

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DEAN B. HOLLIDAY :
 :
 v. : PRISONER
 : No. 3:03cv1824 (SRU)
 :
 CITY OF NEWINGTON, ET AL. :

RULING AND ORDER

Dean B. Holliday, an inmate currently confined at the MacDougall Correctional Institution in Suffield, Connecticut, brings this civil rights action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. The defendants are the City of Newington, the Newington Police Department, Brian Gallagher, Claude Steiner, Anthony Casasanta, Stephen Clark, Gerald A. Lavery, Jr., Sergeant Anderson, Officer Kelliher, Peter J. Lavery, Detective M. Rugens, Paul Rotiroti and William Wollenburg.

The complaint includes the following allegations arising from the plaintiff's arrest by Officer Peter Lavery of the Newington Police Department on April 5, 2001, in West Hartford, Connecticut. After the arrest, Officer Lavery transported Holliday to the Newington Police station. Detectives Gallagher, Steiner, Casasanta, Lieutenant Clark and Sergeant Anderson interrogated Holliday at the station. Holliday signed a self-incriminating statement after several hours of interrogation. Detectives Casasanta and Gallagher and Officer Lavery allegedly gave perjured testimony at trial. Holliday also alleges that several defendants violated Newington Police Department regulations. Holliday claims that

Attorney Rotiroti was part of a conspiracy to maliciously prosecute him on charges attempted robbery, conspiracy to commit robbery and breach of peace. Holliday also claims that Judge Wollenberg erred in finding probable cause to arrest Holliday and imposed an excessive sentence after trial. For the reasons that follow, the complaint is dismissed.

A district court enjoys substantial discretion to manage its docket efficiently to avoid duplicate litigation. Thus, a court may dismiss an action when a prior pending action has been filed as long as the "controlling issues in the dismissed action will be determined in the other lawsuit." 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1360, at 442 (2d ed. 1990). The purpose of this rule is "to avoid placing an unnecessary burden on the federal judiciary, and to avoid the embarrassment of conflicting judgments. . . ." Colortyme Financial Servs., Inc. v. Kivalina Corp., 940 F. Supp. 269, 272 (D. Haw. 1996) (internal quotation marks and citations omitted). The general rule is that the first suit to be filed should have priority "absent the showing of balance of convenience in favor of the second action." Adam v. Jacobs, 950 F.2d 89, 93-94 (2d Cir. 1991) (internal quotation marks and citation omitted). When it is possible that, through amendment, each action may contain all of the issues and parties presently contained in either action, the continuation of the first action to be filed is favored. See Hammett v. Warner Brothers Pictures, Inc., 176 F.2d 145, 150 (2d Cir. 1949); Gyadu v. Hartford Ins. Co., No. 3:96 cv1755 (D. Conn. Apr. 21, 1997) (Squatrito, J.) (dismissing case under "prior pending action doctrine" where plaintiff could raise all causes of action by amended complaint in his first action), aff'd, 133 F.3d 907 (2d Cir. 1998). In determining whether a claim is barred by the prior pending action doctrine, the court may rely on a comparison of the pleadings filed in the two actions. See Connecticut Fund for the Environment v. Contract Plating Co., 631 F. Supp. 1291, 1293

(D. Conn. 1986).

Holliday has filed another action against defendants City of Newington, the Newington Police Department, Brian Gallagher, Claude Steiner, Anthony Casasanta, Stephen Clark, Gerald A. Lavery, Jr., Sergeant Anderson, Officer Kelliher, Peter J. Lavery, Detective M. Rugens, Paul Rotiroti and William Wollenburg. See Holliday v. City of Newington, et al., No. 3:03cv2175 (SRU). A comparison of the complaint in this action with the complaint in the other action reveals that the allegations in the complaint filed in this action are virtually identical to allegations made in Holliday v. City of Newington, No. 3:03cv2157 (SRU). Although this case was filed before Holliday v. City of Newington, et al., No. 3:03cv2175 (SRU), the prior pending action doctrine permits the dismissal of the first-filed case or claims where "the balance of convenience" weighs in favor of the second-filed action. See Adam, 950 F.2d at 93-94. Here, the second-filed case was filed in state court prior to the filing of the present case, but was not removed to this court until after the present case was filed. In addition, the second-filed case involves the same claims as the claims in the first-filed case as well as the same defendants, the defendants have appeared in the second-filed case and the court has already issued a scheduling order in the second-filed case. Thus, the court concludes that it would be appropriate to have all of plaintiff's claims resolved in the second-filed action. Because a litigant has "no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant[s]," the complaint in this action is dismissed under the prior pending action doctrine. Oliney v. Gardner, 771 F.2d 856, 859 (5th Cir. 1985) (quoting Walton v. Eaton Corp., 563 F.2d 66, 70 (3d Cir. 1977)). Holliday may pursue his claims in Holliday v. City of Newington, et al., No. 3:03cv2175 (SRU).

The complaint is dismissed under the prior pending action doctrine pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) (court may dismiss at any time claims which fail to state a claim upon which relief may be granted). The Clerk is directed to close this case. The court determines that any appeal from this order would not be taken in good faith. See 28 U.S.C. § 1915(a)(3).

SO ORDERED this 19th day of March 2004, at Bridgeport, Connecticut.

_____/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge