UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

STEVEN ALAN MAGRITZ,

Plaintiff,

v. Case No. 07-C-0714

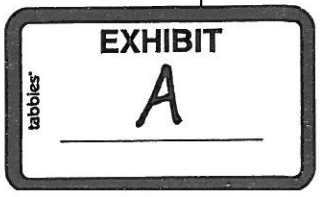
OZAUKEE COUNTY;
62.25 ACRES OF LAND IN THE
TOWN OF FREDONIA;
PORT PUBLICATIONS, INC.;
OZAUKEE PRESS;
LAKELAND METALS PROCESSING, INC.,
a/k/a Lakeland Metals;
EAGLE MOVERS, INC.,
a/k/a Eagle Moving and Storage, Inc.;
THOMAS W. MEAUX;
WILLIAM F. SCHANEN, III;
MARIE J. SCHANEN;
BILL SCHANEN IV;
MICHAEL J. RIEBE;
WILLIAM CIRIACKS;
JEANNE CIRIACKS;
THOMAS ANTHONY BRITTAIN;
BRIAN D. GLOCKE;
DOE #1 THROUGH DOE #100,

Defendants.

DECISION AND ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS AND DISMISSING CASE

Steven Magritz, who is proceeding pro se, has lodged a complaint against several entities and individuals under several federal statutes and state law. Before the court is his petition for leave to proceed in forma pauperis.

A district court may authorize a plaintiff to proceed in forma pauperis, meaning that he does not have to prepay the $350 filing fee to commence the lawsuit, if the plaintiff submits an affidavit setting forth the assets he possesses, indicating that he is



unable to pay the fees, and stating his belief that he is entitled to redress. 28 U.S.C. § 1915(a).

Magritz has filed such an affidavit. He says he is unemployed, he has not been employed for over ten years, he has been separated from his wife for over five years and he does not know her income. According to Magritz, he receives $666 per month from Social Security but must pay rent of $385 per month and expenses for food, bus, clothing, and dental care totaling about $280 per month. Based on Magritz's affidavit, the court is satisfied that he meets the requirements for proceeding in forma pauperis in this case.

However, the inquiry does not end with this finding. The court may conduct an initial review of the plaintiff's claims and will dismiss the case if (1) the action is frivolous or malicious, (2) the complaint fails to state a claim on which relief may be granted, or (3) the plaintiff seeks damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). For purposes of this inquiry, the plaintiff's allegations are accepted as true. *See Wilczynski v. Lumbermens Mut. Cas. Co.*, 93 F.3d 397, 401 (7th Cir. 1996). Further, the issue of a federal court's subject matter jurisdiction can be raised by the court at any time. *See United States v. County of Cook, Ill.*, 167 F.3d 381, 387 (7th Cir. 1999). No court may decide a case without subject matter jurisdiction, and the parties may neither stipulate to its existence nor waive arguments that it is lacking. *Id.* Again, in considering this issue, the court views the complaint in the light most favorable to the plaintiff, accepting his allegations as true. *See Hemmer v. Ind. State Bd. of Animal Health*, 532 F.3d 610, 613 (7th Cir. 2008).

Magritz's complaint is a lengthy and dense 107 pages, asserting twenty different claims. Numerous pages describe alleged actions by persons not named as defendants in the caption of this case (*see, e.g.*, Compl. at 76-77 (referring to defendants

Makoutz, Straub and Kenealy—persons not named in the caption of the present case)), suggesting that Magritz has copied pages from other complaints he has filed.

