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IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION

CASE NUMBER 06-0752-CV-W-GAF

Harold-Ray: Stanley,
Plaintiff, *pro se*,

v.

The Honorable Jack Grate et al.,
Defendants

**PLAINTIFF'S MOTION AND MEMORANDUM OF LAW TO DENY DEFENDANT
WIGHT'S MOTION TO DISMISS**

Plaintiff, *pro se* with assistance of counsel, moves this court to Deny Defendant Les. G.

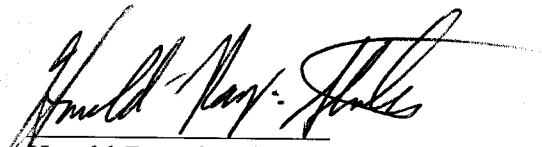
Wight, II, Esq.'s motion to dismiss. In support he offers,

1. All claims are sufficiently pled to survive a motion to dismiss based on "failure to state a cause of action."
 - a. Declaratory Judgment is sought to assert the Plaintiff's Federal Constitutional rights at issue in this action and though specific relief is not pled it is sufficiently implied.
 - b. Pleadings are sufficient to assert the claims under 42 U.S.C. § 1983.
 - c. Pleadings are sufficient to assert conspiracy claims under 42 U.S.C. § 1985.
 - d. Pleadings are sufficient to assert claim for intentional infliction of emotional distress.
 - e. Pleadings are sufficient and proper to request injunctive relief from further unlawful conduct of the defendants.
2. This court has jurisdiction to review all claims.

3. Rooker-Feldman abstention is inapplicable as this is court is not requested to review a state court decision. (*Exxon Mobil v. Saudi Basic Industries*, 544 U.S. 280, (2005))
4. Domestic Relations (Ankenbrandt) abstention is inapplicable as this court is not requested to grant a divorce, alimony or child custody decree or to alter the familial status of the parties. (*Elk Grove Unified School District v. Newdow*, 542 U.S. 1 (2004); *Marshall v Marshall*, 547 U.S. ___, (2006))

Wherefore the Plaintiff prays this court deny the Defendant's Motion to Dismiss on all grounds and sustain the propriety of all claims against all parties. Should this court find an insufficiency of pleadings the Plaintiff prays that dismissal be without prejudice on that point or claim, and permit the Plaintiff to file an Amended Complaint to correct any pleading deficiencies this court notes.

Respectfully Submitted,



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November 28, 2006

MEMORANDUM OF LAW

IN SUPPORT OF MOTION TO DENY MOTION TO DISMISS

Introduction

This action is a civil rights violation action (42 U.S.C. §1983). After removal of a state court proceeding to this federal court was effected and after the action, at the Defendant's request was dismissed, all Defendants usurped the state court chambers and mechanisms, ultra vires, to willfully, knowingly, and egregiously hold proceedings, enter orders, and issue civil contempt arrest warrants to deprive the Plaintiff of his federal constitutional rights. The complete action was removed from state court and the complete action was dismissed in federal court. No remand of the action to state court ever occurred.

A. Standard of Review

A complaint may not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts sufficient to support the claim. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *McCormack v. Citibank*, 979 F.2d 643, 646 (8TH Cir. 1992).

A complaint in federal court need only contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *Schmedding v. Tnemec Co.*, 187 F.3d 862, 864 (8th Cir. 1999).

Pro se complaints are entitled to a liberal construction. *Edgington v. Missouri Dept. of Corrections*, 52 F.3d 777, 779 (8th Cir.1995).

B. The Complaint Sufficiently Avers a Cause of Action Under 42 U.S.C. § 1983

The complaint readily passed the test in *Schmedding v. Tnemec Co.*, 187 F.3d 862, 864 (8th Cir. 1999). The complaint is not vague. It avers parties, dates, places and unlawful conduct of each party that resulted in the deprivation of the Plaintiff's civil rights. The complaint is replete with specifics and provides the Defendants a clear understanding of the conduct for which they are liable.

C. The Complaint Sufficiently Avers a Cause of Action For Conspiracy

The Complaint avers facts that the parties acted in concert, i.e. conspired, to knowingly deprive the Plaintiff of his freedom by the usurpation of state court facilities, mechanism and power, lacking all jurisdiction, to have a civil contempt arrest warrant issued against him. This warrant is still in effect.

D. The Defendant Acted Under Color of State Law, i.e. He Is a State Actor

1. Defendant Acted Under Color of State Law

The Defendant Les. G. Wight, II, Esq. acted under of color of state law as pled. The indisputable controlling law on this point is *Dennis v. Sparks*, 449 U.S. 24, 28 (1980). The *Dennis* 449 U.S. facts are strikingly similar to the present case "...an official act of a defendant judge was the product of a corrupt conspiracy involving bribery of the judge."...and here, the official act of a defendant judge was the product of a corrupt conspiracy involving the usurpation of the state court machinery without jurisdiction.

"As the Court of Appeals correctly understood our cases to hold, to act 'under color of' state law for 1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a willful participant in joint action with the State or its agents. Private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of 1983 actions. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970); *United States v. Price*, 383 U.S. 787, 794 (1966). Of course, merely resorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator or a joint

actor with the judge. But here the allegations were that an official act of the defendant judge was the product of a corrupt conspiracy involving bribery of the judge. Under these allegations, the private parties conspiring with the judge were acting under color of state law;" *Dennis v. Sparks*, 449 U.S. 24, 28 (1980) [Emphasis added}

The *Dennis* 449 U.S. holding is expansive not restrictive. Attempts to narrowly define and recharacterize the participation requirement between the private party and the state official lack authority. See also *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970); *United States v. Price*, 383 U.S. 787, 794 (1966) for the repeated expansive words used to encompass non state official parties who act under color of state law, i.e. are state actors.

Also see *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941 (1982) for expansive language,

"Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of law for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents," quoting *United States v. Price*, 383 U.S., at 794 . [457 U.S. 922, 942]" *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941 (1982)

2. Attorneys are Liable for 42 U.S.C. § 1983 Claims

All of the case law relied upon by the Defendant that attorneys are not private actors liable for 42 U.S.C. §1983 lawsuits, besides being inapposite, is also readily distinguishable. In all Defendant's cases the attorney at issue acted *lawfully* in using the state court system. In the instant case the Defendant knowingly, *unlawfully* participated in a usurped state court system. His participation in filing motions, attending hearings, and demanding incarceration of the Plaintiff effecting the deprivation of the Plaintiff's fundamental rights all took place without the state court having jurisdiction. The Defendant knew the state court and the state official Defendant the Honorable Jack Grate lacked jurisdiction, yet he actively participated to the detriment of the Plaintiff. The law on the effect of removal to federal court divesting state court of jurisdiction until remand (28 U.S.C. § 1446 (d)) was long settled and well know.

The U.S. Supreme Court has well settled that an attorney representing a client even in a valid state court (in the instant case the state court proceeding was invalid) proceeding is a proper defendant to a 42 U.S.C. § 1983 action. *Wyatt v. Cole*, 504 U.S. 158 (1992) Therein John Robbins II, attorney for Cole, was a codefendant who used a state replevin statute that resulted in a 42 U.S.C. § 1983 federal court lawsuit against both parties. The U.S. Supreme Court found both defendants not immune from a 42 U.S.C. § 1983 lawsuit. The holding was expansive and not restrictive to the specific statute at issue (a replevin statute).

“Title 42 U.S.C. 1983 provides a cause of action against “[e]very person who, under color of any statute . . . of any State . . . subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws. . . .” The purpose of 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails. *Carey v. Piphus*, 435 U.S. 247, 254 -257 (1978).” *Wyatt* 504 U.S. at 161.

