

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

ERIC H. HOLDER, JR.,	:	
ATTORNEY GENERAL OF THE	:	
UNITED STATES OF AMERICA,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
DAVID HAMILTON,	:	No. 3:10CV-759-C
	:	
Defendant.	:	

**UNITED STATES’
MOTION TO STRIKE DEFENDANT’S THIRD PARTY COMPLAINT**

Eric H. Holder, Jr., Attorney General of the United States, by the undersigned attorneys, hereby moves the Court for an Order striking Defendant David Hamilton’s Third Party Complaint (Dkt. No. 29).

The United States brought this action pursuant to the Freedom of Access to Clinic Entrances Act (FACE), 18 U.S.C. § 248 (1994), because Defendant used force against a volunteer clinic escort while protesting at the EMW Women’s Surgical Center (“the Center”), a reproductive health care facility. The Defendant, who was protesting the fact that the Center provides abortion services to women, grabbed and pushed the escort, in an attempt to intimidate and/or interfere with persons seeking to obtain or provide reproductive health services.

Defendant’s Answer to the United States’ Complaint contains, and in fact consists largely of, a “Third Party Complaint” against “Does 1-25,” who include, among others, the victim of Defendant’s FACE violation, other volunteer escorts, a “corporate entity or church,” and employees of that corporate entity or church. Defendant claims that, on the date when Defendant

used force in violation of FACE, these “Does” harassed him, assaulted him, violated his rights to free speech and free association, themselves violated FACE, and perpetrated numerous other assaults upon his rights.

Putting aside the merits of Defendant’s claims, which are dubious at best, Defendant may not pursue such claims through third-party practice, as the claims are not against those who are or “may be liable to [defendant] for all or part of the claim against [him].” Fed. R. Civ. P.

14(a)(1).¹ The standard for third-party practice under Rule 14 is clear:

[T]hird-party practice, or impleader, is permitted only where the defendant can show that if it is found liable to the plaintiff, then the third party will be liable to the defendant. . . . Prior to being added as a third-party defendant, it must be established that such third-party defendant will be secondarily or derivatively liable for any loss suffered by the principal defendant in the primary dispute. Furthermore, an entirely separate and independent claim cannot be maintained against a third-party under Rule 14, even when it arises out of the same general set of facts as the main claim.

Independent Liberty Life Ins. Co. v. Fiduciary and General Corp., et al., 91 F.R.D. 535, 537

(W.D. Mich. 1981) (internal citations omitted); see also Eastman Chemical Co. v. URS Corp.,

No. 2:10-cv-218, 2011 WL 3423389, at *3 (E.D. Tenn. Aug. 4, 2011) (“Rule 14 requires an

indemnity claim in order to bring in a third-party defendant whereby the defendant is attempting

to transfer liability from himself to a third-party defendant in the event he is found liable to the

plaintiff.”) (quotation and citation omitted); MSD Energy, Inc. v. Gognat, et al., No. 5:07-cv-7,

1007 WL 2471630, at *2 (W.D. Ky. Aug. 30, 2007) (“Rule 14 cannot be used as a way of

combining all controversies having a common relationship in one action.”) (quotations and

citations omitted).

¹ Under Fed. R. Civ. P. 14(a)(4), “[a]ny party may move to strike the third-party claim.”

Here, Defendant has improperly employed third-party practice to bring suit against individuals and entities not involved in this suit, for entirely separate causes of action that do not have any impact on Defendant's liability in this case, merely because they arise out of the same general set of facts. Defendant does not allege that the various "Does" he seeks to bring into this case would be secondarily liable for any loss he may suffer if the Attorney General's suit is successful against him. Rather, his third-party claims involve wholly separate and distinct actions by individuals and entities having no connection to the present dispute other than the fact that they occurred at roughly the same time as the incident alleged against Defendant, and one of the "Does" is Defendant's victim in the current suit. That is not enough to establish a right to implead third parties.

Here, adding additional parties and additional claims, even if they arise out of a common situation, "would expand, complicate and potentially confuse what is a relatively simple" claim, and would therefore directly contravene the intent of Rule 14, which is to promote judicial economy. Local 67 v. Gem Management Co., Inc., No. 04-cv-73022-DT, 2006 WL 314343, at *6 (E.D. Mich. Jan. 9, 2006).

For the foregoing reasons, this Court should strike Defendant's Third Party Complaint.

Dated: October 6, 2011

Respectfully submitted,

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Plaintiff,	:	
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	:	
DAVID HAMILTON,	:	No. 3:10CV-759-C
	:	
Defendant.	:	

ORDER STRIKING DEFENDANT’S THIRD PARTY COMPLAINT

The United States has moved for an Order striking Defendant’s Third Party Complaint.

The Court, having concluded that oral argument is unnecessary in resolving the pending motion, hereby ORDERS that Defendant’s Third Party Complaint be stricken.

BY THE COURT:

Hon. Jennifer B. Coffman
JUDGE, UNITED STATES DISTRICT COURT

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will provide notice of such filing to all registered parties.

s/Aaron Fleisher
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