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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JUSTIN M. CORLISS,
Plaintiff,

:
:
: CIVIL NO. 3:CV-02-0078
:
: (JUDGE CAPUTO)
:
:
:

vs.

POCONO RECORD, *et al.*,
Defendants.

MEMORANDUM AND ORDER

Justin Corliss, an inmate presently confined at the State Correctional Institution at Huntingdon, Pennsylvania ("SCI-Huntingdon"), filed the instant complaint entitled "Verified Complaint in Defamation, Libel, and Commercial Disparagement (*sic*)." (Doc. 1). Plaintiff also submitted this Court's application to proceed *in forma pauperis* and authorization to have funds deducted from his prison account pursuant to 28 U.S.C. § 1915. The Prison Litigation Reform Act (the "PLRA"), Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996) imposed new obligations on prisoners who file suit in federal court and wish to proceed *in forma pauperis* under 28 U.S.C. § 1915, *e.g.*, the full filing fee ultimately must be paid (at least in a non-habeas suit).¹

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PER km
DEPUTY CLERK

1. The Court issued an administrative order directing the warden of SCI Huntingdon to commence deducting the full filing fee from plaintiff's prison trust fund account.

A new section was added to the PLRA which relates to screening complaints in prisoner actions.² We will now review the complaint pursuant to the screening provisions of the Act. For the reasons set forth below, the instant complaint will be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), for failing to state a claim upon which relief may be granted and for lack of subject matter jurisdiction. See 28 U.S.C. § 1331 and § 1332(a)(1).

Plaintiff previously filed a civil action claim with the Court against two of the presently named defendants, Pocono Record and Brian Germano. Plaintiff asserted that defendants Pocono Record and Germano, intended to libel and defame plaintiff. Because Corliss failed to allege any federal constitutional violations or alternative grounds to warrant federal jurisdiction the matter was dismissed without prejudice pursuant to *Paul v. Davis*, 424 U.S. 693 (1976) and 28 U.S.C. § 1915. See *Corliss v. Pocono Record*, Civil Action No. 3:CV-01-1799 (M.D.Pa. 2001)(Caputo, J.).

Corliss now brings the same claims only he now adds defendant Ottoway Newspapers, Inc. and adds a claim of commercial disparagement (*sic*). Plaintiff asserts the Court now has jurisdiction based on diversity jurisdiction, § 1332, because of the addition of Ottoway Newspapers, Inc. Plaintiff states "Pocono Record is a Division of Ottoway

2. Section 1915(e)(2), which was created by § 804 (a)(5) of the Act, provides: (2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the Court shall dismiss the case at any time if the Court determines that (A) the allegation of poverty is untrue; or (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.

Newspapers, Inc. whose corporate location is currently unknown to the Plaintiff but known to not be in Pennsylvania." (Doc. 1, p. 2). Plaintiff also alleges the Court has federal question jurisdiction because he is bringing his claims pursuant to the First Amendment. Plaintiff asks, "[d]oes the plaintiff retain First Amendment protections to his good character and reputation from defamatory, libelous, and disparaging attacks ... by the defendants under the guise of free speech and press?" (Doc. 1, p. 1).

In *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 2 L.Ed. 435 (1806) (overruled on other grounds *Louisville, Cincinnati & Charleston R. Co. v. Letson*, 43 U.S. (2 How.) 497, 555, 11 L.Ed. 353 (1844)), the Supreme Court announced the "complete diversity" rule. The complete diversity rule requires that, to maintain a diversity suit in federal court, no plaintiff can be a citizen of the same state as any of the defendants. Although plaintiff is uncertain of the location of defendant Ottoway Newspapers, Inc., Corliss and the remaining defendants are citizens of the same state. Accordingly, complete diversity does not exist.

In order for the Court to exercise subject matter jurisdiction over this action based on federal question jurisdiction, the claims must "arise under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. The federal question raised must be a direct element in the plaintiff's claim, and must be substantial and not plainly frivolous. *McLucas v. De Champlain*, 421 U.S. 21, 28 (1975) (court should dismiss federal claim for want of jurisdiction if basis for jurisdiction is obviously without merit or wholly frivolous.). The plaintiff has the burden of demonstrating that a federal question exists. *Jackson v. Strayer*

College, 941 F.Supp. 192, 195 (D.D.C. 1996) citing *Lake Lansing Special Assessment Protest Ass'n v. Ingham County Bd. of Commissioners*, 488 F.Supp. 767, 770 (W.D. Mich. 1980). Mere assertions that a federal question is involved are not sufficient to confer jurisdiction. *McCartney v. West Virginia*, 156 F.2d 739, 741 (4th Cir. 1946).

Plaintiff only alleges the First Amendment violation as the bases for the exercise of federal question jurisdiction. The First Amendment of the U.S. Constitution generally binds only the action of Congress or of agencies of the federal government and not the actions of private corporations. *Granfield v. Catholic University of America*, 530 F.2d 1035, 1046-47 (D.C. Cir.) *cert. denied*, 429 U.S. 821 (1976). The First Amendment protects free speech from infringement by the United States government and the States. The plaintiff has made no allegations of state action. There is no legal substance to the plaintiff's argument that this Court has federal question jurisdiction based on the infringement of his First Amendment rights.

Any potential remaining claim(s) rest on state law. Plaintiff does not provide any basis for transforming a state law libel claim into a constitutional tort.³ *Paul* teaches that

3. A §1983 claim must be cognizable on the face of the complaint, articulating the transgression of a specific federally guaranteed right. *Landrum v. Moats*, 576 F.2d 1320 (8th Cir.), *cert. denied* 439 U.S. 912 (1978). This is part and parcel of the "heightened standard of pleading" imposed on §1983 plaintiffs. *See Branch v. Tunnell*, 937 F.2d 1382, 1386 (9th Cir. 1991). "In order to prove a violation of § 1983, a person must prove that the conduct complained of was committed by a person acting under "color of State law" and that the conduct deprived the persons of rights, privileges or immunities secured by the Constitution or Federal law." *Kost v. Kozakiewicz*, 1 F.3d 176; 183 (3d Cir. 1993).

there is no liberty interest in reputation. *Paul v. Davis*, 424 U.S. 693 (1976). Corliss' allegations do not implicate a constitutionally-protected right. The complaint will be dismissed without prejudice to any right Corliss may have to assert his claim in state court.

An appropriate order follows.

ACCORDINGLY, THIS ¹⁴30 DAY OF JANUARY, 2002, IT IS HEREBY ORDERED

THAT:

1. The complaint is dismissed without prejudice to any right plaintiff may have to assert them in state court, pursuant to 28 U.S.C. §1915(e)(2)(B)(ii), for failing to state a claim upon which relief may be granted and for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1332(a)(1).⁴
2. The Clerk of Court is directed to close this case.
3. Any appeal from this Order will be deemed frivolous, without probable cause and not taken in good faith.

FILED
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JAN 30 2002

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DEPUTY CLERK

A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge

4. The dismissal of this action does not relieve Corliss of the obligation to pay the full filing fee. Until the filing fee is paid in full, the Administrative Order, issued January 23, 2002, is binding on the warden of SCI-Huntingdon and the warden of any correctional facility to which Corliss may be transferred.