Magritz's focus is on facts and proceedings concerning the foreclosure of tax liens on his land (the defendant 62.25 acres of land in Fredonia) by Ozaukee County to satisfy unpaid property taxes, plus his subsequent physical eviction from the property at the hands of the Ozaukee County Sheriff. Often, Magritz refers to a copy of a court order dated August 9, 2001, in case number 01-CV-58-B3, in which Ozaukee County Circuit Judge Joseph D. McCormack ordered as follows:

> NOW, THEREFORE, IT IS ADJUDGED, that Ozaukee County, a subdivision of the State of Wisconsin, is vested with an estate in fee simple absolute in the following described lands . . . .
>
> IT IS FURTHER ORDERED, that all persons, both natural and artificial, excepting said Ozaukee County, but including the State of Wisconsin and infants, incompetents, absentees and nonresidents, who may have any right, title, interest, claim, lien or equity of redemption in such lands hereinafter described and all persons claiming under or through them or any of them from and after the date of filing the said list of tax liens as aforesaid are forever barred and foreclosed of such right, title, interest, claim, lien or equity of redemption.

(Compl, Ex. A at 3.) Magritz alleges that this order applies to the defendant 62.25 acres, which belongs to him notwithstanding the order seems to divest him of title and vest title in Ozaukee County. Among other issues relating to the tax liens, foreclosure court proceedings, and eviction subsequent to the foreclosure judgment, Magritz contends improprieties in the county treasurer's office (for instance, the treasurer would not accept his promissory notes, other instruments, or cash as payment of his taxes), the clerk of court's record (for example, the clerk did not file Magritz's answer to the complaint in the docket of the foreclosure case), and the court proceedings (for instance, Ozaukee County

officials and the judge knew Magritz answered the complaint but granted default judgment anyway).

Pursuant to the *Rooker-Feldman* doctrine, *see Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), lower federal courts lack subject matter jurisdiction to review state court decisions; only the Supreme Court has appellate jurisdiction to reverse or modify a state court judgment. *Holt v. Lake County Bd. of Comm'rs*, 408 F.3d 335, 336 (7th Cir. 2005). The doctrine deprives lower federal courts of subject matter jurisdiction over challenges to state-court decisions, no matter how erroneous or unconstitutional the state court decisions may be. *Feldman*, 460 U.S. at 486; *Kelley v. Med-1 Solutions, LLC*, 548 F.3d 600, 603 (7th Cir. 2008). The doctrine applies not only to claims raised before the state court, but also to claims that are "inextricably intertwined" with state court determinations. *Kelley*, 548 F.3d at 603; *accord Johnson v. Orr*, 551 F.3d 564, 568 (7th Cir. 2008). However, the doctrine is "confined to . . . cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *Hemmer*, 532 F.3d at 613. Thus, this court must review whether plaintiff was the loser in prior state court proceedings and whether his claims here are for injuries caused by the state-court judgment or inextricably intertwined with those proceedings such that plaintiff here seeks review and rejection of the state-court judgment.

Numerous claims seek review and rejection of Judge McCormack's August 2001 order. Count one is aimed at Judge McCormack's order and judgment, and is barred by the *Rooker-Feldman* doctrine. Count one states: "'JUDGMENT' 01-CV-58-B3 IS VOID,

AS WELL AS FRAUDULENTLY OBTAINED." (Compl. at 74.) Magritz asserts in count one that his interest in the land is in fee simple absolute, with the right to exclude all others, that his land was improperly taken by force pursuant to the void judgment in case 01-CV-58-B3, that Ozaukee County now possesses the land and that he is entitled to immediate possession of it. (*Id.*) Consequently, he wants this court to decree that the judgment in case 01-CV-58-B3 is void for lack of subject matter jurisdiction, violations of due process, and other alleged wrongs. (*Id.* at 103.) Further, Exhibit A to the Complaint discloses that the order and judgment in 01-CV-58-B3 preceded the filing of this case by six years and that Magritz was the loser in that state-court case. Therefore, because Magritz expressly seeks rejection of the state-court judgment in case 01-CV-58-B3, that claim is barred by the *Rooker-Feldman* doctrine.

Although other counts are not labeled as attacks on the order and judgment in Ozaukee case 01-CV-58-B3, many require review or seek rejection of the order and judgment and are intertwined with the facts in that proceeding. Count two asserts that the Ozaukee County Treasurer in April 2001 obtained negotiable instruments from Magritz through extortion and by threat of force and legal process. (Compl. at 77.) Other parts of the Complaint indicate that Magritz tried three times in April 2001 to pay his property taxes with promissory notes, other documents or foreign cash. (*Id.* at 15, 17, 18, Ex. D at 2.) Also, count two submits that in October 2001 the Ozaukee County Sheriff and defendants Eagle Movers and Lakeland Metals obstructed and affected commerce by taking personal property from Magritz's home (the property foreclosed upon in case 01-CV-58-B3 two months earlier) by use of force. Taken in context, this claim is inextricably intertwined with the proceedings in case 01-CV-58-B3, in which the court found the tax liens for the unpaid

taxes to be a basis for foreclosure and termination of Magritz's rights in the property and Magritz's subsequent eviction from the property. For Magritz to succeed on these allegations, this court would have to reject the order and judgment in case 01-CV-58-B3.

Count three charges a pattern of racketeering activity under 18 U.S.C. § 1962(c). Magritz maintains that officers or employees of Ozaukee County, Eagle Movers, and Lakeland Metals, with unknown persons, formed an "enterprise" within the meaning of RICO, 18 U.S.C. § 1961(4). He contends that the RICO enterprise carried out attacks on Magritz, knowing that the result would be "loss of way of life, impoverishment, possible loss of life, theft/conversion of property, and destruction of property, as has indeed transpired." (Compl. at 79.) Asserted predicate acts include misconduct in public office, tampering with public records, abuse of legal process, and interstate transportation of stolen vehicles (several vehicles were removed from the real property when Magritz was forcibly evicted). (*Id.* at 80.) In context, these acts concerning Magritz's attempt to pay his property taxes with various documents, the foreclosure proceedings, and the resultant eviction pursuant to the foreclosure judgment.

In count four Magritz asserts racketeering activity under 18 U.S.C. § 1961(1). He offers that the defendants conspired to commit a scheme for at least two acts of racketeering activity as described previously in the Complaint. (Compl. at 81.) Count five alleges a conspiracy to commit RICO violations, with a citation to 18 U.S.C. § 1962(b) and (c). (Compl. at 82.) Count six seeks injunctive and declaratory relief for defendants' violations of § 1962 through aiding and abetting. (Compl. at 83.) Magritz says he has been injured "in his person, business, and/or property" by defendants' violations. (*Id.*) Count seven seeks injunctive relief to divest each defendant from further involvement in the

enterprise. (Compl. at 84.) Magritz hopes to prevent defendants from, among other things, participating in any duties associated with negotiable instruments or activities involving the ownership or maintenance of real estate. Similar to count three, in context the alleged racketeering or other activity in all of these counts is the same activity relating to Magritz's property taxes, court foreclosure proceedings, and eviction.

Again, for Magritz to succeed on these claims, this court would have to reject the order and judgment in case 01-CV-58-B3 that found the tax liens to be a valid basis for vesting title to the property in Ozaukee County. Any finding by this court in his favor would impugn that state court order and judgment, which this court cannot do.

Count nine, brought under 28 U.S.C. § 2201, seeks a declaratory judgment of the following, among other things:

> G) That Petitioner neither had, nor has, nor can have any duty, obligation or liability to the corporation named Ozaukee County except by way of contract . . . .
>
> H) That Petitioner neither had, nor has, any contract with the corporation named Ozaukee County, nor with the county of Ozaukee, nor any silent or purported or concealed principal of either, giving rise to any liability or duty or obligation to Ozaukee County, on or for any purported "Tax Certificate," or claim of indebtedness.
>
> . . . .
>
> L) That on April 30, 2001, Petitioner had no liability or tax liability to Ozaukee County, based on any purported tax certificate or other claimed indebtedness.
>
> M) That Ozaukee County had no legal or lawful claim to Petitioner's 62.25 acres of land at the time Maurice A. Straub dispossessed Petitioner by force of arms on October 24, 2001, from said land.
>
> N) That Joseph D. McCormack acted without subject matter jurisdiction in Ozaukee County case number 01-CV-58-B3 with regard to Petitioner's 62.25 acres of land.
>
> O) That the proceedings in Ozaukee County case number 01-CV-58-B3 are void ab initio with regard to Petitioner's 62.25 acres of land and confer no rights, privileges, immunities, claim, title or interest on, to or in Ozaukee County

> or officers or employees or agents or principals of Ozaukee County.
>
> . . . .
>
> R) That Ozaukee County, as well as [officers of Ozaukee County, Ozaukee County Board of Supervisors, Sheriff, and Circuit Court], and each of them, have trespassed upon Petitioner's Land Patents as well as upon Petitioner's private, patented land.
>
> . . . .
>
> AA) That Ozaukee County has been in unlawful possession of Petitioner's 62.25 acres of land since October 24, 2001.
>
> AB) That Ozaukee County has the duty and obligation to immediately restore Petitioner to the unhindered, full and complete peaceful enjoyment and possession of his 62.25 acres of land.

(Compl. at 86-88.) Other requested declarations are in a like vein, regarding Magritz's 62.25 acres of land or seeking a declaration that Magritz has title to the land, all of which were the subject of the order and judgment in case 01-CV-58-B3. As stated earlier, for Magritz to succeed on his allegations, this court would have to reject the order and judgment in case 01-CV-58-B3.

Count eleven charges infringement by defendants on Magritz's land patents, issued in 1837 and 1840 by President Martin Van Buren. Magritz asserts that he is the sole assignee of the land patents and that the defendants have infringed upon his use of those land patents. This court would have to find that the order and judgment in case 01-CV-58-B3, extinguishing Magritz's rights to the property and vesting title in Ozaukee County, are void, for Magritz to prevail on this claim. However, this court has no authority to grant that relief.

Count twelve asserts a conspiracy to violate rights under 42 U.S.C. § 1985. Magritz contends that the defendants conspired to impede and obstruct the due course of justice in Ozaukee County, with the intent to deny him equal protection of law and injure

him and his property. Magritz maintains that the defendants conspired and entered his premises to deprive him of equal protection; they deprived him of the peaceful possession and enjoyment of his property; and they stole his property, including land, without compensation. Because this court would have to reject the order and judgment in case 01-CV-58-B3 for Magritz to win on this claim and the court is not empowered to eviscerate this underlying state case, Magritz cannot proceed on count twelve.

Count thirteen raises a claim under 42 U.S.C. § 1983 that defendants, under color of law, deprived Magritz of constitutional rights. He claims that he

> has been injured in his rights to peaceful enjoyment and possession of his property, his right not to be injured in his reputation or business or mental or emotional well being, his right to work and earn a living, his right to not be deprived of his liberty, his right to freedom of assembly or to not assemble with any organization, his right to due process of law, his right to contract or not to contract or to not have his contracts impaired, his right to be secure in his home, papers, and effects, his right to just compensation for private property taken for public use.

(Compl. at 94.) He submits that defendants stole his property and that "[u]nder color of law, and as a policy or custom of Ozaukee County, Defendants did unlawfully seize and take for themselves or others personal property as well as land." (*Id.*) Magritz seeks the return of the property and damages for lost rent. (*Id.* at 94-95.)

Viewed in context, all of the injuries underlying count thirteen stem from the property tax issue, foreclosure of Magritz's property based on the tax liens, and eviction pursuant to the state-court foreclosure judgment when he would not leave the property. Thus, this claim, too, is barred by *Rooker-Feldman*.

Count eighteen asserts an unreasonable seizure in violation of the Fourth Amendment by nondefendant Maurice Straub of the Ozaukee Sheriff's Department "and

a band of heavily armed men" on October 24, 2001. (Compl. at 100.) Magritz contends that these persons "unreasonably seized [his] home, land, buildings, and other property" and handcuffed him at gunpoint, without a warrant. Straub threatened Magritz with further arrest if he returned to the property, "which Straub stated he was taking for Ozaukee County." (*Id.*) Magritz adds that Ozaukee County continues to possess the property and destroyed his home; he claims "full and complete legal title and equitable title" to the property. (*Id.*) Once more, for Magritz to succeed on his allegations in this count, this court would have to proceed contrary to its authority. Of course, that will not be done.