Neither judges, state officials, attorneys, state contracted professionals or private parties are immune from 42 U.S.C. § 1983 claims. *West v. Atkins*, 487 U.S. 42 (1988). Section 1983 imposes liability on *anyone* who, under color of state law, deprives a person of *any* rights, privileges, or immunities secured by the Constitution and laws. *Blessing v. Freestone*, 520 U.S. 329, 340 (1997).

3. Conspiracy is Not Needed to Make a Private Actor a State Actor

The Plaintiff's above arguments show that the Defendant is a state actor, i.e. he acted “under color of state law.” The Plaintiff need not show that the Defendant was a “state official” merely that he acted under color of state law. Again see *Wyatt v Cole*, 504 U.S. 158 (1992) and *West v Adkins*, 487 U.S. 42 (1988). The pleadings are sufficient to show active participation by the Defendant with the state official Defendant Grate to demonstrate he acted under color of state law. *Dennis v. Sparks*, 449 U.S. 24, 28 (1980). “It is enough that he is a willful participant in

joint action with the State or its agents. Private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of 1983 actions. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 152 (1970); *United States v. Price*, 383 U.S. 787, 794 (1966).

E. Rooker- Feldman Doctrine is Inapplicable

1. Defendants' Conduct is at issue-not a state court ruling

The Defendant misreads this lawsuit as claims that are against a state court ruling. It is not. This lawsuit contains claims against the Defendants--not against a state court ruling. The distinction is important. Here the Plaintiff complains of injury from the Defendants after the March 24, 2005 removal, not from the state court judgment prior to the March 24, 2005 removal. The Plaintiff only implicates the state court actions following removal because all state court actions on the subject case following the removal are unlawful. In all Rooker Feldman case discussions the context is in that of a lawful state court judgment. Because the state court actions following the March 24, 2005 removal are unlawful Rooker-Feldman does not apply.

As guidance for this court the Plaintiff offers other recent federal appellate court rulings entered after *Exxon Mobil v. Saudi Basic Industries*, 544 U.S. 280, (2005) and *Lance* U.S. 546 that use the clarified concepts for Rooker-Feldman doctrine application.

Coles et al. v. Granville et al., No. 05-3342 (6th Circ. May 26, 2006)

"*Exxon Mobil*, 544 U.S. at 284. *Exxon Mobil* dealt specifically with a case where there were parallel state and federal cases on the same issue. The court held that normal preclusion jurisprudence, not *Rooker-Feldman*, would guide the federal court decision if the state court reached a decision first. *Id.* In dicta, the Supreme Court also addressed the circumstance where the plaintiff initiated a federal claim after a state court decision, circumstances such as the case at bar:

Nor does [*Rooker-Feldman*] stop a district court from exercising subject matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal plaintiff "present[s] some independent claim, albeit one

that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.”

Id. (quoting *GASH Assocs. v. Vill. of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993) (ellipses in original)).

This Circuit and other circuits have taken the Supreme Court’s guidance on the application of *Rooker-Feldman* and applied the doctrine only when a plaintiff complains of injury from the state court judgment itself.”

Other circuits have agreed with this Court’s approach. See *Davani v. Va. DOT*, 434 F.3d

712, 713 (4th Cir. 2006) (“*Exxon* teaches . . . that the *Rooker-Feldman* doctrine applies only when the loser in state court files suit in federal district court seeking redress for an injury allegedly caused by the state court’s decision itself. Because *Davani*’s suit does not challenge the state court’s decision, and it instead seeks redress for an injury allegedly caused by Appellees, the *Rooker-Feldman* doctrine does not apply”); *Galibois v. Fisher*, No. 05-1576, 2006 U.S. App. LEXIS 8246, at *4 (1st Cir. Mar. 31, 2006) (“*Exxon* requires this court to examine whether the state court loser who files suit in federal court seeks redress for an injury caused by a state court decision itself or an injury caused by the defendant.”); *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 85 (2d Cir. 2005) (finding *Rooker-Feldman* implicated only when a plaintiff asked the federal district court to review the validity of a state court judgment). The Tenth Circuit summarized the difference between a suit barred by *Rooker-Feldman* and normal preclusion principles:

