UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11064
Summary Calendar

JOHN ROBERT DEMOS, JR.,

Plaintiff-Appellant,

versus

JOHN DOE, Manufacturer, and
JOHN DOE, Retailer,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:94-CV-1805-D)

(March 2, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

John Robert Demos, Jr., *pro se* and *in forma pauperis*, appeals the Fed. R. Civ. P. 12(b)(6) dismissal of his tort action. We **AFFIRM.**

I.

Demos, a state prisoner in Washington, filed suit against "John Doe/Chairman" of Frito-Lay Inc., a corporation based in Dallas, Texas, alleging that he purchased packages of products which contained hair, toe nail clippings, and a dead fly, which

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[1] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

made him ill.

The magistrate judge propounded interrogatories to Demos and, after receiving the responses, recommended dismissal of Demos' claims against the "John Doe/Chairman" of Frito-Lay. However, the magistrate judge stated that, liberally construed, Demos' complaint appeared to seek redress against the Frito-Lay corporation; therefore, he recommended that Demos be given an opportunity to amend his complaint to name the proper defendant and identify the proper agent for service of process. The magistrate judge recommended further that the action be dismissed with prejudice unless, within 20 days, Demos so amended his complaint.

Within the 20-day period, Demos filed a motion to amend, stating:

> Plaintiff agrees with the court, that the chairman cannot be sued, only the manufacturer, the retailer, his or her agents, and their proxies, 3rd parties.
>
> The manufacturer would be located at the Frito-Lay Tower, which is the headquarters of Frito-Lay, Inc.[]
>
> Once the manufacturere [*sic*] is located, the "retalier" [*sic*] could then be easily located. Here in Washington State there are a number of retailers, and retail outlets that supply, and stock the Frito-Lay Label.

In the proposed amended complaint (incorrectly entitled "Motion to Ammend [*sic*] the Complaint", Demos stated further:

> I am "amending" my original complaint to remove any confusion as to who I am actually bringing this sutt/lawsuit [*sic*] against. I wish to "amend" the complaint to read that I am sueing [*sic*] "John Doe" (the manufacturer & retailer) of the product.
>
> ....

> I ... wish to "amend" my civil complaint to read that I am "sueing" [*sic*] "John Doe" manufacturer/ of the defective product and his "agents", who would be the "retailer".
>
> Since I am not from the State of Texas, I have no way of identifying the manufacturer, and or retalier [*sic*] of the product by name, so I will use "John Doe".[]
>
> The address of the manufacturer would be the same address as for the Frito-Lay Corporation, (if not, then Frito-Lay would be able to provide the federal marshals, and the court with the correct address of the manufacturer of it's [*sic*] products).
>
> ....
>
> I wish to name John Doe (until I can aquire [*sic*] his or her true name) as the manufacturer/retailer as the proper defendant/agent in this matter.

The district court granted leave to amend. In a supplemental report, the magistrate judge recommended dismissal pursuant to Rule 12(b)(6) because Demos had "persist[ed] in naming unknown individuals as defendants in his complaint"; had "failed to articulate any facts to demonstrate a colorable claim against the unknown individuals identified as John Doe"; and had "failed to provide the court with the information required to serve process as directed by the District Court" in its order adopting the magistrate judge's previous recommendation. The district court adopted the recommendation and dismissed the action pursuant to Rule 12(b)(6).

II.

In his brief, which consists primarily of irrelevant legal conclusions followed by citations to irrelevant authorities, Demos contends that he corrected his "jurisdictional issues" by amending

his complaint. He asks that we remand this action to prevent a miscarriage of justice. Reaching to the utmost limits of liberal construction,[2] we interpret this assertion as challenging the 12(b)(6) dismissal.

A Rule 12(b)(6) dismissal is reviewed *de novo*. *E.g.*, ***Jackson v. City of Beaumont Police Dep't***, 958 F.2d 616, 618 (5th Cir. 1992). In determining whether a plaintiff can prove no set of facts which would entitle him to relief, the test is "whether within the universe of theoretically provable facts there exists a set which can support a cause of action under this complaint, indulgently read". ***Covington v. Cole***, 528 F.2d 1365, 1370 (5th Cir. 1976).

Because Demos' original complaint appeared to seek redress from the Frito-Lay corporation, rather than its chairman, Demos was given an opportunity to amend his complaint to name the corporation as a defendant and to identify the agent for service of process. Rather than taking advantage of that opportunity, Demos persisted in trying to pursue his product liability action against unknown individuals, even though his original complaint reflects that he was well aware that the products in question were Frito-Lay products, and that he was in possession of the corporation's address.[3] The district court correctly concluded that the amended

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[2] *See* ***Haines v. Kerner***, 404 U.S. 519, 520-21 (1972).

[3] The corporation's address appears in the caption of Demos' original complaint against the "John Doe/Chairman" and on the last page of his amended complaint. He states in his brief that he has written a letter to the company to request a refund. His notice of appeal makes clear that he has never attempted to sue the

complaint does not state a claim against those unknown individuals upon which relief can be granted.

Needless to say, the duty to liberally construe *pro se* pleadings does not include a duty to read a *pro se* litigant's mind, or the duty to prosecute his lawsuit for him by serving process on parties not named as defendants. We are bound by Demos' pleadings, and are not free to speculate whether he might be able to state a claim against the Frito-Lay corporation if given yet another opportunity to amend his complaint. *Cf.* ***Macias v. Raul A. (Unknown), Badge No. 153***, 23 F.3d 94, 97 (5th Cir.) ("Although we construe IFP complaints liberally, ... we are still bound by the allegations in the complaint, and are not free to speculate that the plaintiff `might' be able to state a claim if given yet another opportunity to add more facts to the complaint."), *cert. denied*, ___ U.S. ___, 115 S. Ct. 220 (1994).

III.

For the foregoing reasons, the judgment is

AFFIRMED.

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corporation; it states that "[t]he suit was not against a corporation, or a corporate chairman, but rather against the `manufacturer' of the defective product". It is clear that Frito-Lay corporation has never been made a party to this proceeding.