

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DONELL L. PRINCE,

Plaintiff,

v.

THOMAS AIELLOS,

Defendants.

Civil Action No.: 09-5429 (JLL)

ORDER

LINARES, District Judge.

This matter comes before the Court by way of several motions: (1) Plaintiff's motion to vacate this Court's April 23, 2010 Order granting motions to dismiss filed by Defendants Bergen Regional Medical Center, Bergen County Jail, E. Fahey and Care Plus NJ, Inc., (2) Plaintiff's motion to amend the complaint, and (3) four motions to dismiss Plaintiff's complaint filed by various Defendants. The Court has considered the papers submitted in support of and in opposition to the instant motions. No oral argument was heard. Fed. R. Civ. P. 78. Based on the reasons that follow: Plaintiff's motion to vacate is granted; Plaintiff's motion to amend the complaint is granted; and Defendants motions to dismiss the complaint are denied without prejudice.

Plaintiff commenced the instant cause of action in October 2009. An Amended Complaint was filed in February 2010, setting forth claims pursuant to 28 U.S.C. § 1983 for false arrest, false imprisonment, malicious prosecution and conspiracy. A motion to dismiss Plaintiff's Amended Complaint was filed by Defendant Bergen Regional Medical Center on April 5, 2010. The motion was joined by Defendants E. Fahey and Care Plus NJ, Inc. on April 16, 2010. On April 23, 2010, Defendants' motion to dismiss the complaint was granted. In doing so, the Court noted that Plaintiff had failed to oppose said motion and found that Plaintiff's § 1983 claims as against the foregoing defendants were barred by the two-year statute of limitations given that "no wrongful act by moving Defendants is alleged to have occurred later than the end of 2005, well over two years prior to the filing of the original complaint in this case." See Docket Entry No. 40 at 3.

On May 7, 2010, Plaintiff filed a motion to vacate this Court's April 23, 2010 decision pursuant to Federal Rule of Civil Procedure 60(b)(6) and a request to stay this Court's April 23, 2010 decision pursuant to Federal Rule of Civil Procedure 62(b)(4). Plaintiff seeks to vacate this Court's April 23rd decision on the basis that: (1) he had not received Defendant's motion when it was originally filed, (2) he had submitted a letter to the Court requesting an automatic extension of time in which he could respond to Defendant's motion prior to the Court's decision, and (3) the Court erroneously deemed the motion as unopposed and rendered its decision without considering Plaintiff's request for an extension of time in which to respond to same. The Court has reviewed the papers submitted by the Plaintiff, including the letter requesting an extension, dated April 13, 2010. Although this letter does not appear on the Court's docket and was not in this Court's possession at the time it rendered its April 23rd decision, the letter appears to have been stamped by the Clerk's Office on April 13, 2010. Accordingly, in the interest of justice, and given Plaintiff's pro se status, the Court finds it appropriate to vacate its April 23, 2010 decision. Plaintiff's motion to vacate is, therefore, granted. Plaintiff's request that this Court's April 23rd decision be stayed is denied as moot.

Having vacated this Court's April 23, 2010 decision, the Court must now re-entertain the motion to dismiss filed by Defendant Bergen Regional Medical Center (which was joined by Defendants E. Fahey and Care Plus NJ, Inc.). Also before the Court are motions to dismiss filed by: (1) the Municipal Defendants,¹ (2) Police Officers Thomas Aiello, A. Gutierrez and A. Ferraioli, (3) the Superior Court of New Jersey, Bergen Vicinage Municipal Division, and (4) the Bergen Prosecutor Defendants.² Each of the foregoing motions seek dismissal of Plaintiff's Amended Complaint, including Plaintiff's § 1983 conspiracy claim.

On May 20, 2010, Plaintiff filed a motion for leave to file a Second Amended Complaint. See Docket Entry No. 54. Plaintiff seeks to amend the Amended Complaint "to make more clear

¹ The "Municipal Defendants" include: The Hackensack Police Officers, Lieutenant Lee, Lieutenant Plunket, Officer Toomey, Officer Gervasi, Captain Walsh and Sergeant Trezza; the Hackensack Police Department; Court Administrator Janice Behnke; Deputy Court Administrator Elizabeth P.; and the Hackensack Municipal Court.

² The "Bergen Prosecutor Defendants" include: the Bergen County Prosecutor, Assistant Prosecutor Nicholas Ostuni and John Doe Members of the Bergen County Prosecutor's Staff.

his allegations of conspiracy . . . as it [sic] relates to all these defendants.” See Pl. Cert., Docket Entry No. 54-1 at 2.

Rule 15(a) provides that “leave [to amend] shall be freely granted when justice so requires.” Fed. R. Civ. P. 15(a). The decision to grant a motion to amend a pleading rests in the sound discretion of the district court. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330 (1970). Generally, leave to amend should be granted unless there is undue delay or prejudice, bad faith, dilatory motive, repeated failure to cure deficiencies through previous amendments or futility. Foman v. Davis, 371 U.S. 178, 182 (1962). Absent these factors, leave should be “freely given.” Id.

Plaintiff’s motion to amend has been opposed by Defendants E. Fahey and Care Plus NJ, Inc. (jointly) and the Bergen Prosecutor Defendants on the basis of futility. As a preliminary matter, the Court notes that none of the Defendants claim that they will be prejudiced in any way by Plaintiff’s filing of an amended complaint at this early stage of the litigation. Moreover, having considered the futility arguments raised by the two groups of Defendants who have chosen to oppose this motion, the Court finds that such arguments are more appropriately assessed on a motion to dismiss. This is particularly so given the number of defendants in this action and the overlapping nature of the arguments raised in opposition to Plaintiff’s motion to amend and the various motions to dismiss currently pending before the Court. Accordingly, Plaintiff’s motion for leave to file a Second Amended Complaint is, therefore, granted. The Second Amended Complaint (filed under Docket Entry No. 54-3) is hereby deemed the operative complaint in this matter.

The motions to dismiss currently pending before the Court all relate to Plaintiff’s Amended Complaint. The Defendants opposing Plaintiff’s motion to amend concede that the Second Amended Complaint – which is now the operative complaint – does contain, at the very least, new factual allegations concerning Plaintiff’s § 1983 conspiracy claim, which is asserted against all of the Defendants. The Court has reviewed both complaints and finds that it is not in a position to conclusively determine whether the new factual allegations contained in the Second Amended Complaint materially affect the arguments raised in the currently pending motions to dismiss. In light of the foregoing circumstances, and given Plaintiff’s pro se status,³ the Court finds that the

³ See Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007) (“A document filed pro se is to be liberally construed.”).

more prudent approach is to deny without prejudice the currently pending motions to dismiss (which seek dismissal of the non-operative complaint) and afford Defendants with thirty (30) days from the date of entry of this Order in which to respond to the Second Amended Complaint.

Accordingly, **IT IS** on this **12th day of July, 2010,**

ORDERED that Plaintiff's motion to vacate this Court's April 23, 2010 Order is **granted;**

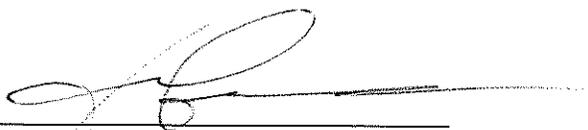
ORDERED that Plaintiff's motion to amend the complaint [Docket Entry No. 54] is **granted;** and it is further

ORDERED that the document contained in Docket Entry No. 54-3 shall be docketed by the Clerk's Office as the Second Amended Complaint, which is hereby deemed the operative complaint in this matter; and it is further

ORDERED that Defendants' motions to dismiss [Docket Entry Nos. 21, 43, 46, 60 and 61] are **denied without prejudice;** and it is further

ORDERED that Defendants have thirty (30) days from the date of entry of this Order in which to respond to Plaintiff's Second Amended Complaint.

IT IS SO ORDERED.



JOSE L. LINARES,
UNITED STATES DISTRICT JUDGE