

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

JOHN E. RAHL, and d/b/a THE WALLKILL VALLEY
RAILROAD COMPANY, and JOHN E. RAHL, 95%
STOCKHOLDER OF THE WALLKILL VALLEY
RAILROAD COMPANY (1866)

Civil Action No.1:09-cv-00126

Plaintiff,

v.

NEW YORK TELEPHONE COMPANY,
d/b/a VERIZON, NYNEX and BELL ATLANTIC
TELEPHONE COMPANIES

Defendants.

OPPOSITION TO MOTION
DISQUALIFYING JOHN E.
RAHL AS COUNSEL,
DIMISS FOR LACK OF
SUBJECT MATTER
JURISDICTION, AND
TRANSFER VENUE

**OPPOSITION TO MOTION TO DISQUALIFY JOHN E. RAHL AS COUNSEL
OF RECORD FOR PLAINTIFF WALLKILL VALLEY RAILROAD COMPANY**

1. Mr. Potter Stewart, Jr., Defendants' counsel, moves this Court to disqualify John E. Rahl as Counsel for The Wallkill Valley Railroad Company.

2. Plaintiff, John E. Rahl, has NOT represented himself as an attorney, is not an attorney, nor could he represent The Wallkill Valley Railroad Company ("Wallkill") in that capacity. Although the complaint refers to Wallkill under **PARTIES** at number two (2.), this paragraph was crafted and intended to be the first under **BACKGROUND** and when read as such adds to the sufficiency of the information there given. If necessary, and upon leave of the Court, this small error may be corrected pursuant to FRCP 15, Kedra v. Philadelphia, 454 F. Supp. 652.

3. Further, pursuant to FRCP 10 the caption is part of the complaint and The Wallkill Valley Railroad Company (1866 corporate entity) is not named as a Plaintiff in the Complaint.

4. The Motion to Disqualify John E. Rahl is a non-issue and should be dismissed because it lacks merit.

OPPOSITION TO MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

1. Defendant's counsel statement on lines 13 and 14 of page 5 of his Memorandum of Law, "*what is clear is that New York Telephone cannot violate the Due Process clause where no "state action" is involved.*"

2. Indeed, this is the gravamen of the complaint in that the defendant did more than breach the contract. Defendant acted under color of law in concert with the State of New York, its subdivisions, New York Thruway Authority, and others.

3. Exhibit 6 of the complaint is the deposition of Mr. William Strecker who represented the defendant as their right of way specialist at a certain meeting where it was decided to take a course of action which violated plaintiff's constitutional rights and protections.

5. The Special Statement of the complaint reserved all rights, claims, causes of action, and discoveries. This became necessary based on Mr. Strecker's deposition and the Continuing Criminal Enterprise ("CCE") brought to Plaintiff's attention.

4. Accordingly, this action has a nexus with case 03-cv-941, (See No. 15, page 3 of complaint) being the case that Mr. Strecker was deposed and where Defendant declined to be present. And by reference Adversary Proceeding No. 99-91320 and bankruptcy case No. 96-12875.

6. Defendant, in concert with the state and by their actions, caused jurisdiction pursuant to 28 U.S.C. 1331 and 1337. Although not specifically stated in the complaint,

the 14th amendment is by implication pleaded. Paragraph 40 of the complaint being the “protections found in the U.S. Constitution...and New York Constitution...”

7. The Exhibits are part of the complaint and Plaintiff believes he has met the 8(a)(2) threshold. Mr. Potter appears not to have consider all of the material and the facts contained therein.

8. Although Defendant’s Counsel moves this Court pursuant to FRCP 12(b)(1), when reading his basis for the motion he is also moving under FRCP 12(b)(6) failure to state a claim upon which relief can be granted.

9. A court may consider documents attached to the complaint, by reference, or judicial notice without converting the motion to dismiss into a motion for summary judgment. See Van Buskirk v. CNN, 284 F.3d 977, 980 (9th Cir. 2002); Barron v. Reich, 13 F.3d 1370, 1377 (9th Cir.1994); Moore’s Federal Practice 12.34[2] (3rd ed. 1999).

10. Further, Defendant is, in part, a regulated entity pursuant to Title 47 of the United States Code and is in the business of interstate commerce. Verizon maintains an office in the State of Vermont at: 825 Williston Rd., So. Burlington, VT 05403.

11. In addition, although Wallkill is not a party to this action, it is NOT an intrastate railroad as stated by Mr. Potter at lines 6 an 7 of page 4 of his Memorandum of Law, “*Nor has Plaintiff alleged any facts, other than the dispute involves a wholly intrastate railroad, which would implicate commerce, trade or restraints on monopolies.*”

12. Plaintiff purchased these rights, being the franchise, (See Exhibit 2 of the complaint) and licensed them to Defendant (See Exhibit 3 of the complaint).

13. In that Mr. Potter has raised the issue, the franchise owned and licensed by the Plaintiff is derived from Wallkill and is governed by Chapter 140 of the laws of the State of New York of 1850. (See Exhibit 1 of the complaint) And all other instruments filed

with the State of New York, foreign states, and the Interstate Commerce Commission in the exercise of that franchise by reference and govern, in part, the franchise licensed to the defendant and is indeed interstate commerce. The rights of Wallkill are by touch and concern and run with the fee and franchise once obtained. Wallkill is a successor to The New York Central Railroad Company through a Lease in perpetuity in 1899, merger of 1952 and other instruments duly filed. Thus the causes of action in the complaint are valid pursuant to “arising under” 28 U.S.C. 1331 and 1337.

14. 28 U.S.C. 1337(a) provides that district courts shall have original jurisdiction over civil actions “arising under” an “Act of Congress regulating Commerce” and is analogous to the language “arising under” of 28 U.S.C. 1331. See *Peyton v. Railway Express Agency, Inc.*, 316 U.S. 350, 62 S.Ct. 1171, 86 L.Ed. 1525 (1942)

15. Plaintiff requests this Court to deny Defendant’s motion.

OPPOSITION TO MOTION TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF NEW YORK

1. Defendant argues that the choice of plaintiff’s forum is less than sound. On the contrary, it was upon Plaintiff’s request to Washington and the head of the District Court system that case No. 03-cv-941 be transferred from the Northern District of New York to Vermont. The request was based on inaction by the Northern District Court for unknown reasons other than unnecessary delay and irregularities by the bankruptcy court in an adversary proceeding under case bankruptcy case No. 96-12875 involving the State of New York and its subdivisions.

2. At this time there is no evidence that would rise to a 60B request to re-open the bankruptcy case or any of the adversary proceedings. However, there is enough information to request the United States Senate Judiciary Committee and its House counter-part to commence an investigation of the Northern District of New York Courts. A man in Plattsburgh, NY, requested intervention from the Senate Committee based on

some of the same acts by the state and federal judiciary in 2006 that has resulted in federal and state grand juries and many indictments. Apparently the federal judiciary in the Northern District has been treading very cautiously.

3. Plaintiff would not have come to Vermont if there had been a “level playing field” in the Northern District of New York. And since Plaintiff has already been there on related matters associated with this case, and presently before the Court, a change in venue would only serve the interest of the defendant.

4. The motion for change of venue should be denied. Plaintiff sees no inconvenience for himself or Defendant. Defendant maintains an office in South Burlington, VT. However, Plaintiff believes and knows that he will be prejudiced if the case is sent to the Northern District of New York.

SPECIAL INFORMATION

Attached is a letter under seal (now electronically made available by the Clerk) originally sent to the Vermont District Court concerning a complex set of issues facing John E. Rahl. The letter is attached hereto and made a part hereof to inform the Court and Mr. Potter that the complaint in the above caption is but one part of a greater convoluted case. The Vermont Court declined the letter under seal and requested it be made into a complaint. However, because of the complexity and intertwining of issues and parties, Mr. Rahl believes that a document to the U. S. Senate Judiciary Committee would be proper at this time and will request investigation and other appropriate action.

In addition, attached is a letter from the U. S. Postal Inspector responding to a complaint because the letter under seal sent by the Clerk of the Court never arrived back to Mr. Rahl. As stated above the, the letter under seal is being made available because it is no longer sealed having been intercepted in the U.S. Mail.

In consideration of all of the above, Plaintiff respectfully request this Court to deny defendant's motions and move forward with this case.

Dated: Rosendale, NY
08 July 2009

Respectfully submitted,

/s/ John E. Rahl, Pro se

Attachments: Letter no longer sealed and PDF; postal investigation.

**UNITED STATES DISTRICT COURT
FOR
THE DISTRICT OF VERMONT**

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on 08 July 2009, I electronically filed with the Clerk of Court the following documents: **OPPOSITION TO MOTION DISQUALIFYING JOHN E. RAHL AS COUNSEL, DIMISS FOR LACK OF SUBJECT MATTER JURISDICTION, AND TRANSFER VENUE** with Attachments: Letter no longer sealed and PDF; postal investigation, using the CM/ECF system. The CM/ECF system will provide service of such filing(s) via Notice of Electronic Filing (NEF) to the following NEF parties: Potter Stewart, Jr.

/s/ John E. Rahl, Pro se