

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 04-2170

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ALFREDO LEON SANCHEZ,

Plaintiff - Appellant,

versus

E. NORRIS TOLSON; RONALD G. STARLING; DENNIS  
O'DELL; PHILLIP REDMOND; J. W. TULBERT;  
PEERLESS INSURANCE COMPANY,

Defendants - Appellees,

versus

UNITED STATES OF AMERICA,

Amicus Curiae.

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Appeal from the United States District Court for the Western  
District of North Carolina, at Statesville. Richard L. Voorhees,  
District Judge. (CA-03-123-V)

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Submitted: March 16, 2005

Decided: April 26, 2005

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Before MOTZ and DUNCAN, Circuit Judges, and HAMILTON, Senior  
Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Aaron E. Michel, Charlotte, North Carolina, for Appellant. Roy  
Cooper, Attorney General, Christopher G. Browning, Jr., North

Carolina Solicitor General, Michael D. Youth, Assistant Attorney General, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina; Allan R. Gitter, Douglas R. Vreeland, WOMBLE, CARLYLE, SANDRIDGE & RICE, P.L.L.C., Winston-Salem, North Carolina, for Appellees.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Alfredo Leon Sanchez appeals the district court's order dismissing his civil action that he filed under 42 U.S.C. § 1983 (2000) and North Carolina law. We note Sanchez does not seek appellate review of the portions of the district court's order that: (a) found all defendants except Peerless Insurance Company were shielded from damages in their individual and official capacities by qualified immunity and the Eleventh Amendment; (b) dismissed the insurance company because its liability was derivative of the liability of another dismissed defendant; and (c) found the federal court could not grant the relief of the return of property seized to pay state taxes.

On appeal, Sanchez challenges the district court's dismissal of his request that the court declare the North Carolina Unauthorized Substance Tax Act, N.C.G.S. §§ 105-113.105 through 105-113.113, unconstitutional on its face and as applied to him. Sanchez also argues on appeal that the district court should have given him leave to amend his complaint to cure any deficiencies. We conclude the district court properly found Sanchez failed to establish that the Unauthorized Substance Tax Act was unconstitutional as applied and on its face. We note this court has declined to hold the current version of the North Carolina Unauthorized Substance Tax Act to be an unconstitutional criminal penalty. See Nivens v. Gilchrist, 319 F.3d 151, 157 (4th Cir.),

cert. denied, 539 U.S. 915 (2003). We also conclude the district court did not abuse its discretion in declining to grant Sanchez's informal and non-specific request for leave to amend.

Accordingly, we have reviewed the record and we find no reversible error. We affirm for the reasons stated by the district court. See Sanchez v. Tolson, No. CA-03-123-V (W.D.N.C. Aug. 6, 2004). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED