

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

MICHAEL R. RAY,

Petitioner,

v.

SEVENTH AVENUE COMPANY;
MIDNIGHT VELVET, INC.;
FUN CHARGE, and GINNY'S INC.,

Respondents.

ORDER

07-C-331-C

Petitioner Michael R. Ray, a prisoner at the Federal Correctional Institution in Estill, South Carolina, has filed a proposed complaint for declaratory, injunctive and monetary relief and a request for leave to proceed in forma pauperis. The request will be denied, because petitioner does not qualify for in forma pauperis status under 28 U.S.C. § 1915(g).

Section 1915(g) reads as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

On at least three prior occasions, petitioner has filed actions or appeals that were dismissed as legally meritless or for failure to state a claim upon which relief may be granted. See Ray v. Chicago Title Ins. Co., 04-CV-509 (D. S.C.), decided June 21, 2004; Ray v. State of New Jersey, 05-CV-3508-RBK-AMD (D. N.J.), decided Jan. 20, 2006; and Ray v. State of New Jersey, 06-1521 (3rd Cir.), decided Mar. 5, 2007.

Moreover, petitioner's complaint does not allege facts from which an inference may be drawn that he is under imminent danger of serious physical injury. In his complaint, petitioner alleges that respondents violated his rights under the Fair Credit Reporting Act and the Equal Credit Opportunity Act when they closed his accounts after learning that he was incarcerated.

In order to meet the imminent danger requirement of 28 U.S.C. § 1915(g), a petitioner must allege a physical injury that is imminent or occurring at the time the complaint is filed, and the threat or prison condition causing the physical injury must be real and proximate. Ciarpaglini v. Saini, 352 F.3d 328, 330 (7th Cir. 2003) (citing Lewis v. Sullivan, 279 F.3d 526, 529 (7th Cir. 2002) and Heimermann v. Litscher, 337 F.3d 781 (7th Cir. 2003)). Claims of physical injury ordinarily arise in the context of lawsuits alleging Eighth Amendment violations. I can conceive of no factual scenario under which a petitioner would be subjected to physical injury by the denial of his rights under the Fair Credit Report Act or the Equal Credit Opportunity Act. Therefore, petitioner's complaint

is not a complaint requiring application of the exception to § 1915(g).

Because petitioner is disqualified from proceeding in forma pauperis under § 1915(g), he may choose to pursue this case as a paying litigant. If so, he must submit a check or money order made payable to the clerk of court in the amount of \$350 and he must do so no later than July 13, 2007. If he does this, however, petitioner should be aware that the court then will be required to screen his complaint under 28 U.S.C. § 1915A, and dismiss his case if the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune from such relief.

If petitioner does not pay the \$350 filing fee by July 13, 2007, I will consider that he does not want to pursue this action. In that event, the clerk of court is directed to close this file. However, even if the file is closed, petitioner will still owe the \$350 filing fee and he must pay it as soon as he has the means to do so. Newlin v. Helman, 123 F.3d 429, 436-437 (7th Cir. 1997). If he fails to pay it promptly, I will be required to advise the warden of the Federal Correctional Institution in Estill of petitioner's obligation to pay the fee so that the fee can be collected and sent to the court in accordance with 28 U.S.C. § 1915(b)(2).

ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is

DENIED because petitioner is ineligible for in forma pauperis status under 28 U.S.C. § 1915(g).

Further, IT IS ORDERED that petitioner may have until July 13, 2007, in which to submit a check or money order made payable to the clerk of court in the amount of \$350. If, by July 13, 2007, petitioner fails to pay the fee, the clerk of court is directed to close this file. However, even in that event, the clerk of court is to insure that petitioner's obligation to pay the \$350 fee for filing this case is reflected in this court's financial records.

Entered this 22d day of June, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge