during the necessary response period while in detention, Pl's Mot. for Extension at 2-3, ECF No. 21; (2) his mail was allegedly tampered with because, as of the filing of the February 23, 2011 motion, plaintiff had not yet received the notice of appearance from the Department of Justice, *id.* at 3, 6; (3) his internet communications were allegedly intercepted at the public library because he was unable to access certain websites, *id.* at 4¹; and (4) he would like to hand-deliver future filings because he believes they may be otherwise intercepted, *id.* Because the Court granted Mr. Clark leave to file an amended complaint by March 30, 2012, *see* Sched. Order, Mar. 8, 2012, ECF No. 48, his February 23, 2011 motion is **MOOT**.

On May 11, 2011, Mr. Clark filed a motion requesting permission to review the official record of his case. He identifies himself as a disadvantaged *pro se* litigant who is unable to verify the contents of the docket sheet beyond the filings he submits or receives. Pl's Mot. for Ct. Review of Official R. at 2, ECF No. 33. Plaintiff indicates that in a previous case, *Clark v. Crues*, No. 4:05-cv-1344-JCH, 2007 WL 90670 (E.D. Mo. Mar. 23, 2007), he filed "several pleadings that were not obtained and/or recognized by the Court." *Id.* He uses this example to illustrate and justify his interest in reviewing the docket of the above-captioned case. In its response, the government misunderstood Mr. Clark's motion, believing him to be requesting review of the record of a previous case. In any event, the government does not oppose Mr. Clark's motion. Def.'s Resp. at 1, ECF No. 36. Plaintiff's motion is accordingly **GRANTED**. The clerk of the court shall provide Mr. Clark with a copy of the official docket sheet. Because of the voluminous nature of his filings, the clerk of court shall not mail Mr. Clark copies of papers that have already been filed. Mister Clark can review all filings contained in the official record of this case at www.pacer.gov.

On May 11, 2011, Mr. Clark filed a motion requesting permission to verbally inform the Court that an unidentified party had been allegedly interfering with, intercepting, and/or tampering with his mail and his internet access. Pl's Mot. to Communicate with Ct. at 6, ECF No. 34. Mister Clark provided printouts of the United Postal Service's Track and Confirm page to support his claim that his mail was intercepted. He also provided printouts of various internet pages to show that someone was interfering with his internet access. Mister Clark also mentioned this same concern in his most recent telephone conference on March 2, 2012.

Although Mr. Clark alleges that his mail and internet transmissions have been intercepted, this Court has received all filings he has submitted and identifies no evidence of tampering with his filings. Also, none of these internet printouts he submitted indicate that Mr. Clark's internet access was interfered with. Instead they show that he may have had a slow internet connection—which is not uncommon at public libraries—or that he mistyped his search terms. *See, e.g.*, ECF No. 34, at Attach. 2c ("What you're looking for is not available at the web address that brought you here. Possible reasons: ... There's a typo or an error in the URL.").

The Court will accept this May 11, 2011 filing as a status report, informing us of Mr. Clark's difficulties with his mail and internet service. No further action is needed.

¹ The printouts Mr. Clark provides as exhibits appear to indicate the library's internet connection was malfunctioning or that he incorrectly entered search terms. There is no evidence of tampering with or interception of his searches.

On February 8, 2012, Mr. Clark filed a motion requesting leave to file his first amended complaint. Pl's Mot. for Leave, ECF No. 38. In an order dated March 8, 2012, the Court granted Mr. Clark leave to file his motion by March 30, 2012. Therefore his motion for leave to file his first amended complaint has been **GRANTED**.

On February 8, 2012, Mr. Clark filed a motion requesting the court to appoint counsel for his corporation Alternative Discipline and Behavioral Concepts ("ADBC"). Pl's Mot. to Appoint Counsel ¶ 1, ECF No. 40. Mister Clark apparently intends to have ADBC join this lawsuit as a second plaintiff and to recast his claim as a derivative action. *See id.* ¶ 13.

Although a second party is permitted to join as a plaintiff under RCFC 20(a)(1), Mr. Clark seemingly recognizes that under our rules a corporation may not proceed *pro se*, and that a *pro se* litigant cannot represent a corporation. *See* RCFC 83.1(3) (a *pro se* litigant may represent himself "but may not represent a corporation, an entity, or any other person in any proceeding before this court."); *see also* Pl's Mot. to Appoint Counsel ¶ 2, ECF No. 40. It is not our court's practice to appoint counsel for a corporation. ADBC must itself obtain counsel to represent it in this matter before it may participate in Mr. Clark's lawsuit. Plaintiff's motion concerning ADBC and the requested appointment of counsel is therefore **DENIED**.

The Court also notes that it fails to understand Mr. Clark's intention to restyle his lawsuit as a derivative action. The Federal Circuit explains the derivative action is a mechanism of limited availability: a party has standing to sue derivatively only "in a very narrow range of circumstances." *First Hartford Corp. Pension Plan & Trust v. United States*, 194 F.3d 1279, 1295 (Fed. Cir. 1999). The purpose of a derivative action is to "to permit shareholders to file suit on behalf of a corporation when the managers or directors of the corporation, perhaps due to a conflict of interest, are unable or unwilling to do so, despite it being in the best interests of the corporation." *Id.* It is hard to see how this protection of "the interests of the corporation from the misfeasance and malfeasance of faithless directors and managers," *id.* (quoting *Kamen v. Kemper Fin. Servs.*, 500 U.S. 90, 95 (1991)), can be invoked by someone like Mr. Clark, who describes himself as the "only shareholder and member" of ADBC. *See* Pl's Mot. to Appoint Counsel ¶ 8, ECF No. 40. Plaintiff has not identified any recalcitrant managers or directors of ADBC, if any exist, nor has he explained how such officers can fail to abide by the wishes of the person who completely owns and controls the corporation.

On February 8, 2012, Mr. Clark filed a motion requesting leave to hand deliver four copies of exhibits. Pl's Mot. to Hand Deliver Copies, ECF No. 41. This motion has been rendered moot by the telephone conference on March 2, 2012, and the order issued March 8, 2012, and is therefore **DENIED**.

Finally, on February 8, 2012, Mr. Clark filed an unopposed motion requesting certification of all future communications. Pl's Mot. to Certify Communications ("Pl's Mot. to Cert. Comm."), ECF No. 42. Plaintiff again raises questions about his documents received and filed with the Court on April 15, 2011 (also raised in his May 11, 2011 filing, ECF No. 33). He argues that the early morning and weekend hours for delivery indicated on the Track & Confirm page are evidence that his mail was intercepted and tampered with. *See* Pl's Mot. to Cert.

Comm. at 10, Ex. C, ECF No. 42. The Court reiterates that there was no evidence of tampering and his papers were filed as received. Because plaintiff suspects his mail is being intercepted and tampered with, he requests that all future mail be sent with “certification and signature confirmation and tracking.” *Id.* at 3. The Court notes that plaintiff remains free to submit all future filings by a private courier service such as UPS, Federal Express, or DHL; plaintiff is also free to purchase any certification receipts with his courier of choice. Because there has been no evidence that the Court’s mail has been intercepted, tampered with, or interfered with, however, the Court will continue to send its orders to Mr. Clark through the United States Postal Service. Mr. Clark’s motion for certification is therefore **DENIED**.

IT IS SO ORDERED.

s/ Victor J. Wolski

VICTOR J. WOLSKI

Judge