

DOCKET NO. X07-CV-23-5081340-S : SUPERIOR COURT
 ANDREW CHIEN : JUDICIAL DISTRICT OF
 HARTFORD
 v. : COMPLEX LITIGATION
 DOCKET
 JUDGE RICHARD BURKE, ET AL. : MAY 20, 2024

FILED

MAY 20 2024

HARTFORD J.D.

MEMORANDUM OF DECISION RE MOTION TO DISMISS, # 109

Before the court is the motion to dismiss of the defendants, Judge Richard Burke, Judge James Abrams, and Judge Michael Kamp (collectively, “the defendants”), which asserts that the claims of the plaintiff, Andrew Chien, are barred by sovereign immunity, judicial immunity, as well as statutory immunity and thus, the court lacks jurisdiction. Because the court finds that it is without subject matter jurisdiction, the motion to dismiss is granted and the case is dismissed.

The following facts and procedural history are relevant to this decision. The operative complaint is that which was filed on November 13, 2023.¹ This action derives from the plaintiff’s series of attempts to collaterally attack a judgment that was obtained against him in Virginia and a subsequent prior debt collection action that was filed in Connecticut in 2012 (“2012 Connecticut action”) to enforce the Virginia judgment against the plaintiff by his former business partner, Richard Freer.² The defendants are all Superior Court judges who were, at

¹ The plaintiff, a self-represented litigant, filed a separate “Amended Complaint” (# 101), which was purportedly not served on the defendants’ counsel and does not meet the requirements of Practice Book § 10- 59. It is unclear whether this filing was intended to replace the original complaint, or merely to supplement it. Regardless of which complaint is treated as the operative complaint, however, the courts decision remains the same and the case must be dismissed for lack of subject matter jurisdiction.

² This court takes judicial notice of that prior action, *Freer v. Chien*, Superior Court, judicial district of New Haven, Docket No. CV-12-4053717-S, which gives rise to the allegations in the present action. See *Jewett v. Jewett*, 265 Conn. 669, 678 n.7, 830 A.2d 193 (2003). Additional history regarding the *Freer* action is described in several Superior Court decisions. See, e.g., *Chien v. Connecticut*, Superior Court, judicial district of New Haven, Docket No. CV-17-5037735-S, 2017 WL 3623491 (July 17, 2017, *Wilson, J.*); *Freer v. Chien*, Superior Court, judicial district of New Haven, Docket No. CV-12-4053717-S, 2015 WL 8487803 (November 10, 2015, *Burke, J.*); *Freer v. Chien*, Superior Court, judicial district of New Haven, Docket No. CV-12-4053717-S, 2015 WL 5315608 (August

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various times, assigned to the 2012 Connecticut action. The plaintiff's complaint in the present action broadly alleges that the defendant judges, in overseeing the 2012 Connecticut action, acted as "debt collectors" in violation of General Statutes § 36a-800, and coordinated with Freer and other individuals in violation of the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, et seq. and its Connecticut state equivalent, General Statutes § 53-393, et seq. See Compl. ¶¶ 67-68. The plaintiff alleges, inter alia, that the defendants acted fraudulently, with gross negligence, and in conspiracy with Freer outside the scope of their job description. Compl. ¶ 1. The plaintiff seeks an injunction ordering a trial on the merits in the 2012 Connecticut action, compensatory damages, and other costs and fees in relief. Id., ¶¶ 69-71.

The defendants filed a motion to dismiss; #109; on the grounds that any claims filed by the plaintiff in the present action are barred by sovereign immunity, judicial immunity, and statutory immunity and thus, this court is without subject matter jurisdiction. The plaintiff, in his objection to the motion to dismiss; #112; reiterates his position that the defendants were acting outside of their authority as judges and instead were impermissibly acting as debt collectors for which, in his view, they must be licensed to do. Oral argument was heard on February 29, 2024.

