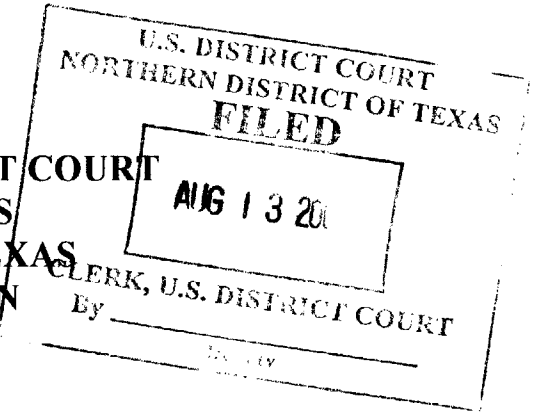


IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF TEXAS
NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION



Larry Henry Tompkins,)
Plaintiff,) Civil Action No.
v.)
Milton Eugene Douglass, Attorney) 7-04CV-057-R
The Hon. Robert Brotherton, and)
The Hon. Roy T. Sparkman,)
Defendants.)

FIRST AMENDED VERIFIED COMPLAINT AS OF RIGHT

**A.
Prefatory Statement**

1. This timely First Amended Verified Complaint is filed as of right because only a Motion to Dismiss, but no Answer to the Original (now superseded) Original Complaint, has been filed herein. Because this Amended Complaint renders the Original Complaint void and a nullity, and because Defendant's Counsel failed to abide by the local procedures set by the assigned Federal Judge for pre-submission conference with Plaintiff and joint submission of all papers relevant to such a motion, the Court is urged to Strike the pending Motion to Dismiss.

2. The claims herein against the Defendant Judges are limited to Declaratory relief, from which they are not immune; however their joinder

provides a solid basis for several types of Federal Civil Rights relief against their non-immune, but jurisdictionally vulnerable co-conspirator, Defendant Attorney Milton Eugene Douglass.

3. None of the Defendants named herein were litigant parties themselves in the Texas State Action in which the Federal torts herein are alleged to have occurred.

4. This Federal matter is not an attempt to Appeal the State defamation case, but rather to Declare the status of Defendants herein, none of which were parties to the State case, and to obtain compensation for conspiracy to deny due process on the part of non-immune co-conspirator, Attorney Milton Eugene Douglass.

**B.
PARTIES**

5. Plaintiff, Larry Henry Tompkins, is a Citizen of the State of Texas.

6. Defendant Milton Eugene Douglass is a Texas Licensed Attorney who is a Citizen of the State of Texas, and may be served with process at 1811 10th. St., Wichita Falls, TX 76301.

7. Defendants The Hon. Robert Brotherton, and The Hon. Roy T. Sparkman are sitting judges of the State Court of Texas at Wichita Falls and Citizens of the State of Texas, who are joined here solely for those Federal matters, such as Declaratory Relief, from which they are not immune, and to

help render the Conspiracy allegation herein justiciable with regard to the non-immune Attorney Defendant. The Defendant Judges may be served with process at the Wichita Falls State Courthouse at which they sit, at times when they are not conducting actual court proceedings.

**C.
JURISDICTION**

8. Jurisdiction arises in this Court under one or more of the Federal Civil Rights Statutes, 42 U.S.C. Chapter 21, Sections 1981-1988, The Federal Declaratory Judgment Statute, 28 U.S.C. 2201, 2202, (under which Federal Jurisdiction over the Defendant Judges is valid) and such other Federal Jurisdictional grounds as the Court shall determine. This Court further may assert Pendent Jurisdiction over Texas State Laws, so long as at least one cognizable Federal Statutory basis exists.

**D.
CONDITIONS PRECEDENT**

9. All conditions precedent have been performed or have occurred.
(Fed R. Civ. P. 9(c))

**E.
FACTS**

10. On April 30th 2001 Larry Tompkins, the Plaintiff in this Federal suit, filed a well justified State libel lawsuit against the Wichita Falls Television Station KAUZ, Channel 6 TV, a former manager and three

Television reporters in Texas State District Court. There were two other Plaintiffs, Clampitt Retirement Community and Barbara Cagle. This State claim was not for just one instance of libel but for at least five instances of libel in 2000 and at least five instances of libel in 1998.

11. Plaintiffs in the Texas State libel case were represented by Wichita Falls' very competent, 25 year practiced, local attorney Barry H. Richardson. One or more of the Defendants in the State case was represented by Defendant herein, Attorney Milton Eugene Douglass.

12. The State case Plaintiffs paid Attorney Barry H. Richardson \$15,000 up front, to represent them in what should have been a slam dunk lawsuit. There was tape recorded evidence of multiple, negligent or intentional, malicious, libelous broadcasts. There was tape recorded evidence of multiple recorded phone calls with reporters who were therein cautioned and warned that the television station had previously libeled the Clampitt Retirement Community, manager and owner, and had caused at least \$120,000 in damage to Clampitt, the business. In spite of those warnings, said State Defendants did a second series of negligent, malicious broadcasts. The State lawsuit was neither frivolous nor a minor suit for its plaintiffs!!!

13. On the same day of the State case filing, the originally drawn judge, Juanita Pavlick (Douglass), told Plaintiffs' attorney, Barry Richardson, she was going to recuse herself from that case. Several of the parties were involved in a case she had previously heard.

14. Shortly after filing the Texas libel case for its Plaintiffs, Barry Richardson developed a severe case of Gout with severe fatigue syndrome. On top of that, Barry Richardson also caught a persistent and very hard to treat case of double pneumonia.

15. The State case sat justifiably dormant because of plaintiffs' attorney's severe health conditions.

16. State Plaintiffs' attorney, Barry Richardson, was of the opinion that the Clampitt Retirement Community case would be reassigned by the Texas Fort Worth administrative judge to an out of town judge.

17. On March 20, 2002, or shortly before, Defendant herein, Attorney Gene Douglass, submitted to the local Wichita Falls State Court Judge, Robert Brotherton, an ex-parte motion to transfer the Clampitt v. Benedick Broadcasting case, without filing said document with the Clerk.

18. On March 20, 2002, local Wichita Falls Judge Robert Brotherton, signed an Order to transfer the Clampitt v. Benedick Broadcasting case to local Wichita Falls Judge Roy T. Sparkman.

19. Not until March 21, 2002, did Attorney Gene Douglass file said motion to transfer the Clampitt v. Benedick Broadcasting case. It is amazing and questionable that the order to transfer the case was signed *a day before* the ex parte motion was filed of record. It is further highly constitutionally suspect, as to whether there was any justifiable need for ex-parte handling of the motion.

20. Attorney Gene Douglass eventually and belatedly sent to plaintiffs' state-case attorney, a copy of the motion to transfer the case along with the *fait accompli*, pre-motion-filing, signed order to transfer the case to local judge Roy T. Sparkman.

21. Judge Sparkman in rulings for two summary judgments made biased, outrageous and cowardly rulings that dismissed the claims made by all the small State Plaintiffs against all of the large media defendants. He did so without any findings of fact or conclusions of law nor any memorandum opinion. He did so in spite of overwhelming evidence of record in the form of transcripts of multiple libelous broadcasts and transcripts of multiple telephone conversations with television reporters, putting them on notice of current libel of Clampitt and others, and previous libel damages to Clampitt of \$120,000.

22. Had Plaintiff herein been given notice and an opportunity to appear, he could and would have argued that only a non-local Texas judge would be able to adjudicate the State matter free of the pervasive public-opinion influence of the local Broadcast defendants.

F.
CLAIM I – DECLARATORY RELIEF

23. Plaintiff hereby realleges each of the foregoing paragraphs numbered 1 through 22, and incorporates them by reference in the following claim.

24. Plaintiff herein, Larry Tompkins, was during the foregoing described events, denied through a conspiracy of two or all three of the Defendants named hereinabove, his right to Due Process, to timely Notice and an Opportunity to Appear, regarding the selection or appointment of a new judge in the State case.

25. None of the three Defendants is immune from the declaratory relief herein sought.

26. A finding by this Court that a conspiracy existed by two or more of the three named Defendants herein, would aid in restoration of Plaintiff's public reputation and image, damaged by said conspiracy.

G.

CLAIM II – Liability under 42 USC 1983

27. Plaintiff hereby realleges each of the foregoing paragraphs numbered 1 through 26, and incorporates them by reference in the following claim.

28. The action of Defendant Attorney Milton Eugene Douglass involving procurement of a selection of new judge prior to the filing or giving notice to opposing counsel of a motion regarding such procurement, is an act outside the scope of acts authorized under the Texas Rules of Civil Procedure, and created an individual liability for Attorney Milton Eugene Douglass under 42 U.S.C. 1983.

29. Plaintiff has been damaged by said 42 U.S.C. 1983 cognizable act, in an amount set forth in the prayer for relief herebelow, and further, in view of bad faith thereto by Attorney Milton Eugene Douglass, Plaintiff should be entitled to punitive damages payable by Douglass in an amount set forth in the prayer for relief herebelow.

H.

CLAIM III – Liability under 42 USC 1985

30. Plaintiff hereby realleges each of the foregoing paragraphs numbered 1 through 29, and incorporates them by reference in the following claim.

31. The action of Defendant Attorney Milton Eugene Douglass involving conspiracy with one or more of the other judicial defendants, to procure a selection of new judge prior to the filing or giving notice to opposing counsel of a motion regarding such procurement, is an act outside the scope of acts authorized under the Texas Rules of Civil Procedure, and created an individual liability for Attorney Milton Eugene Douglass as a conspirator under 42 U.S.C. 1985, regardless of any judicial immunity asserted by the other conspirators/defendants.

32. Plaintiff has been damaged by said 42 U.S.C. 1985 cognizable act, in an amount set forth in the prayer for relief herebelow, and further, in view of bad faith thereto by Attorney Milton Eugene Douglass should be entitled to punitive damages payable by Douglass in an amount set forth in the prayer for relief herebelow.

I.
CLAIM IV – Liability under 42 USC 1988

33. Plaintiff hereby realleges each of the foregoing paragraphs numbered 1 through 32, and incorporates them by reference in the following claim.

34. The actions of Defendant Attorney Milton Eugene Douglass, alone and involving conspiracy with one or more of the other judicial defendants, to procure a selection of new judge prior to the filing or giving notice to opposing counsel of a motion regarding such procurement, is an act outside the scope of acts authorized under the Texas Rules of Civil Procedure, and created an individual liability for Attorney Milton Eugene Douglass to compensate Plaintiff for the expenses of this lawsuit, including attorney fees, litigation costs, cost of service and related expenses, under 42 U.S.C. 1988, regardless of any judicial immunity asserted by the other conspirators/defendants, and regardless of the size of any compensatory or punitive award herein..

**J.
DAMAGES**

35. Plaintiff hereby realleges each of the foregoing paragraphs numbered 1 through 34, and incorporates them by reference in the following claim of damages:

36. As a direct and proximate result of Defendants' conducts, Plaintiff in this Federal lawsuit suffered the following injuries and damages:

36a. Loss of Income from Lost Settlement or Award for actual and punitive damages in Texas case Clampitt v. Benedeck. et.al.

36b. Physical pain from exacerbated arthritis and mental anguish.

**K.
ATTORNEY FEES AND COSTS OF LITIGATION**

37. Plaintiff is entitled to an award of any attorney fees and costs of litigation, under 42 U.S.C. 1988 and any other lawful basis determined by the Court.

**L.
PRAYER FOR RELIEF**

38. For the foregoing reasons, all incorporated herein by reference, Plaintiff Larry Tompkins asks for Judgment against all Defendants sounding in Declaratory relief, and against Defendant Douglass, the following:

38a. Actual damages of \$170,000

38b. Prejudgment and postjudgment interest

38c. Costs of Suit, including any attorney fees

38d. Punitive damages of \$100,000

38e. All other relief that to the Court seems appropriate.

Respectfully Submitted,

By Larry Henry Tompkins
Larry Henry Tompkins, Pro Se
1810 Ardath Ave.
Wichita Falls, Texas 76301
Tel. 940 322 3279

VERIFICATION

State of Texas)
) ss.
County of Wichita

Larry Henry Tompkins, being first sworn, under oath, declares that He has read the foregoing Complaint, and that the allegations therein are true and correct on personal knowledge, or if stated on information and belief, are believed to be true.

Larry Henry Tompkins
Larry Henry Tompkins

On Aug 13-2004 appeared before me, a notary or judicial officer, Larry Henry Tompkins, known or identified to me, who upon his oath executed the foregoing Verification.

Rebecca Carriger
Notary/Judicial Officer

My Commission Expires:

