

Briefs and Other Related Documents

Smith v. Walgreen Drug Store E.D.La., 2003. Only the Westlaw citation is currently available.

United States District Court, E.D. Louisiana.

Robert J. SMITH, III

v.

WALGREEN DRUG STORE, et al

No. Civ.A. 03-1286.

Oct. 22, 2003.

Oct. 24, 2003.

Robert J. Smith, III, pro se, Plaquemines Parish Detention Center, Braithwaite, LA, for plaintiff.

Jack Etherton Truitt, The Truitt Law Firm, Madisonville, LA, for defendants.

BARBIER, J.

*1 Before the Court is the Motion to Dismiss (Rec.Doc. 16), filed by defendant Walgreen's Drug Store which was set for hearing today, October 22, 2003.

Defendant asserts that Plaintiff's complaint states no basis for recovery against defendant, and no basis for federal jurisdiction, whether under federal question jurisdiction or diversity jurisdiction. Plaintiff contends that Defendant's store manager and other employees battered him and falsely arrested him on December 22, 2002. Plaintiff also asks for \$15 million dollars in damages with no exact or general statement as to the nature of damages suffered.

Plaintiff's complaint fails to state a claim upon which relief can be granted as required by FRCP 12(b)(6). Defendant is not a state actor nor do the circumstances of this case fit the limited exceptions where a private actor may be deemed a state actor. See e.g. Bass v. Parkwood Hospital, 180 F.3d 234 (5th Circuit 1999). The Bass court held that an action against a private individual may lie under section 1983, only where the challenged conduct may be "fairly attributable to the State." Id. at 241. Walgreen's alleged conduct in the

instant matter includes battery and false imprisonment. Walgreen's is a Louisiana citizen (Walgreen's Louisiana Co., Inc.) with no authority for state action. Although Walgreen's acted to take the Plaintiff into custody pursuant to rights granted by statutory enactment, that is not sufficient to take its private conduct and convert it to state action. Id. A private party who participates in a criminal investigation does not become a state actor unless the individual controls or directs the investigation and arrest. See Dennison v. City of New Orleans, 1997 WL 361904 (E.D.La.1997).

Further, the Plaintiff and Defendant are both Louisiana citizens depriving this court of jurisdiction to grant Plaintiff the relief he seeks.^{FN1} See 28 U.S.C. § 1332; accordingly,

FN1. According to the Louisiana Secretary of State, the Defendant is a Louisiana citizen, Walgreen's Louisiana Co. See Defendant's Memo in Support, Exh. 4.

IT IS ORDERED that the Motion to Dismiss (Rec.Doc. 16) is GRANTED and the Plaintiff's suit brought under 42 U.S.C. § 1983 is dismissed with prejudice.

E.D.La., 2003.

Smith v. Walgreen Drug Store

Not Reported in F.Supp.2d, 2003 WL 22427980 (E.D.La.)

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* 2:03CV01286 (Docket) (May. 21, 2003)

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