Appellate review – the type of judicial action barred by *Rooker-Feldman* – consists of a review of the proceedings already conducted by the “lower” tribunal to determine whether it reached its result in accordance with law. When, in contrast, the second court tries a matter anew and reaches a conclusion contrary to a judgment by the first court, without concerning itself with the bona fides of the prior judgment (which may or may not have been a lawful judgment under the evidence and argument presented to the first court), it is not conducting appellate review, regardless of whether compliance with the second judgment would make it impossible to comply with the first judgment. In this latter situation the conflict between the two judgments is to be resolved under preclusion doctrine, not *Rooker-Feldman*.

Bolden v. City of Topeka, 441 F.3d 1129, 1143 (10th Cir. 2006).

If this lawsuit was asking this court to overturn a state court ruling that would be improper as this court lacks such subject matter jurisdiction which is solely reserved to the U.S. Supreme Court (28 U.S.C. § 1257). This lawsuit targets the conduct of the Defendants as violating the Plaintiff's civil rights. The conduct happened to take place in a state court courtroom by parties who lacked all jurisdiction to conduct a state court proceeding.

Yes, the Plaintiff did subsequently—not appeal the ultra vires state court order—but requested a writ of mandamus from superior state courts. Those rulings are not at issue. They are recorded in the complaint to point out to this court it need not extend comity to the state courts because they did have a chance to correct the deprivation of the Plaintiff's civil rights that resulted from the ultra vires conduct of the Defendants. The fact the state courts chose to deny, without reasoned opinion, the Plaintiff's request for a writ of mandamus does not in any fashion serve as a preclusive effect on the claims of the *Defendants'* unlawful conduct. The Defendants usurped a state court chambers to conduct an ultra vires proceeding that resulted in an arrest order and warrant for civil contempt that is the cause of the deprivation of the Plaintiff's civil rights.

This distinction is nicely articulated in *Galibois v Fisher*, No. 05-1576, unpublished (1st Cir. March 31, 2006),

("Rooker-Feldman is not simply preclusion by another name"). In other words, Exxon requires this court to examine whether the state court loser who files suit in federal court seeks redress for an injury caused by the state court decision itself or for an injury caused by the defendant. "If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, Rooker-Feldman bars subject matter jurisdiction in federal district court. If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, Rooker-Feldman does not bar jurisdiction." Noel v. Hall, 341 F.3d 1148, 1164 (9th Cir. 2003); see Washington v. Willmore, 407 F.3d 274, 280 (4th Cir. 2005) (holding, post Exxon, that the Rooker-Feldman doctrine does not apply because

"[plaintiffs] claim of injury rests not on the state court judgment itself, but rather on the alleged violation of his constitutional rights [by the defendant]"); Todd v. Weltman, Weinberg & Reis, Co., 434 F.3d 432, 437 (6th Cir. 2006); Jensen v. Foley, 295 F.3d 745, 747-48 (7th Cir. 2002) ("The Rooker-Feldman doctrine, generally speaking, bars a plaintiff from bringing a § 1983 suit to remedy an injury inflicted by the state court's decision . . . Preclusion, on the other hand, applies when a federal plaintiff complains of an injury that was not caused by the state court, but which the state court has previously failed to rectify.")

The next distinction worthy of clarification is between the ultra vires arrest order/ warrant and the state petitions for writ of mandamus.

2. Ultra Vires State Court Order v. State Petitions for Writ of Mandamus

Rooker-Feldman doctrine does not apply to the state petitions for writs of mandamus. The Plaintiff has not requested this court overturn those petition rulings. The Plaintiff has pointed out they are erroneous legal rulings. The petitions also do not raise the claims raised in this lawsuit, i.e. deprivation of Plaintiff's Federal civil rights and 42 U.S.C. § 1983, 42 U.S.C. § 1985 claims, intentional infliction of emotional distress. These claims are raised for the first time in this lawsuit. The petitions for the state writs of mandamus were addressed to the ultra vires nature of the order resulting from the Defendants unlawful conduct. The Petitions were not targeted at the Defendants...but at an unlawful state order.

The Plaintiff does not seek review of the state writs of mandamus. In this action he requests this court for injunctive relief to prevent the Defendants from further unlawful action. He also petitions this court to issue a writ of mandamus to the state enforcement authorities to cease enforcement of the arrest warrant. This Petition now is in the context of the ultra vires state court order impermissibly infringing federal constitutional rights—claims not raised in the state court petitions.

As noted above, the state writs of mandamus are offered to this court to show the Plaintiff's good faith effort, the non frivolous nature of his claims and as evidence this court need not feel comity is at issue.

3. The State Court Judgment was Unlawful

The Plaintiff only implicates the state court actions following removal because all actions following removal are unlawful. In all Rooker Feldman case discussions the context is in that of a lawful state court judgment. Because the state court judgment here is unlawful Rooker-Feldman does not apply.

F. Domestic Relation Exception (Ankenbrandt) is Inapplicable

The domestic relations except is explicit only to a request for a divorce, alimony or child custody decree by a federal court. This was well settled law but Federal courts have been misapplying it. It does not apply to this action as no such decrees are requested.

The United States Supreme Court recently restated the very narrow nature of the domestic relations exception—divorce and alimony decrees—in the case that controls here, *Marshall v Marshall*, 547 U.S. ___ (2006). “In *Ankenbrandt v. Richards*, 504 U. S. 689 (1992), this Court reined in the ‘domestic relations exception.’” In *Marshall* 547 U.S. the U.S. Supreme court reviews the origins of the domestic relations exception, expresses how lower federal courts have erroneously expanded the exception and restates its very narrow application—only divorce and alimony decrees..

Marshall 547 U.S.,

“Noting that some lower federal courts had applied the domestic relations exception “well beyond the circumscribed situations posed by Barber and its progeny,” *id.*, at 701, we clarified that only “divorce, alimony, and child custody decrees” remain outside federal jurisdictional bounds, *id.*, at 703, 704.”

It goes on to say....

“While recognizing the ‘special proficiency developed by state tribunals...in handling issues that arise in the granting of [divorce, alimony, and child custody] decrees,’ id., at 704, we viewed federal courts as equally equipped to deal with complaints alleging the commission of torts, ibid.”

This action is not subject to the domestic relations exception and this court must accept its authorized jurisdiction.

G. The Complaint Sufficiently Avers a Cause of Action for Intentional Infliction of Emotional Distress

Contrary to Defendant’s assertions, the complaint avers the elements needed to sustain a claim of intentional infliction of emotional distress.

1. Wrongdoer Initiated Behavior When He Knew or Should Have Known that Emotional Distress Would Result

There can be little doubt that the fear of arrest, the fear of confinement in jail, the fear of loss of reputation, the fear of future loss of employment opportunity would cause emotional distress in anyone, and in particular the Plaintiff.

The complaint alleges that the Defendant’s conduct was intentional, willful and knowing.

2. The Conduct Was Outrageous

The complaint alleges conduct that fulfills this element. The complaint states the Defendant was on notice that the Plaintiff would not attend the state court contempt hearing because the action had been properly removed to federal court. The complaint notes the Defendant received notification of the removal of the action and was provided the current law on the effect of removal. Despite this the Defendant initiated and attended the ultra vires state court

hearings ex parte. The Defendant was informed and the law is unambiguous that the state court lacked jurisdiction. To pursue ex parte ultra vires a hearing to imprison the Plaintiff without jurisdiction is outrageous, goes beyond all bounds of decency, is odious, and utterly intolerable in a civilized community. Evidence of this is the bar on attorney participation in ex parte hearings when noticed by opposing counsel of his contemplated absence for reason permitted by law.

3. The Conduct Caused Emotional Distress

The complaint alleges this element. The allegations must be taken as valid for sake of this motion to dismiss.

4. The Emotional Distress Was Severe

The complaint distinctly pleads this element. Dismissal would be improper as all elements are adequately pled.

H. Declaratory Judgment Relief of Federal Constitutional Rights is Sufficiently Implied

The Plaintiff's unfamiliarity with this court's required form for complaint caused an oversight in his distinct prayer for declaratory relief that he is entitled to the protections of the U.S. Constitutional amendments enumerated in his Complaint, Claim I.

Nonetheless, the relief sought is clearly implied, if not specifically requested, to survive a motion to dismiss the claim. The Plaintiff merely wishes this court to declare that he is entitled to the U.S. Constitutional protections enumerated in Claim I. He seeks no more than that declaration as relief in Claim I.

I. Case Number 05-0281-CV-W-GAF Was a Removed Action

1. Case Number 05-0281-CV-W-GAF was a Removed Action

The case at issue in this lawsuit which triggered the voluntary knowing ultra vires conduct of the Defendants, i.e. Case Number 05-0281-CV-W-GAF of this court was a removed action from state court. All filings support that the action was a removed action. Defendant's argument that it has the character of an original action simply fails. Evidence of Removal is distinct, repetitive and unambiguous, i.e.,

- a. A Notice of Removal was filed with this court citing removal of state court case Number 16D96-08993-02, -04 as removed to this federal court.
- b. A Notice of Filing of Notice of Removal was filed with the Clerk of the Court of Jackson County Missouri pursuant to 28 U.S.C. § 1446 on March 24, 2005. (Attached to the complaint of this action is a dual date stamped copy—federal court case number stamp and Jackson County Clerk of Court stamp.)
- c. Form JS44 part V has an "x" marked immediately with #2 Removal from State Court.
- d. Form JS 44 part VI Cause of Action includes 28 U.S.C. 1446.
- e. The Removed Complaint cites jurisdiction pursuant to 28 U.S.C. § 1441 (a)(b)(c) and 28 U.S.C. § 1446.
- f. The Court Order comments on the removed action.

2. Removal Was Properly Effected

An important point of the lawsuit is whether the state court action was "removed" to federal court. An effected removal creates the unlawful (ultra vires) conduct of the defendants

impermissibly usurping a state court to effect the deprivation of Plaintiff's fundamental constitutional rights. Removal was "effected."

28 U.S.C. § 1446 is controlling as to whether removal is effected. It states removal is effected when the clerk of the state court is provided notice of the removal. In this case the clerk of the Jackson County Missouri was noticed on March 24, 2005 of the state case's removal to federal court. It was at that point per 28 U.S.C. 1446 (d) that the state court lost all jurisdiction, i.e. "State court shall proceed no further unless and until the case is remanded." Remand from federal court to state court was never effected.

In fact, a state court has a "duty...to proceed no further in the cause." *Steamship Co. V. Tugman*, 106 U.S. 118, 122 (1882); *Hyde Park Partners, L.P. v. Connolly*, 839 F. 2d 837.842 (1st Cir. 1988)

The removal of a case from state court to federal court effects a transfer of the entire action, including all the parties and all the claims, to the federal court. *City of Gainesville v. Brown-Crummer Investment Co.*, 277 U.S. 54.60 (1928); *Arango v. Guzman Travel Advisors Corp.*, 621 F. 2d 1371, 1376 (5th Cir. 1980); *Murphy v. Kidz*, 351 F. 2d 163, 167 (9th Cir. 1965)

3. Removal Was Effected Even When Removal is Improper.

Even if Case Number 05-0281-CV-W-GAF was improperly removed, removal was effected and the state court lacked all jurisdiction to proceed unless and until remanded.

A later determination that the removal petition was not proper does not change the outcome that any proceedings in state court subsequent to removal on the case are void ab initio. See *Maseda v. Honda Motor Co.*, 861 F. 2d 1248, 1254 n 11 (11th Cir. 1988); *South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971); *United States v Silbergliitt*, 441 F. 2d 225, 227 (2nd Cir. 1971); *Love v. Jacobs*, 243 F. 2d 432, 433 (5th Cir. 1957).

“After compliance with the removal statute[s] the jurisdiction of the [s]tate court is suspended until there has been a remand.” *Levine v. Lacy*, 204 Va. 297, 300, 130 S.E. 2d 43, 445 (1963); *Yarnevic v. Brink’s Inc.*, 102 F. 3d 753, 754 (4th Cir. 1996); *Maseda* 861 F. 2d at 1254; *Allman v. Hanley*, 302 F. 2d 559, 562 (5th Cir. 1962). “Any subsequent proceedings in state court on the case are void ab initio.” *Maseda* 861 F. 2d 1254-55 (citing *Steamship Co. v. Tugman*, 106 U.S. 118, 122 (1882)), South Carolina 447 F. 2d 1067 at 1073.

The removal of a case from state court to federal court effects a transfer of the *entire action*, including all the parties and *all the claims* to the federal court. *City of Gainesville v Brown-Crummern Investment Co.*, 277 U.S. 54, 60 (1928); *Arango v. Guzman Travel Advisors Corp.*, 621 F. 2d 1371, 1376 (5th Cir. 1980); *Murphy v. Kodz*, 351 Fl. 2d 163, 167 (9th Cir. 1965); *Hartlein v. Illinois Power Co.*, 601 N.E. 2d 720, 726 (Ill. 1992)

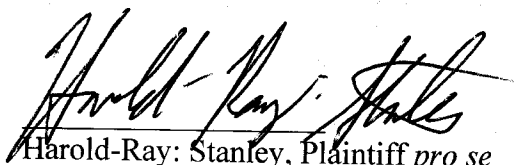
Conclusion

“We are deeply troubled that circuit courts continue to illegally incarcerate people for civil contempt in the face not only of ample case law, but also a rule which clearly delineates the procedures that should be followed in order to ensure that the due process rights of alleged contemnors are protected. As the [Florida] Supreme Court noted when issuing a public reprimand to a judge found to have improperly exercised his contempt powers, ‘[a]lthough the contempt power is an extremely important power for the judiciary, it is also a very awesome power and is one that should *never* be abused.’ See In re Inquiry Concerning Perry, 641 So. 2d 366, 368 (Fla. 1994). We therefore once again repeat our admonishment that there are dangers not only to litigants but to trial judges as well when contempt powers are abused. See Conley v. Cannon, 708 So. 2d 306 (Fla. 2d DCA 1998); Blalock v. Rice, 707 So. 2d 738 (Fla. 2d DCA 1997).” Bresch v Henderson, 761 So. 2d 449, (Fla. 2nd DCA 2000) [Emphasis added]

Wherefore the Plaintiff prays this court find Defendant’s arguments insufficient, not persuasive and lacking merit to sustain a motion to dismiss on any and all grounds requested. Instead the Plaintiff prays this court find that the complaint survives all arguments for dismissal.

In the alternative should this court find any merit in any of Defendant’s arguments the Plaintiff prays this court permit him to amend his complaint to correct any deficiencies in the pleadings.

Respectfully Submitted,



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November 28, 2006

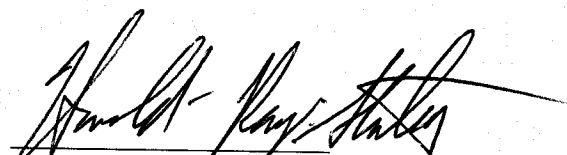
Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing was sent via first-class U.S. Mail, postage pre-paid, this 28th Day of November, 2006 to

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