Count nineteen alleges a Fifth Amendment violation for taking private property without compensation. None of the persons identified in this count as harming Magritz is a defendant identified in the case caption. However, to the extent that Magritz incorporates prior paragraphs of the Complaint and may be asserting a claim against Ozaukee County, as the targets appear to be County officials, the claim is barred by *Rooker-Feldman*.

Magritz points out the refusal of the County's Board of Supervisors to restore his real property or to compensate him for the property taken by Straub for the County. Magritz again is referring to the loss of his property through the foreclosure proceedings and eviction which implicate the order and judgment in case 01-CV-58-B3, and must be rejected.

In count twenty, Magritz alleges that the land patents, issued in 1837 and 1840 by President Martin Van Buren, are executed contracts protected from impairment or infringement by article 1 of the U.S. Constitution. Magritz charges the defendants, Ozaukee County in particular, with trespassing, infringing, and impairing, these land patents by unlawful possession of the 62.25 acres, and slandering his title to the land. Again, the

Rooker-Feldman doctrine bars this claim. Inasmuch as this court may not reject the order and judgment in case 01-CV-58-B3, this claim may not proceed.

All of the above claims are barred by the *Rooker-Feldman* doctrine. The final federal claim, count ten, fails to state a claim for relief. In this count Magritz states that his claim arises under the anti-terrorism statute of 18 U.S.C. § 2333. That statutory section provides for a civil remedy to a United States national, but only for injuries to person, property or business "by reason of an act of international terrorism." § 2333(a). "International terrorism" is defines as activities that

> (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State . . . ;
> (B) appear to be intended—
> (i) to intimidate or coerce a civilian population;
> (ii) to influence the policy of a government by intimidation or coercion; or
> (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
> (C) *occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.*

18 U.S.C. § 2331(1) (emphasis added). Nothing in the 107-page complaint construed liberally in Magritz's favor, suggest a defendant engaged in any activities outside the territorial jurisdiction of the United States. Indeed, all of the alleged activities occurred in Ozaukee County, Wisconsin, within the boundaries of the United States. Therefore, count ten fails to state a claim under this federal law.

Only a few counts remain: eight, fourteen, fifteen, sixteen, and seventeen. All assert claims only under state law, and all defendants appear to be Wisconsin citizens. When all federal claims are dismissed before trial, the usual and preferred course is to

dismiss the supplemental state law claims without prejudice, especially when there has been no discovery or pretrial proceedings. *Van Harken v. City of Chicago*, 103 F.3d 1346, 1354 (7th Cir. 1997); *see* 28 U.S.C. § 1367(c)(3) (providing that the district court may decline to exercise supplemental jurisdiction over a state-law claim if all claims over which the court has original jurisdiction have been dismissed). Here, the court declines supplemental jurisdiction over these state-law claims. Therefore,

IT IS ORDERED that Magritz's petition for leave to proceed in forma pauperis is granted.

IT IS FURTHER ORDERED that count ten is dismissed with prejudice under 28 U.S.C. § 1915(e)(2)(b) for failure to state a claim; that counts one through seven, eleven through thirteen, and eighteen through twenty are dismissed without prejudice for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine; that the state-law claims, counts eight and fourteen through seventeen are dismissed without prejudice based on the court's refusal to exercise supplemental jurisdiction under 28 U.S.C. § 1367(c)(iii).

IT IS FURTHER ORDERED that this case is dismissed.

Dated at Milwaukee, Wisconsin, this 8th day of June, 2009.

BY THE COURT

/s/ C. N. Clevert, Jr.
C. N. CLEVERT, JR.
U. S. DISTRICT JUDGE