

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FREDERICK GEORGE KRIEMELMEYER,

Plaintiff,

v.

MEMORANDUM and ORDER
05-C-193-S

ERIC KOPP, STEVEN CROCKER and
INTERNAL REVENUE SERVICE,

Defendants.

Plaintiff commenced this action on April 4, 2003 against defendants Eric Kopp, Steven Crocker and Internal Revenue Service. On May 2, 2005 defendant Steven Crocker filed a motion to dismiss plaintiff's complaint for failure to comply with Rule 8(a), Federal Rules of Civil Procedure and based on the doctrine of judicial immunity. Pursuant to this Court's May 3, 2005 scheduling order plaintiff's response to defendant Crocker's motion to dismiss was to be filed not later than May 23, 2005 and has not been filed to date.

A complaint should be dismissed for failure to state a claim only if it appears beyond a reasonable doubt that the plaintiffs can prove no set of facts in support of the claim which would entitle the plaintiffs to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to survive a challenge under Rule 12(b)(6)

a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Car Carriers, Inc. v. Ford Motor Co., 745 F. 2d 1101, 1106 (7th Cir. 1984).

MEMORANDUM

Defendant Crocker moves to dismiss plaintiff's complaint against him because it does not contain "a short and plain statement of the claim showing that the pleader is entitled to relief" pursuant to Rule 8(a), Federal Rules of Civil Procedure. The complaint is unintelligible. Plaintiff does not allege any conduct by defendant Crocker.

This Court takes judicial notice of the fact that defendant Crocker is a United States Magistrate Judge in the Western District of Wisconsin. As a judge defendant Crocker issued a December 13, 2004 search warrant for the business premises of plaintiff. He is absolutely immune from liability for acts taken in the performance of his official duties that relate to his judicial function. Forrester v. White, 484 U.S. 219, 225-227 (1988); Stump v. Sparkman, 435 U.S. 349 (1979). Judicial immunity bars plaintiff's suit against defendant Steven Crocker.

Accordingly, defendant Crocker's motion to dismiss plaintiff's complaint against him will be granted.

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ORDER

IT IS ORDERED that defendant Steven Crocker's motion to dismiss plaintiff's complaint against him is GRANTED.

Entered this 26th day of May, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge