

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

EUSTACE C. MULLINS,)	
)	
Plaintiff,)	Civil Action No. 5:00-CV-00088
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
THE DAILY NEWS LEADER,)	By: Samuel G. Wilson,
)	Chief United States District Judge
Defendant.)	

This is a suit for compensatory and punitive relief by plaintiff, Eustace C. Mullins, against defendant, the Daily News Leader, pursuant to 42 U.S.C. § 1983; the Racketeering Influenced and Corrupt Organizations (“RICO”) Act, 18 U.S.C. § 1962; and state law (defamation and assault). The court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1367. The action is before the court on the Daily News Leader’s motion to dismiss for failure to state a claim. Finding that Mullins has failed to state a claim under § 1983 or RICO, the court grants the Daily News Leader’s motion to dismiss these claims. Absent federal claims, the court declines to exercise supplemental jurisdiction over Mullins’ state law claims, see 28 U.S.C. § 1367(c)(3), and therefore grants the Daily News Leader’s motion to dismiss those claims as well.

I.

On July 2, 2000, the Daily News Leader, a Staunton, Virginia, newspaper, published an article about Eustace C. Mullins entitled “Writer dismisses criticism” and subtitled “Work called supremacist.” (Compl., Exhibit A.) Essentially, the article discussed how Mullins’ one-man publishing company, Revelation Books, was described by the Southern Poverty Law Center as “one of 13 hate groups in Virginia.” (Id.)

Mullins filed this suit against the Daily News Leader on November 3, 2000, pursuant to 42 U.S.C. § 1983; the Racketeering Influenced and Corrupt Organizations (“RICO”) Act, 18 U.S.C. § 1962; and state law (alleging defamation and assault). On November 24, 2000, the Daily News Leader filed a motion to dismiss for failure to state a claim upon which relief may be granted. The court heard oral argument on the motion on January 18, 2001.

II.

First, Mullins alleges that the Daily News Leader violated 42 U.S.C. § 1983 by conspiring to “deprive Plaintiff of equal protection of the laws.” (Compl. ¶ 10.) Section 1983 provides that

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

42 U.S.C. § 1983. Under this statute, liability is imposed only for deprivations carried out under color of law, which has been interpreted as equivalent to the “state action” requirement under the Fourteenth Amendment. See Goldstein v. Chestnut Ridge Volunteer Fire Co., 218 F.3d 337, 341 (4th Cir. 2000). The Supreme Court has explained that

[s]tate action requires both an alleged constitutional deprivation “caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible” and that “the party charged with the deprivation must be a person who may fairly be said to be a state actor.”

American Manufacturers Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50 (1999) (quoting Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982)). In this regard, the court looks at (1) “whether the injury caused is aggravated in a unique way by the incidents of governmental authority,” (2)

“the extent and nature of public assistance and public benefits accorded the private entity,” (3) “the extent and nature of governmental regulation over the institution,” and (4) “how the state itself views the entity, i.e., whether the state itself regards the actor as a state actor.” Goldstein, 218 F.3d at 343 (citations omitted).

In this case, the Daily News Leader is a private newspaper owned by Staunton Leader Publishing Co., a division of Multimedia, Inc., which is a wholly owned subsidiary of Gannett Co., Inc. The newspaper is not a state actor. Nor does it perform an action typically reserved for state action. Because he fails to allege that his constitutional deprivation was carried out under color of law, Mullins fails to state a valid claim against the Daily News Leader under 42 U.S.C. § 1983.

III.

Mullins also alleges that the Daily News Leader cooperated with the Southern Poverty Law Center “making its publication a Racketeer-Influenced-Corrupt-Organization offense.” (Compl. ¶ 8.) Section 1964(c) of title 18 provides a private cause of action for treble damages and attorney’s fees to “[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter.” 18 U.S.C. § 1964(c). Section 1962 provides in relevant part:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. § 1962(c). “Racketeering activity” is defined in 18 U.S.C. § 1961(1) as including certain enumerated violations of state and federal law. Furthermore, “[a] ‘pattern of racketeering activity’ requires ‘at least two acts of racketeering activity’ occurring within a ten-year period.”

United States v. Abed, No. 98-4637 *et al.*, 2000 U.S. App. LEXIS 261, at *27 (4th Cir. 2000)

(quoting 18 U.S.C. § 1961(5)).

Mullins fails to allege a pattern of racketeering activity, or even that the Daily News Leader engaged in any of the racketeering activities specified in 18 U.S.C. § 1961(1). Even if this court liberally construes Mullins' complaint, see Haines v. Kerner, 404 U.S. 519, 520 (1972), the court does not see a valid civil RICO claim in the facts presented. Consequently, the court finds that Mullins has failed to state a claim against the Daily News Leader under RICO.

IV.

Absent federal claims, the court declines to exercise supplemental jurisdiction over Mullins' state law claims. See 28 U.S.C. § 1367(c)(3). The court will dismiss those claims without prejudice.

V.

For the reasons stated above, the court grants the Daily News Leader's motion to dismiss Mullins' federal claims. Absent federal claims, the court declines to exercise supplemental jurisdiction over Mullins' state law claims, see 28 U.S.C. § 1367(c)(3), and therefore grants the Daily News Leader's motion to dismiss those claims as well. The court will enter an appropriate order on this day.

ENTER: This _____ day of February, 2001.

CHIEF UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

EUSTACE C. MULLINS,

Plaintiff,

v.

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Civil Action No. 5:00-CV-00088

FINAL ORDER

THE DAILY NEWS LEADER,
Defendant.

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By: Samuel G. Wilson,
Chief United States District Judge

In accordance with the Memorandum Opinion entered this day, it is **ORDERED and ADJUDGED** that Defendant's motion to dismiss is **GRANTED**. Plaintiff's state-law claims are dismissed pursuant to 28 U.S.C. § 1367(c)(3) without prejudice. It is further **ORDERED** that this case be stricken from the docket of the court.

ENTER: This _____ day of February, 2001.

CHIEF UNITED STATES DISTRICT JUDGE