

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

MICHAEL R. RAY,

Plaintiff,

v.

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

Defendants.

ORDER

07-C-331-C

Plaintiff Michael R. Ray, a prisoner at the Federal Correctional Institution in Estill, South Carolina, has filed a complaint against defendants Seventh Avenue Company, Midnight Velvet, Inc., Fun Charge and Ginny's Inc. for declaratory, injunctive and monetary relief under the Equal Credit Opportunities Act, 15 U.S.C. § 1691. Initially, plaintiff requested leave to proceed in forma pauperis, which I denied after concluding that petitioner was ineligible under 28 U.S.C. § 1915(g). After plaintiff paid the \$350 filing fee, he filed a motion for reconsideration of that decision, asking that this court refrain from counting as a strike the June 21, 2004 dismissal of a case he filed in the District of South Carolina, Ray v. Chicago Title Ins. Co., 04-CV-509. In an order dated July 11, 2007, I found that case

no. 04-CV-509 should not count as a strike and amended the June 22 order to rescind the finding that petitioner is ineligible to proceed in forma pauperis because of his three-strike status.

Although plaintiff has paid the full filing fee, because he is a prisoner, I would be required to screen his complaint under 28 U.S.C. § 1915A if he was seeking redress from “a government agency or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). However, defendants appear to be private business entities. Therefore, the court has no power or obligation to screen plaintiff’s complaint before it proceeds.

The next step is for plaintiff to serve his complaint on defendants. Under Fed. R. Civ. P. 4(m), a plaintiff has 120 days after filing a complaint in which to serve the defendants. However, that is an outside limit with few exceptions. This court requires that a plaintiff act diligently in moving his case to resolution. If plaintiff acts promptly, he should be able to serve his complaint on the defendants well before the deadline for doing so established in Rule 4.

To help plaintiff understand the procedure for serving a complaint on defendants, I am enclosing with this order a copy of document titled “Procedure for Serving a Complaint on Individuals in a Federal Lawsuit.” In addition, I am enclosing to plaintiff an extra copy of his complaint and forms he will need to send to defendants in accordance with the procedures set out in Option 1 of the memorandum.

One final matter requires attention. Plaintiff has filed a request for “clarification” of the July 11 order, in which I concluded that he had not “struck out” under §1915(g) as I had thought previously because one of the cases on which I had relied was dismissed without prejudice and for a reason unrelated to the merits of the case. Plaintiff now wants a declaration from this court that *none* of the three cases dismissed should count as strikes.

Although I understand plaintiff’s concern, his request goes beyond what is necessary to decide his case. To begin with, the question whether plaintiff is eligible to proceed in forma pauperis in this court is for the most part moot because plaintiff has paid the full filing fee. To the extent it is not moot, the only relevant question is whether plaintiff has struck out and I have concluded that he has not. Thus, whether plaintiff has two strikes or none has no bearing on this case.

Further, the other two cases that I construed as requiring a strike are from other courts. Because this court’s interpretations of another court’s rulings are not binding on any other court, even if I have mischaracterized one or more of plaintiff’s dismissals, it does him no harm. If plaintiff files another action in this court in a situation in which 1915(g) is relevant, he may raise his arguments at that time.

ORDER

IT IS ORDERED that plaintiff should promptly serve copies of his complaint on

defendants and file proof of service of his complaint as soon as service has been accomplished. If, in the time allowed, plaintiff fails to submit proof of service of his complaint on defendants Seventh Avenue Company, Midnight Velvet, Inc., Fun Charge and Ginny's Inc. or explain his inability to do so, I will direct plaintiff to show cause why his case should not be dismissed for lack of prosecution.

FURTHER IT IS ORDERED that plaintiff's motion for clarification is DENIED AS UNNECESSARY.

Entered this 25th day of July, 2007.

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