

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Mottahedeh v. Tambornini

304 F. App'x 472 (9th Cir. 2008) · Decided November 6, 2008

SUMMARY

The Ninth Circuit affirmed the dismissal of Peymon and April Mottahedeh’s action arising from a tax investigation and asserting claims under the Freedom of Information Act. The court held that the district court lacked personal jurisdiction over Agent Tambornini because service was improper and properly dismissed the FOIA claims without leave to amend.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
JURISDICTION	Federal
DECIDED	November 6, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	Pro se appellants appealed the district court's judgment dismissing their action arising from a tax investigation and asserted claims under the Freedom of Information Act.
STANDARD OF REVIEW	De novo review applies to dismissals for lack of personal jurisdiction and lack of subject matter jurisdiction.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Peymon Mottahedeh, April Mottahedeh v. Agent Tambornini

TOPICS

- personal jurisdiction
- service of process
- subject matter jurisdiction
- appellate procedure
- motion to amend

PRACTICE AREAS

- civil procedure
- appellate procedure
- tax
- administrative law
- Freedom of Information Act

QUESTIONS PRESENTED

1. Whether the district court properly dismissed the claims against Agent Tambornini for lack of personal jurisdiction because he was not properly served.

2. Whether the district court properly dismissed the FOIA claims sua sponte for lack of subject matter jurisdiction.
3. Whether the district court erred by dismissing without granting leave to amend.

HOLDINGS

1. The district court properly dismissed the claims against Agent Tambornini for lack of personal jurisdiction because he was never properly served.
2. The district court did not err by dismissing the FOIA claims sua sponte.
3. The district court did not err by dismissing the action without leave to amend.

KEY QUOTATIONS

“*We affirm.*” (304 F. App'x at 472)

“*AFFIRMED.*” (304 F. App'x at 473)

FACTUAL BACKGROUND

The action arose from a tax investigation and included claims under the Freedom of Information Act. The appellants attempted to serve Agent Tambornini, but service was not properly completed. The district court dismissed the action, including the FOIA claims, and denied leave to amend.

PROCEDURAL HISTORY

The district court dismissed the action for lack of personal jurisdiction and dismissed the FOIA claims sua sponte. It also dismissed without granting leave to amend. The Ninth Circuit reviewed the jurisdictional dismissals de novo and affirmed.

DISPOSITION

affirmed

CASES CITED

- FDIC v. British-Am. Ins. Co., 828 F.2d 1439, 1441 (9th Cir. 1987)
- Scholastic Entm't, Inc. v. Fox Entm't Group, Inc., 336 F.3d 982, 985 (9th Cir. 2003)
- Barlow v. Ground, 39 F.3d 231, 234 (9th Cir. 1994)
- Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1298 (9th Cir. 1998)

OPINION

PER CURIAM.

MEMORANDUM ** Peymon and April Mottahedeh appeal pro se from the district court's judgment dismissing their action arising from a tax investigation and under the Freedom of

Information Act (“FOIA”). We have jurisdiction under 28 U.S.C. § 1291.

We review de novo a dismissal for lack of personal jurisdiction, *FDIC v. British-Am. Ins. Co.*, 828 F.2d 1439, 1441 (9th Cir. 1987), and for lack of subject matter jurisdiction, *Scholastic Entm’t, Inc. v. Fox Entm’t Group, Inc.*, 336 F.3d 982, 985 (9th Cir.2003).

We affirm. The district court properly concluded that it lacked personal jurisdiction over Agent Tambornini because he was never properly served. See Fed.R.Civ.P. 4(i)(3); see also *Barlow v. Ground*, 39 F.3d 231, 234 (9th Cir.1994) (explaining that in California service by mail is valid only if a signed acknowledgment is returned).

The district court did not err when it dismissed the FOIA claims sua sponte. See 5 U.S.C. § 552(a)(4)(B) (stating the court has jurisdiction to enjoin an “agency from withholding records and to order the production of any agency records improperly withheld”); *Scholastic Entm’t*, 336 F.3d at 985 (setting forth circumstances when a party is entitled to notice and an opportunity to respond when a court contemplates dismissing a claim).

Contrary to Appellants’ contentions, the district court did not err by dismissing without leave to amend. See *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir.1998) (stating that the general rule that parties are allowed to amend their pleadings does not extend to cases where amendment would be futile). Appellants’ remaining contentions are unpersuasive.

AFFIRMED. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.