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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

DAVID A. DARBY, Freeman,

Plaintiff,

v.

GREG KIMSEY, Auditor for Clark County,
State of Washington,

Defendant.

Case No. 2:10cv00053

[PROPOSED]

ORDER OF DISMISSAL

THIS MATTER came before the Court on Defendant's motion for an order dismissing the action because (1) the Court lacked jurisdiction over the subject matter of the action, 12(b)(1); (2) the Court lacked jurisdiction over the defendant, 12(b)(2); and (3) the plaintiff has failed to state a claim upon which relief can be granted, 12(b)(6). The Court having reviewed the pleadings filed in this action finds as follows:

SUBJECT MATTER JURISDICTION (12(b)(1))

1. The subject matter of this action is real property which was not at the commencement of this action and is not now in the District of Utah.

1 2. The Court does not obtain subject-matter jurisdiction just because the plaintiff
2 raises a federal question in his complaint. The Court finds that the asserted basis of federal
3 jurisdiction is patently meritless and dismissal for lack of jurisdiction is appropriate.

4 3. The Court has no jurisdiction over the subject property and no meritorious federal
5 question has been raised.
6

7 Based upon the above findings, IT IS HEREBY ORDERED:

8 1. The Defendant's motion is granted _____ denied _____.

9 2. The action is dismissed without prejudice for lack of jurisdiction over the subject
10 matter.
11

12 3. The Defendant is awarded his statutory costs.

13 4. This is a matter of local state property tax law and the validity of the Washington
14 State Constitution.
15

16 **PERSONAL JURISDICTION 12(b)(2)**

17 1. That the defendant is a resident of the State of Washington.

18 2. That the plaintiff is a resident of the State of Washington.

19 3. That the pleadings clearly establish a lack of diversity jurisdiction.
20

21 Based upon the above findings, IT IS HEREBY ORDERED:

22 1. The Defendant's motion is granted _____ denied _____.

23 2. The action is dismissed without prejudice for lack of jurisdiction over the person
24 of the defendant.
25

26 3. The Defendant is awarded his statutory costs.
27
28
29

1 **FAILURE TO STATE A CLAIM 12(b)(6)**

2 1. The complaint in this case is to compel an elected official of the State of
3 Washington to remove real property owned by the plaintiff from the tax rolls.

4 2. Federal Court of the District of Utah is without authority to order the Clark
5 County Auditor to perform a function which is clearly a matter of state law.
6

7 3. The plaintiff has requested that the Federal Court of the District of Utah invalidate
8 the 1889 Constitution of the State of Washington. The Federal Court is without authority to
9 invalidate the Washington State Constitution.
10

11 Based upon the above findings, IT IS HEREBY ORDERED:

12 1. The Defendant's motion is granted _____ denied _____.

13 2. The action is dismissed without prejudice for lack of jurisdiction over the subject
14 matter.

15 3. The Defendant is awarded his statutory costs.
16

17
18 Dated this _____ day of _____, 2010.
19

20 _____
21 U.S. Magistrate Judge

22 Presented by:

23
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