UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YOEL WEISSHAUS,

Plaintiff,

-against-

-against-

PORT AUTHORITY OF NEW YORK AND NEW JERSEY, et al.,

Defendants.

ORDER

11 Civ. 6616 (LAP)

LORETTA A. PRESKA, Chief United States District Judge:

On October 24, 2011, the Court dismissed this action *sua sponte* for failure to state a claim upon which relief may be granted. Plaintiff has now filed a motion for reconsideration alleging, *inter alia*, that the Court did not "mention" 42 U.S.C. § 1983 in its Order and that the Port Authority is not immune from suit under the Eleventh Amendment. In addition, Plaintiff argues, for the first time, that the EZ Pass program is discriminatory. The Court construes the filing as a motion for reconsideration pursuant to Federal Rule of Civil Procedure 60(b). Fed. R. Civ. P. 60(b) provides that a party may seek relief from a district court's order or judgment for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is not longer equitable; or (6) any other reason justifying relief.

Fed. R. Civ. P. 60(b).

Despite granting Plaintiff's motion the liberal interpretation that it is due, he has failed to allege that any of the circumstances listed in the first five clauses of Fed. R. Civ. P. 60(b) have taken place. Nothing in Plaintiff's submission warrants reconsideration of the Court's initial determination that he failed to state a denial of access to the court claim or any other claim over which this Court has jurisdiction. Contrary to Plaintiff's arguments, in the Order of Dismissal the Court (1) construed Plaintiff's Complaint as having been filed pursuant to § 1983; (2) dismissed his claims against the states, its legislators and legislatures on Eleventh Amendment immunity grounds and (3) dismissed his claims against the Port Authority because he did not allege a violation of his federal or constitutional rights. Because Plaintiff did not challenge EZ Pass in his Complaint the Court need not consider that claim now. EZ Pass has, however, survived constitutional challenge before. See Saunders v. Port Authority of New York, 02 Civ. 9768, 2004 WL 1077964 (S.D.N.Y. May 14, 2004). Thus, any relief Plaintiff seeks under any of the first five clauses of Fed. R. Civ. P. 60(b) is denied.

To the extent Plaintiff seeks relief under Fed. R. Civ. P. 60(b)(6), Plaintiff's motion is also denied. With respect to motions brought under Fed. R. Civ. P. 60(b)(6), the movant must first demonstrate that, but for the one-year time limitation, he could not have sought relief under the first five grounds of Rule 60(b). See United Airlines, Inc. v. Brien, 588 F.3d 158, 175 (2d Cir. 2009). In addition, the movant must show that the motion was filed within a "reasonable time" and that "'extraordinary circumstances' [exist] to warrant relief." Old Republic Ins. Co. v. Pac. Fin. Servs. of America, Inc., 301 F.3d 54, 59 (2d Cir. 2002) (per curiam) (quoting Rodriguez v. Mitchell, 252 F.3d 191, 201 (2d Cir. 2001)). Plaintiff has failed to allege facts demonstrating that extraordinary circumstances exist to warrant relief under Fed. R. Civ. P. 60(b)(6). See Ackermann v. United States, 340 U.S. 193, 199-202 (1950).

CONCLUSION

Accordingly, Plaintiff's motion for reconsideration is DENIED. No further filings will be accepted in this case except those directed to the United States Court of Appeals for the Second Circuit.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED:

LORETTA A. PRESKA
Chief United States District Judge

Dated: DEC 08 2011
New York, New York