

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER,	:	CIVIL ACTION
a/k/a RAY GORDON	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JOHN DOE #1, a/k/a	:	
"WINTERMUTE," and	:	
JOHN DOES #2-100,	:	
Defendants.	:	No. 02-7215

MEMORANDUM AND ORDER

J. M. KELLY, J.

NOVEMBER 21 , 2002

Presently before the Court are two motions filed by pro se Plaintiff Gordon Roy Parker ("Plaintiff"): (1) a Motion for Temporary Injunctive Relief Enjoining Publication of the RayFAQ Website and (2) a Motion for Court-Ordered Release of John Doe Identities by Internet Providers, for Permission to Serve Subpoenas Duces Tecum by Certified Mail, and for an Extension of Time to Serve the Amended Complaint. Defendants John Doe #1 a/k/a "Wintermute" and John Does #2-100 (individually referred to as "John Doe #__, " and collectively, the "Defendants") have not been served with Plaintiff's Motions as Plaintiff has failed to file any certificates of service, presumably, due to his lack of knowledge concerning the Defendants' identities. It is also for that reason that Plaintiff has filed his Motion for Court-Ordered Release of John Doe Identities.

For the following reasons, Plaintiff's Motions are **DENIED**.

I. DISCUSSION

As a preliminary matter, every pleading and motion filed with this Court must be served upon each of the parties to the action. Fed. R. Civ. P. 5(a). Plaintiff, however, alleges that service has not been effectuated of any paper filed thus far because he has yet to secure the identity of the Defendants. As Plaintiff's present Motions appear to address specifically this issue, among others, they will be discussed in turn below.¹

A. Motion for Court-Ordered Release of John Doe Identities by Internet Providers, for Permission to Serve by Certified Mail, and for Extension of Time to Serve Amended Complaint

1. Court-Ordered Release of John Doe Identities

Plaintiff seeks court-ordered release of the Defendants' identities, specifically, John Does #1 through #18, from certain Internet Service Providers ("ISPs"). Plaintiff alleges that ISPs such as America Online ("AOL"), Earthlink, Pacific Bell, RoadRunner Corporation, Comcast Cable, and secondary providers such as Yahoo! and Hotmail are in possession of information that will identify John Does #1 through #18. Citing AOL's subpoena policy and case law, Plaintiff argues that serving these ISPs with a subpoena and a copy of his Amended Complaint would be an

¹ As Plaintiff is proceeding pro se and is, ostensibly, neither an attorney nor well-versed in the law and procedure involved in pursuit of his claim, this Court recommends that he seek counsel before proceeding further in what appears to be a complex action.

ineffective and useless act towards securing any information about the Defendants' identities from the ISPs. Reserving comment on Plaintiff's characterization of the law, it is abundantly clear that Plaintiff has made no effort whatsoever to attempt to secure, in accordance with the applicable law and procedure, the information he seeks, and now asks that this Court intervene on his behalf.

Rule 45 of the Federal Rules of Civil Procedure sets forth the form, issuance, service and compliance procedures for subpoenas. Fed. R. Civ. P. 45. Rule 45 also establishes territorial restrictions on service of subpoenas:

a subpoena may be served at any place within the district of the court by which it is issued, or at any place without the district, that is within 100 miles of the place of the deposition, hearing, trial, production, or inspection specified in the subpoena or at any place within the state where a state statute or rule of court permits service of a subpoena issued by a state court of general jurisdiction sitting in the place of the deposition, hearing, trial, production, or inspection specified in the subpoena.

Fed. R. Civ. P. 45(b)(2). Plaintiff offers no evidence, except to the contrary, that he has even attempted to secure information about the Defendants' identities in accordance with Rule 45. Rather, Plaintiff summarily dismisses the subpoena process as ineffective because there are uncertainties about receiving the precise information he seeks from the ISPs, and because he may be exposed to additional financial responsibilities in defending against proceedings to quash the subpoenas. Plaintiff is correct

to the extent that such risks and responsibilities may befall Plaintiff, however, they are customary when pursuing federal court litigation of the magnitude contemplated by Plaintiff. Furthermore, this Court is neither inclined nor authorized to do for Plaintiff what he himself has failed to effectuate. Nevertheless, Plaintiff should also note the territorial limitations on service of subpoenas as set forth above. Accordingly, Plaintiff's motion for court-ordered release of the Defendants' identities is denied.

2. Service of Subpoenas By Certified Mail

Plaintiff also requests that this Court permit Plaintiff to serve his subpoenas by certified mail as he has named numerous defendants in this case and the cost of personal service is prohibitive and beyond Plaintiff's means.

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, service of a subpoena is effected by delivering a copy of the subpoena to the person named within by an adult non-party person:

A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person

Fed. R. Civ. P. 45(b)(1). A majority of courts have held that Rule 45 requires personal service of subpoenas. FTC v. Compagnie De Saint-Gobain-Pont-A-Mousson, 636 F.2d 1300, 1312-1313 (D.C. Cir. 1980) (holding that rule does not permit any form of mail

service and that compulsory process may be served upon an unwilling witness only in person); Terre Haute Warehousing Serv., Inc. v. Grinnell Fire Protection Sys. Co., 193 F.R.D. 561, 563 (S.D. Ind. 1999) (holding that certified mail is insufficient method of service); Smith v. Midland Brake, Inc., 162 F.R.D. 683, 686 (D. Kan. 1995) (same); In re Nathurst, 183 B.R. 953, 954-955 (Bankr. M.D. Fla. 1995) (same); In re Smith, 126 F.R.D. 461, 462 (E.D.N.Y. 1989) (holding that district court lacked discretion under rule to permit alternative service); In re Johnson & Johnson, 59 F.R.D. 174, 177 (D. Del. 1973) (determining that personal service of individuals required).

Notwithstanding the force of authority requiring personal service under Rule 45, Plaintiff has not demonstrated that he has expended any effort whatsoever to identify the Defendants or to serve the subpoenas upon the ISPs and, thus, his assertion that the costs are prohibitive and beyond his means is mere speculation. Nevertheless, Rule 45 requires personal service of subpoenas and, for that reason, Plaintiff's motion for leave to serve subpoenas by certified mail is denied.

3. Extension of Time to Serve Amended Complaint

Finally, Plaintiff requests that this Court grant him an extension of time to serve his Amended Complaint, which was filed on October 24, 2002. Among Plaintiff's asserted causes for delay

are the alleged two weeks it took for Plaintiff to learn of the ruling on his Motion for Leave to Proceed In Forma Pauperis ("IFP"), speculative delays in obtaining the identities of the Defendants from the ISPs and any motion practice relevant thereto (including the present motions and anticipated proceedings to quash the subpoenas), and Plaintiff's alleged inability to hire necessary process servers within the allotted time period.

Rule 4 of the Federal Rules of Civil Procedure provides that service of a summons and complaint must be made upon a defendant within 120 days of the filing of the complaint to avoid dismissal of the action. Fed. R. Civ. P. 4(m). An extension of time for service may be granted, however, if good cause is shown. Id.; Petrucelli v. Bohringer & Ratzinger, 46 F.3d 1298, 1305 (3d Cir. 1995). Having already noted that Plaintiff has yet to take appropriate action to secure the Defendants' identities, his other proffered reasons do not amount to good cause sufficient to grant an extension of time to serve his Amended Complaint. Specifically, Plaintiff's excuse that he did not learn of this Court's ruling for two weeks on his IFP motion is disingenuous. According to this Court's docket report, Plaintiff's IFP motion was filed on September 10, 2002, decided on September 12, 2002, and the order mailed to him on September 16, 2002. On September 18, 2002, just eight (8) days after Plaintiff filed his IFP motion, Plaintiff submitted his \$150.00 filing fee to the Clerk

of Court, presumably in response to this Court's denial of his IFP motion. Plaintiff misrepresents the alleged delay, as the docket report clearly indicates that he knew of the decision prior to the passage of two weeks' time. In addition, Plaintiff offers no evidence of any difficulty in hiring process servers within the allotted time period. Thus, Plaintiff's proffered reasons do not rise to good cause sufficient to grant an extension of time, and until such time that Plaintiff can demonstrate that he has engaged in significant legal measures, at the very least, to attempt to secure the Defendants' identities, this Court will deny Plaintiff's motion for an extension of time to serve his Amended Complaint.

Accordingly, Plaintiff's Motion for Court-Ordered Release of John Doe Identities by Internet Providers, for Permission to Serve Subpoenas Duces Tecum by Certified Mail, and for an Extension of Time to Serve the Amended Complaint is **DENIED**.

