

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Christopher Anthony Roller,

Plaintiff,

v.

David Copperfield's Disappearing, Inc.,

Defendant.

Case No.: 05-446 (JRT/FLN)

**DEFENDANT'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
APPEAL OF MAGISTRATE NOEL'S
REPORT AND RECOMMENDATION**

INTRODUCTION

David Copperfield's Disappearing, Inc. ("Copperfield") submits this memorandum¹ in opposition to Christopher Roller's ("Roller") appeal of Magistrate Judge Noel's Report and Recommendation ("Report") dated October 12, 2005. In the Report, Magistrate Judge Noel recommended (1) granting Copperfield's Motion to Dismiss; and (2) denying Roller's Motion for Summary Judgment.

ARGUMENT

The standard of review of a Magistrate Judge's dispositive order is *de novo*. 28 U.S.C. § 636(b)(1)(C); L.R. 72.1(c)(2). Even with another in-depth review of Roller's Complaint, it is clear that Roller has failed to produce or identify one scintilla of evidence supporting any of his claims in this lawsuit. Worse yet, as Magistrate Noel reported, "Plaintiff has failed to cite an authorizing statute that would allow for such a claim

¹ Roller's findings are vague, ambiguous, largely incomprehensible, and state no cause of action. Accordingly, Defendant, without waiving any rights, does not intend to respond point-by-point to Plaintiff's voluminous filing unless invited to or required by the Court.

[usurpation of godly powers] to proceed.” Report and Recommendation, p. 4. Roller’s lawsuit is frivolous.

Roller now claims Copperfield, along with others including George Bush and unidentified mafia bosses, has committed fraud against him. Notwithstanding that Roller has not pled fraud in his Complaint and has not sought leave to amend for such claim, Roller fails to identify any evidence or facts demonstrating fraud and he certainly does not plead fraud with specificity as required by law. “[T]he circumstances constituting fraud . . . shall be stated with particularity.” FED. R. CIV. P. 9(b). Roller’s lawsuit is frivolous and verges on harassment.²

CONCLUSION

Under no set of facts does Roller’s Complaint state a cause of action. As Magistrate Judge Noel reported, “In the present case it appears beyond a doubt that Plaintiff can prove no set of facts in support of his claim that will entitle him to relief.” Report and Recommendation, p. 3. (emphasis added). Accordingly, Magistrate Judge Noel’s Report and Recommendation should be affirmed and Roller’s Complaint should be dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(2) & 12(b)(6). Similarly, Roller’s motion for summary judgment should be denied.

² Defendant has not brought a Rule 11 motion despite the fact that Plaintiff’s Complaint is improper harassment, frivolous, and has zero evidentiary support. To the extent that Plaintiff pursues his nonsensical claims, Defendant will seek sanctions to deter Plaintiff from repetition of such conduct. FED. R. CIV. P. 11. In addition to sanctions under Rule 11, Copperfield urges the Court to consider a restriction precluding Roller from filing lawsuits unless (a) he has legal representation, or (b) a judicial officer approves the filing.

Dated: 11/01/05

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