"[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). "A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court

13, 2015, *Burke, J.*); *Freer v. Chien*, Superior Court, judicial district of New Haven, Docket No. CV-12-4053717-S, 2014 WL 5094345 (September 2, 2014, *Burke, J.*).

has jurisdiction to hear and decide.” (Internal quotation marks omitted.) *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41, 84 A.3d 895 (2014).

“Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction. . . .” (Internal quotation marks omitted.) *Keller v. Beckenstein*, 305 Conn. 523, 531-32, 46 A.3d 102 (2012). “[A] subject matter jurisdictional defect may not be waived . . . [or jurisdiction] conferred by the parties, explicitly or implicitly. . . . [T]he question of subject matter jurisdiction . . . once raised . . . must be answered before the court may decide the case.” (Internal quotation marks omitted.) *Batte-Holmgren v. Commissioner of Public Health*, 281 Conn. 277, 283, 914 A.2d 996 (2007). “Once the question of subject matter jurisdiction has been raised, cognizance of it must be taken and the matter passed upon before [the court] can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction.”³ (Footnote added; internal quotation marks omitted.) *Schaghticoke Tribal Nation v. Harrison*, 264 Conn. 829, 839 n.6, 826 A.2d 1102 (2003).

“[T]he doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss.” (Internal quotation marks omitted.) *Housatonic Railroad Co. v. Commissioner of Revenue Services*, 301 Conn. 268, 274, 21 A.3d 759 (2011). “The principle that the state cannot be sued without its consent, or sovereign immunity, is well established under our case law. . . . It has deep roots in this state and our legal system in general, finding its origin in ancient common law. . . . Not only have we recognized the state’s immunity as an entity, but we have also recognized that because the state can act only through its officers and agents, a suit against a state officer concerning a matter in which the

³ It is for this reason that the court could not and cannot consider the plaintiff’s motions for injunction because to do so would constitute an impermissible exercise of jurisdiction.

officer represents the state is, in effect, against the state. . . .” (Internal quotation marks omitted.) *Allen v. Commissioner of Revenue Services*, 324 Conn. 292, 298-99, 152 A.3d 488 (2016). “The doctrine of sovereign immunity protects state officials and employees from lawsuits resulting from the performance of their duty. The doctrine protects the state against lawsuits as well as protecting against liability, and in effect, [it protects] against having to litigate at all.” (Internal quotation marks omitted.) *Hultman v. Blumenthal*, 67 Conn. App. 613, 620, 787 A.2d 666, cert. denied, 259 Conn. 929, 793 A.2d 253 (2002).

The four-part test for determining whether an action is against the state or against a defendant in his individual capacity is set forth in *Somers v. Hill*, 143 Conn. 476, 479, 123 A.2d 468 (1956) and explained further in *Spring v. Constantino*, 168 Conn. 563, 362 A.2d 871 (1975). If all four criteria are satisfied, the action is deemed to be against the state and, therefore, is barred. *Spring v. Constantino*, supra, 568. The criteria are: “(1) a state official has been sued; (2) the suit concerns some matter in which that official represents the state; (3) the state is the real party against whom relief is sought; and (4) the judgment, though nominally against the official, will operate to control the activities of the state or subject it to liability.” *Id.* “Whether a particular action is one against the state is not determined solely by referring to the parties of record. The fact that the state is not named as a defendant does not conclusively establish that the action is not within the principle which prohibits actions against the sovereign without its consent. . . . The vital test is to be found in the essential nature and effect of the proceeding.” (Citations omitted.) *Somers v. Hill*, supra, 479.

In the present case, the court finds that the first criterion of the *Spring* test, that a state official is being sued, is met because a review of the complaint and summons makes clear that the plaintiff is suing the defendant judges in their official capacities. More specifically, the

complaint identifies the defendants as judges and provides addresses for them at the Superior Court in New Haven. The second criterion of the *Spring* test, whether the suit concerns some matter in which that official represents the state, is also satisfied. The suit clearly concerns a matter in which the defendants represented the state, a judicial case, and therefore the second criterion is satisfied. All of the alleged wrongful acts that the plaintiff asserts were committed by the defendants were in relation to orders and rulings made in connection with the plaintiff's prior civil actions as part of the defendants' duties as Superior Court judges. The third criterion is also met because damages are sought against the defendants "for performing or not performing acts that are part of [their] official duties." *Kenney v. Weaving*, 123 Conn. App. 211, 217, 1 A.3d 1083 (2010). By claiming liability based on the defendants' orders and rulings made regarding certain court filings, the plaintiff is challenging actions that the defendants took, or failed to take, as the judges presiding over his lawsuits. Finally, the fourth criterion is met because exposing a judge of the superior court to liability for a judgment exercised in this capacity not only implicates the independent exercise of this important sovereign function but also subjects the state to liability on the basis of statutory indemnification. General Statutes § 5-141d. For these reasons, unless the plaintiff has pleaded an exception to, or waiver of, the doctrine of sovereign immunity, the doctrine bars the exercise of the court's subject matter jurisdiction.

There are three recognized exceptions to sovereign immunity, however, that must also be addressed before determining whether the action is barred. These are: "(1) when the legislature, either expressly or by force of a necessary implication, statutorily waives the state's sovereign immunity . . . (2) when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights . . . and (3) when an action seeks declaratory or injunctive relief on the basis of a

substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority." (Internal quotation marks omitted.) *Traylor v. Gerratana*, 148 Conn. App. 605, 610, 88 A.3d 552, cert. denied, 135 S. Ct. 444, 190 L. Ed .2d 336 (2014). "For a claim made pursuant to the first exception, . . . [our Supreme Court] has recognized the well established principle that statutes in derogation of sovereign immunity should be strictly construed. . . . Where there is any doubt about their meaning or intent they are given the effect which makes the least rather than the most change in sovereign immunity. . . . For a claim made pursuant to the second exception, complaining of unconstitutional acts, we require that [t]he allegations of such a complaint and the factual underpinnings if placed in issue, must clearly demonstrate an incursion upon constitutionally protected interests. . . . For a claim under the third exception, the plaintiffs must do more than allege that the defendants' conduct was in excess of their statutory authority; they also must allege or otherwise establish facts that reasonably support those allegations. . . . In the absence of a proper factual basis in the complaint to support the applicability of these exceptions, the granting of a motion to dismiss on sovereign immunity grounds is proper." (Citations omitted; internal quotation marks omitted.) *Columbia Air Services v. Dept. of Transportation*, 293 Conn. 342, 349-50, 977 A.2d 636 (2009).

"In the absence of a statutory waiver of sovereign immunity, the plaintiff may not bring an action against the state for monetary damages without authorization from the claims commissioner to do so. [A] plaintiff who seeks to bring an action for monetary damages against the state must first obtain authorization from the claims commissioner." (Internal quotation marks omitted.) *Id.*, 351, citing *Miller v. Egan*, 265 Conn. 301, 317, 828 A.2d 549 (2003). In the present case, the plaintiff has not presented his claim to, and received permission from, the claims commissioner to seek money damages. Accordingly, because neither the legislature nor

the claims commissioner has authorized suit against the defendants, this court is without jurisdiction to hear the plaintiff's claim for monetary damages. See *Columbia Air Services, Inc. v. Dept. of Transportation*, supra, 293 Conn. 351-52.

The court finds that the plaintiff's claims do not fall within the first exception to the doctrine of sovereign immunity. None of the statutes that the plaintiff claims were violated, General Statutes §§ 36a-800, 36a-812, and 50a-34, the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, et seq., or General Statutes § 53-393, et seq., expressly waive the state's sovereign immunity; nor do they implicitly waive the state's sovereign immunity. None of these statutes contain any language that would cause any doubt about their meaning or intent in relation to the applicability of the bar of sovereign immunity. Neither does the federal RICO statute contain a waiver against the doctrine of sovereign immunity. See *Daddona v. Gaudio*, 156 F. Supp. 2d 153, 157-58 (D. Conn. 2000) (RICO claims against federal judge in his official capacity are barred by sovereign immunity). Moreover, the state equivalent of RICO, § 53-393, does not permit a private cause of action, let alone one against the state. *Dauphinais v. Cunningham*, 395 F. App'x 745, 746 (2d Cir. 2010) (holding "claim under [CORA] was properly dismissed because that criminal statute does not provide a private cause of action"); *Greene v. Grimes*, United States District Court, Docket No. 3:23-cv-00453 (SVN), 2024 WL 1341118 (D. Conn. March 29, 2024) (General Statutes § 53-393 does not provide a private cause of action). For these reasons, the first exception to the doctrine of sovereign immunity does not apply to the plaintiff's claims.

The court also finds that the second exception does not apply. The plaintiff argues that he does not need the permission of the claims commissioner to sue the state because he has alleged violations of his constitutional rights and relies on the Connecticut Supreme Court case *Binette v.*

Sabo, 244 Conn. 23, 710 A.2d 688 (1998). Pl.'s Obj. to Mot. to Dismiss, #112, p. 2. In *Binette*, the court recognized a common-law cause of action under article first, §§ 7 & 9, of the Connecticut constitution,⁴ thus allowing for a private cause of action for money damages arising from alleged violations of §§ 7 & 9. *Binette v. Sabo*, supra, 32, 48-49. The court notes that the plaintiff has made an identical argument in a previous case against Judge Burke, which was dismissed due to the bar of sovereign immunity. See *Chien v. Connecticut*, Superior Court, judicial district of New Haven, Docket No. CV-17-5037735-S, 2017 WL 3623491 (July 17, 2017, *Wilson, J.*). This court agrees with the court, *Wilson, J.*, in the plaintiff's prior case against Judge Burke and finds that *Binette* does not apply to the plaintiff's claims because it involved a suit against *municipal* police officers and, therefore, did not address the doctrine of sovereign immunity, the protections of which do apply to the defendants in the present case. Additionally, as to the plaintiff's claims relating to the "deprivation of his property," the court finds that the plaintiff has failed to "clearly demonstrate an incursion upon constitutionally protected interests;" *Barde v. Trustees*, 207 Conn. 59, 64, 539 A.2d 1000 (1988); therefore, the constitutional violation exception to sovereign immunity is inapplicable. Accordingly, because neither the legislature nor the claims commissioner has authorized suit against the defendants, this court is without jurisdiction to hear the plaintiff's claim for monetary damages. See *Columbia Air Services, Inc. v. Dept. of Transportation*, supra, 293 Conn. 351-52.

The court finds that the third exception to the bar of sovereign immunity, which permits a plaintiff to seek declaratory or injunctive relief based on a substantial claim that a state official

⁴ The constitution of Connecticut, article first, § 7, provides: "The people shall be secure in their persons, houses, papers and possessions from unreasonable searches or seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly may be, nor without probable cause supported by oath or affirmation." The Connecticut constitution, article first, § 9, provides: "No person shall be arrested, detained or punished, except in cases clearly warranted by law."

acted in excess of his statutory authority and subsequently violated a right of the plaintiff, also does not apply. The plaintiff argues that the defendants have acted in excess of their judicial authority because they affirmed the plaintiff's false imprisonment in Virginia, had no jurisdiction to execute the Virginia orders, improperly issued the turnover orders, and violated basic evidentiary law and basic court standards. Further, the plaintiff alleges that the defendants have exceeded their authority by acting as "debt collectors" in violation of General Statutes § 36a-800 and violated the Fair Debt Collection Practices Act ("FDCPA") as codified as 15 U.S.C §§ 1692-1692p.

The court observes that issuing orders as presiding judges is not debt collection. Instead, the defendants were acting within their authority as public officers or state officials performing official duties which are specifically excluded from the statutes' scope. See General Statutes § 36a-800 (3); 15 U.S.C. § 1692a (6). Moreover, the court finds that the plaintiff has not met his burden to demonstrate that either statute abrogates sovereign immunity. "A claim under this exception must do more than make a conclusory allegation that the defendants' conduct was in excess of their statutory authority; it must allege facts that *reasonably support* such an allegation." (Emphasis added.) *Columbia Air Services, Inc. v. Dept. of Transportation*, supra, 354. The plaintiff's allegations are nothing more than conclusory assertions. Neither has the plaintiff put forth any law to support his contention that the defendants were without authority to domesticate the Virginia judgment or issue their court orders. Consequently, the court concludes that the plaintiff is unable to avail himself of this exception.

For the foregoing reasons, the court concludes that it is without jurisdiction to hear the plaintiff's claims because the bar of sovereign immunity applies.

As an alternate ground for asserting a lack of subject matter jurisdiction, the defendant asserts the doctrine of absolute judicial immunity. “Absolute judicial immunity bars the plaintiff’s state law claims against the judicial defendants in their official capacities. It is a long-standing doctrine that a judge may not be civilly sued for judicial acts he undertakes in his capacity as a judge.” (Internal quotation marks omitted.) *Traylor v. Gerratana*, supra, 148 Conn. 613. See also *Lombard v. Edward J. Peters, Jr., P.C.*, 252 Conn. 623, 749 A.2d 630 (2000) (“It is a long-standing doctrine that a judge may not be civilly sued for judicial acts he undertakes in his capacity as a judge. The rationale is that a judge must be free to exercise his judicial duties without fear of reprisal, annoyance or incurring personal liability.”); *Leseberg v. O’Grady*, 115 Conn. App. 18, 22, 971 A.2d 86, cert. denied, 293 Conn. 913 (2009) (“A judge is entitled to absolute judicial immunity unless the judicial conduct is so far outside the normal scope of judicial functions that the judge was in effect not acting as a judge” [internal quotation marks omitted]). The court has already determined that the plaintiff’s claims are against the defendants in their official capacity and finds that the defendants conduct was within the normal scope of judicial functions. Therefore, the plaintiff’s claims are also barred by absolute judicial immunity.

Lastly, the defendants assert that statutory immunity further bars the plaintiff from any claim seeking monetary damages pursuant to General Statutes § 4-165.⁵ However, “[b]ecause [the court] find[s] that the plaintiff’s complaint failed to allege any claims against the defendant [judges] in [their] individual capacity, consideration of the doctrine of statutory immunity is unnecessary.” *Macellaio v. Newington Police Dept.*, 142 Conn. App. 177, 182 n.5, 64 A.3d 348 (2013). “[T]he statutory immunity provided by § 4-165 applies where sovereign immunity does

⁵ General Statutes § 4-165 (a) provides in relevant part: “No state officer or employee shall be personally liable for damage or injury, not wanton, reckless or malicious, caused in the discharge of his or her duties or within the scope of his or her employment. . . .”

not apply.” *Shay v. Rossi*, 253 Conn. 134, 164, 749 A.2d 1147 (2000), overruled in part on other grounds by *Miller v. Egan*, supra, 265 Conn. 325. Because the court has already found that the defendants are being sued in their official capacities and that sovereign immunity bars the plaintiff’s claims against them, the court need not, and may not, consider whether statutory immunity applies.

For the foregoing reasons, the court concludes that it lacks subject matter jurisdiction over the plaintiff’s action due to the bars of sovereign immunity and absolute judicial immunity. The action is therefore dismissed.

THE COURT

/s/ #435707

Cesar A. Noble
Judge, Superior Court