B. Motion for Temporary Injunctive Relief Enjoining Publication of the RayFAQ Website

Plaintiff also seeks temporary injunctive relief to enjoin John Doe #4 from the continued publication of the "RayFAQ" website, which can be found at www.ray-gordon.com, for its allegedly false and defamatory statements concerning Plaintiff. In support of his factual allegations, Plaintiff provides a sampling of statements contained on the RayFAQ website,

including: (1) a statement that Plaintiff is running an illegal bookmaking operation in Pennsylvania; (2) a statement to the effect that there is "no such thing as civil RICO [Racketeer Influenced and Corrupt Organizations Act]," which, Plaintiff alleges, encourages website visitors to violate Plaintiff's rights; (3) an inference from John Doe #1 that Plaintiff would be a security risk for a job at the University of Pennsylvania;² and (4) a list of links to area law enforcement and mental health agencies that, Plaintiff alleges, encourages visitors to the RayFAQ website to report Plaintiff to such agencies. Plaintiff also alleges that, each time Plaintiff posts a message to an internet discussion forum, mechanisms known as "bots" are triggered to generate an automatic and anonymous response directing participants in the internet discussion group to the RayFAQ website. Plaintiff characterizes these statements as "outrageous" and "blatantly false," and as encouraging "third parties to initiate legal and administrative process against Plaintiff." Plaintiff presented this Court with a "Motion for Temporary Injunctive Relief," and we assume that Plaintiff is requesting a temporary restraining order ("TRO") in accordance with Rule 65(b) of the Federal Rules of Civil Procedure, as this

² Plaintiff alleges that John Doe #1 is a student at the University of Pennsylvania and that Plaintiff has a separate discrimination claim pending against the university in the Eastern District.

is the only form of provisional relief that may be granted ex parte.

Injunctive relief is an extraordinary remedy that should be granted only in limited circumstances. Instant Air Freight Co. v C.F. Air Freight, Inc., 882 F.2d 797, 800 (3d Cir. 1989). To succeed under Rule 65(b), it must clearly appear "from *specific facts* shown . . . that immediate and irreparable injury, loss or damage will result to the applicant." Fed. R. Civ. P. 65(b) (emphasis added). An extraordinary remedy, the duration of a TRO may not exceed ten (10) days. See id. To qualify for a TRO, the movant must demonstrate: (1) a likelihood of success on the merits; (2) the probability of irreparable harm if the relief is not granted; (3) that granting injunctive relief will not result in even greater harm to the other party; and (4) that granting relief will be in the public interest. Frank's GMC Truck Center, Inc. v. General Motors Corp., 847 F. 2d 100, 102 (3d Cir. 1988); Ecri v. McGraw-Hill, Inc., 809 F.2d 223, 226 (3rd Cir. 1987). In demonstrating irreparable harm, it is not enough to allege a risk of irreparable harm, rather, there must be a clear showing of immediate irreparable injury. Ecri, 809 F.2d at 226 (citations omitted). Nor is it enough for the harm to be serious or substantial, rather, it must be so peculiar in nature that money cannot compensate for the harm. Id. (citations omitted).

In response to this heavy burden, Plaintiff offers no

specific facts to make a clear showing of immediate, irreparable injury that is so peculiar that money cannot compensate for it. Nor does Plaintiff cite to any law to support his legal assertion that he is entitled to a TRO. Rather, Plaintiff offers one mere conclusory statement that he is likely to prevail on the merits of his claim and that the continued publication of the RayFAQ website will cause irreparable harm to Plaintiff, not limited to damage to his reputation, employment and investment prospects. Without more than mere conclusions, this Court cannot consider and weigh the factors necessary for the issuance of a TRO. Accordingly, Plaintiff's Motion for Temporary Injunctive Relief is **DENIED**.

II. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Court-Ordered Release of John Doe Identities by Internet Providers, for Permission to Serve Subpoenas Duces Tecum by Certified Mail, and for an Extension of Time to Serve the Amended Complaint is **DENIED**, and Plaintiff's Motion for Temporary Injunctive Relief Enjoining Publication of the RayFAQ Website is **DENIED**.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
JOHN DOE #1, a/k/a	:	
"WINTERMUTE," and	:	
JOHN DOES #2-100,	:	
Defendants.	:	No. 02-7215

ORDER

AND NOW, this day of November, 2002, in consideration of the Motion for Temporary Injunctive Relief Enjoining Publication of the RayFAQ Website (Doc. No. 5) and the Motion for Court-Ordered Release of John Doe Identities by Internet Providers, for Permission to Serve Subpoenas Duces Tecum by Certified Mail, and for an Extension of Time to Serve the Amended Complaint (Doc. No. 6) filed by Plaintiff Gordon Roy Parker ("Plaintiff"), it is **ORDERED** that both of Plaintiff's Motions are **DENIED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.