

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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| _____ |) |
| DONELL PRINCE, |) |
| |) |
| Plaintiff, |) |
| |) |
| v. |) |
| |) |
| THOMAS AIELLOS, et al., |) |
| |) |
| Defendants. |) |
| _____ |) |

Civil Action No.: 09-5429 (JLL)

ORDER

LINARES, District Judge.

This matter comes before the Court on the motion to dismiss [CM/ECF #21] filed by Defendant Bergen Regional Medical Center and joined by Defendants Bergen County Jail, E. Fahey, and Care Plus NJ, Inc. (collectively “moving Defendants”). Also before the Court at this time is the motion [CM/ECF #36] for an extension of time to answer, move, or otherwise reply out of time filed by Plaintiff Donell Prince (“Plaintiff”). No oral argument was held. Fed. R. Civ. P. 78.

After reviewing the submissions of the parties on the docket, this Court finds that the date for filing an opposition to moving Defendants’ motion to dismiss has passed, and that it is appropriate to consider the motion as unopposed. The applicable inquiry under Federal Rule of Civil Procedure 12(b)(6) is well-settled. Courts must accept all well-pleaded allegations in the complaint as true and draw all reasonable inferences in favor of the non-moving party.¹ See

¹ In doing so, a court may look only to the facts alleged in the complaint and any accompanying attachments, and may not look at the record. See Jordan v. Fox, Rothschild,

Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), abrogated on other grounds by Harlow v. Fitzgerald, 457 U.S. 800 (1982); Allegheny Gen. Hosp. v. Philip Morris, Inc., 228 F.3d 429, 434-35 (3d Cir. 2000). However, courts are not required to credit bald assertions or legal conclusions improperly alleged in the complaint. See In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1429 (3d Cir. 1997). Similarly, legal conclusions draped in the guise of factual allegations may not benefit from the presumption of truthfulness. See In re Nice Sys., Ltd. Sec. Litig., 135 F. Supp. 2d 551, 565 (D.N.J. 2001).

A sound complaint must set forth “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Although the proscriptions of Rule 8 apply to all plaintiffs, when a plaintiff is proceeding pro se, the court must construe the complaint liberally. Altson v. Parker, 363 F.3d 229, 233-34 (3d Cir. 2004); U.S. v. Miller, 197 F.3d 644, 648 (3d Cir. 1999) (recognizing the courts’ “time-honored practice of construing pro se plaintiffs’ pleadings liberally”). Moreover, given the disparity in legal sophistication, the court will hold a complaint submitted by a pro se plaintiff to a less exacting standard than one submitted by trained counsel. See Erickson v. Pardus, 127 S.Ct. 2197, 2200 (2007); Haines v. Kerner, 404 U.S. 519 (1972).

The primary ground moving Defendants rely upon is the statute of limitations. They allege that Plaintiff’s cause of action under § 1983 accrued on May 24, 2005, when he was removed from his home by the Hackensack police and placed at Bergen Regional Medical Center for psychiatric evaluation. (Def. Br. at 1.) They further argue that as he filed his complaint on

O’Brien & Frankel, 20 F.3d 1251, 1261 (3d Cir. 1994).

October 20, 2009, he beyond the time permitted under the applicable statute of limitations by more than two years, and his complaint must be dismissed on that basis. (Id. at 1-2.)

After an examination of Plaintiff's Amended Complaint, this Court finds that he alleges that he was seized by Hackensack police and placed under in-patient psychiatric supervision on May 24, 2005. Plaintiff was later transferred to a correctional facility, and he was let out on bail from that facility on August 30, 2005. His Amended Complaint alleges violations of § 1983 for false arrest, false imprisonment, malicious prosecution. (Am. Compl. ¶ 31.) He also alleges a § 1983 conspiracy. (Id. ¶ 32.) There is no allegation concerning moving Defendants in the Amended Complaint that occurred after 2005.

Under the "Third Circuit rule," a defendant may prevail on the statute of limitations at the motion to dismiss stage "if the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations." Robinson v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002) (quoting Hanna v. United States Veterans' Admin. Hosp., 514 F.2d 1092, 1094 (3d Cir. 1975)). The statute of limitations on § 1983 actions in this District is two years. O'Connor v. City of Newark, 440 F.3d 125, 126-27 (3d Cir. 2006). A § 1983 cause of action accrues under federal law when the allegedly wrongful act occurred. Wallace v. Kato, 549 U.S. 384, 388 (2007). Here, 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. Moving Defendants' motion to dismiss is, therefore, granted with prejudice.

With respect to Plaintiff's motion for an extension of time to answer, move, or otherwise reply, this Court finds that Plaintiff requests relief that is not available to him. Plaintiff is not a defendant in this case and cannot make ex parte requests for extensions on behalf of his

adversaries, as he has no standing to do so. Summers v. Earth Island Institute, — U.S. —, 129 S. Ct. 1142, 1149 (2009) (requiring plaintiff to have “a personal stake in the outcome of the controversy”). This Court, therefore, will deny Plaintiff’s request for extensions of time for defendants who have not answered or otherwise moved at this time.

Given that Plaintiff is pro se, however, this Court will grant Plaintiff (1) an additional thirty (30) days from the date of this Order to serve any Defendants who have not yet been served, and (2) an additional thirty (30) days from the date of this Order to move for default against Defendants this Court referred to in its April 5, 2010 Letter Order.

IT IS, therefore, this 23rd day of April, 2010,

ORDERED that moving Defendants’ motion to dismiss [CM/ECF #21] is GRANTED and that the Amended Complaint is dismissed with prejudice as to Bergen Regional Medical Center, Bergen County Jail, E. Fahey, and Care Plus NJ, Inc.; and it is further

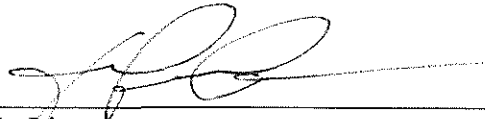
ORDERED that Plaintiff’s motion for an extension of time to answer, move, or otherwise reply [CM/ECF #36] is DENIED for lack of standing; and it is further

ORDERED that Plaintiff shall have an additional thirty (30) days from the date of this Order to serve any Defendants who have not yet been served; and it is further

ORDERED that Plaintiff shall have an additional thirty (30) days from the date of this Order to move for default against Sgt. Thomas Aiello, Det. W. Inghima, Det. A. Guitierrez, Det. A. Ferraoli, Lt. Lee, Officer C. Toomey, Officer J. Gervasi, Sgt. A. Trezza, Hackensack Police

Dept., Court Administrator Janice Behnke, Elizabeth P., Hackensack Municipal Court, E.

Schiffman, M.D., Bergen County Municipal Court, Bergen County Prosecutor, Attorney General
of the State of New Jersey, and Prosecutor Ostoni.

A handwritten signature in black ink, appearing to read 'J. Linares', is written over a horizontal line.

Jose L. Linares
United States District Judge