

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

**RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25<sup>th</sup> day of May, two thousand seventeen.

PRESENT: BARRINGTON D. PARKER,  
RICHARD C. WESLEY,  
CHRISTOPHER F. DRONEY,  
*Circuit Judges.*

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ROCHELLE DRIESSEN,  
*Plaintiff-Appellant,*

v.

No. 16-1496-cv

ROYAL BANK OF SCOTLAND, a brand of the ROYAL BANK  
OF SCOTLAND GROUP,  
*Defendant.<sup>1</sup>*

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FOR PLAINTIFF-APPELLANT: Rochelle Driessen, Miami Beach, FL.

Appeal from a March 30, 2016 judgment of the United States District Court for the District of Connecticut (Thompson, J.; Merriam, M.J.).

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<sup>1</sup> The Clerk of Court is respectfully directed to amend the official caption to conform with the caption above.

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court is **AFFIRMED**.

Plaintiff-Appellant Rochelle Driessen, proceeding *pro se*, appeals from a judgment of the United States District Court for the District of Connecticut dismissing her complaint as frivolous. Driessen's complaint alleged that she received an email informing her that she had won £750,000 from the "Google lottery." The complaint further alleged that she responded to the email and attempted to claim her winnings from Defendant Royal Bank of Scotland ("RBS"). The instructions that Driessen received in reply led her to exchange email correspondence with an individual purportedly associated with RBS. In her complaint, Driessen claimed that RBS prevented her from transferring her winnings by refusing to provide her with a "Non Residential Tax Code" in violation of the Electronic Fund Transfer Act, 15 U.S.C. §§ 1693 *et seq.*

Driessen had sought to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1). The district court, in accepting a recommended ruling from a magistrate judge, determined that Driessen's claim was legally and factually frivolous, however, and dismissed her complaint *sua sponte* in accordance with 28 U.S.C. § 1915(e)(2)(B)(i). We assume familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

"We review *de novo* a district court's dismissal of a complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)." *Milan v. Wertheimer*, 808 F.3d 961, 963 (2d Cir. 2015). "A district court must dismiss an *in forma pauperis* action if the action is frivolous . . . . An action is frivolous when either: (1) the factual contentions are clearly baseless, such as when allegations are the product of delusion or fantasy; or (2) the claim is based on an indisputably meritless legal theory." *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (internal quotation marks omitted).

The district court correctly concluded that Driessen's complaint was frivolous and therefore properly dismissed it. Driessen's claim was founded on a clearly baseless notion that she had won a lottery rather than been the target of an obvious scam. As the district court explained, Driessen, who has a long history of filing claims that are virtually identical to her claim in this case, should have known that "there is no such thing as a Google lottery that randomly selects winners without their knowledge to award large sums of money." Indeed, Driessen should have realized that whomever she was communicating with was not connected to RBS, and that RBS cannot possibly be held liable.

Driessen's arguments that the district court misapplied *Neitzke v. Williams*, 490 U.S. 319 (1989), and should have given her leave to amend her complaint are not persuasive. The district court properly applied *Neitzke*'s holding that an action is not frivolous merely because it fails to state a claim upon which relief can be granted. *See id.* at 328. We have already explained why Driessen's claim is obviously frivolous. Giving Driessen leave to amend her complaint could not have cured the complaint's deficiencies, and was therefore properly denied. *See Krys v. Pigott*, 749 F.3d 117, 134 (2d Cir. 2014) ("Leave to amend may properly be denied if the amendment would be futile . . .").

We have considered Driessen's remaining arguments and conclude that they are without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk of Court

  
Catherine O'Hagan Wolfe

UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 28<sup>th</sup> day of September, two thousand seventeen.

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Rochelle Driessen,

*Plaintiff - Appellant,*

**ORDER**

Docket No: 16-1496

v.

Royal Bank of Scotland, a brand of the Royal Bank of Scotland Group,

*Defendant.*

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Appellant, Rochelle Driessen, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

*Catherine O'Hagan Wolfe*



UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ROCHELLE DRIESSEN,

Plaintiff,

v.

ROYAL BANK OF SCOTLAND, a brand of  
the Royal Bank of Scotland Group,

Defendant.

2016 MAR 30 P 47  
CASE NO. 3:15-CV-1336 (AWT)

REPORT

**JUDGMENT**

This action having come on for consideration of a pro se complaint before the Honorable Sarah A. L. Merriam, United States Magistrate Judge, and the Honorable Alvin W. Thompson, United States District Judge.

The Honorable Sarah A. L. Merriam having considered the complaint and the full record of the case including applicable principles of law, and having filed a recommended ruling dismissing the complaint, with prejudice, and the Court having accepted the recommended ruling, over objection, it is therefore;

**ORDERED, ADJUDGED AND DECREED** that judgment is hereby entered and this case is dismissed, with prejudice, pursuant to 28 U.S.C. § 1915 (e) (2) (B)(i), (ii).

Dated at Hartford, Connecticut, this 30th day of March, 2016.

ROBIN D. TABORA, Clerk

By: /s/ Linda S. Ferguson  
Linda S. Ferguson  
Deputy Clerk

EOD: 3/30/16

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

-----x  
ROCHELLE DRIESSEN, : Civ. No. 3:15CV01336 (AWT)  
Plaintiff, :  
v. :  
ROYAL BANK OF SCOTLAND, :  
Defendant. :  
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ORDER RE RECOMMENDED RULING

Upon review and pursuant to 28 U.S.C. §636(b) and Rule 72.2 of the Local Rules for United States Magistrate Judges (D.Conn.), Magistrate Judge Merriam's Recommended Ruling (Doc. No. 6) on initial review of plaintiff's pro se Complaint (Doc. No. 1) and motion to proceed in forma pauperis (Doc. No. 2) is hereby ACCEPTED, over objection. The plaintiff's motion to proceed in forma pauperis (Doc. No. [2]) is hereby GRANTED and this case is hereby DISMISSED with prejudice for the reasons set forth in the recommended ruling.

The plaintiff objects to the recommended ruling, emphasizing that under Neitzke v. Williams, 490 U.S. 319 (1989), the court must exercise "caution in dismissing a case under section 1915(e) because a claim that the court perceives as likely to be unsuccessful is not necessarily frivolous." (Plf.'s Obj. (Doc. No. 7) at 2.) The plaintiff's objection accurately states the standard under Neitske, which is as follows:

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5.

Appendix "C"

To the extent that a complaint filed *in forma pauperis* which fails to state a claim lacks even an arguable basis in law, Rule 12(b)(6) and § 1915(d) both counsel dismissal. But the considerable common ground between these standards does not mean that the one invariably encompasses the other. When a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not. This conclusion follows naturally from § 1915(d)'s role of replicating the function of screening out inarguable claims which is played in the realm of paid cases by financial considerations.

Neitske, 490 U.S. at 328. However, the recommended ruling accurately applies the holding in Neitzke. Dismissal of the complaint with prejudice is based on the conclusion that (1) the factual allegations in the complaint are clearly baseless, and (2) the plaintiff's claim is based on an indisputably meritless theory. The recommended ruling recites numerous reasons in support of the conclusion that the factual allegations in the complaint are clearly baseless. In addition, the recommended ruling not only cites to authority for the proposition that the plaintiff's claim is based on an indisputably meritless legal theory in that 15 U.S.C. § 1693(b) does not provide a cause of action, but also highlights the fact that these holdings are from prior cases brought by the claimant.

Finally, the court notes that the plaintiff filed a sworn affidavit submitted under penalty of perjury in support of her motion for leave to proceed *in forma pauperis*. (See Doc. No. 2.) In that affidavit the plaintiff did not disclose the fact that she had filed three prior actions in this district. This is a

serious omission and the plaintiff is cautioned that false statements and omissions in submissions to the court will be treated as a serious matter.

The Clerk shall close this case.

It is so ordered.

Dated this 22nd day of February 2016, at Hartford,  
Connecticut.

/s/AWT  
Alvin W. Thompson  
United States District Judge

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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ROCHELLE DRIESSEN : Civ. No. 3:15CV01336(AWT)  
v. :  
ROYAL BANK OF SCOTLAND : December 4, 2015  
:-----x

**RECOMMENDED RULING**

This matter is before the Court on its initial review of plaintiff Rochelle Driessen's pro se Complaint [Doc. #1] and motion to proceed in forma pauperis [Doc. #2]. Plaintiff's motion for leave to proceed in forma pauperis [Doc. #2] is **GRANTED** based on the financial information submitted by the plaintiff. However, for the reasons set forth below, the Complaint [Doc. #1] is **DISMISSED** with prejudice pursuant to 28 U.S.C. §1915(e) (2) (B) (i), (ii).

**I. Background**

Plaintiff alleges that on July 25, 2015, she received an email notifying her that she won "without [her] knowledge" £750,000 "Great British Pounds Sterling" from the "Google lottery." [Doc. #1, Compl. ¶ 7, Ex. A] The email directed her to contact Mr. Kennedy Watson, Google Award Claims Manager, to claim her lottery winnings. Id. Plaintiff sent an email to the address provided, and a person identifying himself as Watson

emailed her in response from goo.glelotoff22@hotmail.com, directing her to contact "Mr. Bruce Van Saun, International Transfer Officer," at the Royal Bank of Scotland at transfer@rbs-bank.uk.ht<sup>3</sup> to arrange a transfer of her winnings. Compl. ¶¶ 8-9, Ex. C. After plaintiff emailed this address as directed, "Van Saun" informed her that the bank was prepared to start the "processing of a new Offshore account" and directed plaintiff to complete and return an attached "Royal Bank of Scotland Offshore Account Opening form." Compl. Ex. D. Plaintiff returned the completed form, along with a copy of her driver's license, on July 28, 2015, to "Van Saun" by email. Compl. ¶ 10, Ex. E. An email dated July 30, 2015, from "Van Saun" provided login details for a new account purportedly opened in Driessen's name with the Royal Bank of Scotland ("RBS"). Compl. ¶ 10, Ex. F.

Plaintiff alleges that on July 31, 2015, she logged into the bank account by clicking on the link provided in Van Saun's July 30, 2015, email.<sup>4</sup> Compl. ¶ 11. A screen shot of the account login page displayed the following information: "Hi Rochelle, Today is Jul <sup>31</sup> 2015. You last accessed your account on July 31, 2015." The page stated that she was "Currently Logged into

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<sup>3</sup> The Court notes that .ht is the domain code for Haiti. See <https://www.eurodns.com/international-domain-names/ht-domain-registration/> (last checked Dec. 3, 2015).

<sup>4</sup> The hyperlink to the account login provided in the email is: <http://rbsdigital.co.vu/users/clients/login/index.php>

Account: 73551662" and "[y]our current account balance is: 750,000.00 GBP." Compl. Ex. H. Plaintiff alleges that she could not complete the transfer of funds from this "Offshore" account to her own account because she was prompted to provide a "Non Residential Tax Code." Compl. Ex. J. Plaintiff contends that the defendant has wrongfully refused to provide her with a Non Residential Tax Code, thereby preventing her from collecting her winnings. Compl. ¶¶ 12, 15. Plaintiff claims that defendant RBS's failure to provide her with a Non Residential Tax Code to complete the transfer of her winnings to her nominated bank account is a violation of 15 U.S.C. § 1693(b) of the Electronic Funds Transfer Act ("EFTA"). Compl. ¶ 15.

## **II. Initial Review of Complaint**

### **A. Standard of Review**

Consideration of whether an in forma pauperis plaintiff should be permitted to proceed under 28 U.S.C. § 1915 is a two-step process. The court must first determine whether the plaintiff may proceed with the action without prepaying the filing fee in full. See 28 U.S.C. § 1915(a). Second, section 1915 requires the court to conduct an initial screening of the complaint to ensure that the case meets certain requirements, and provides that "the court shall dismiss the case at any time if the court determines," inter alia, that the case "is

frivolous" or "fails to state a claim on which relief may be granted[.]" 28 U.S.C. § 1915(e)(2)(B)(i), (ii).

The court construes pro se complaints liberally. See Haines v. Kerner, 404 U.S. 519, 520 (1972). The court exercises caution in dismissing a case under section 1915(e) because a claim that the court perceives as likely to be unsuccessful is not necessarily frivolous. See Neitzke v. Williams, 490 U.S. 319, 329 (1989). In addition, "unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim[,]" the court should permit "a pro se plaintiff who is proceeding in forma pauperis" to file an amended complaint that attempts to state a claim upon which relief may be granted. Gomez v. USAA Fed. Sav. Bank, 171 F.3d 794, 796 (2d Cir. 1999).

#### **B. Discussion**

Plaintiff has filed dozens of pro se civil actions in District Courts across the country, many of which are variations on the complaint in this action.<sup>5</sup> See, e.g., Driessen v. Natwest Bank, PLC, Civ. No. 13CV00217(MPS), slip. op. n.1 (D. Conn. Oct. 25, 2013) (citing seven cases filed by plaintiff), aff'd, 580 F. App'x 32 (2d Cir. 2014); see also Driessen v. Citigroup, Inc.,

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<sup>5</sup> A national PACER search returned 64 cases filed by plaintiff pro se since 2006.

Civ. No. 1:14CV03123(LAP) (S.D.N.Y. May 27, 2014); Driessen v. Royal Bank Int'l, Civ. No. 3:14CV01300(VAB) (D. Conn. Dec. 17, 2014) (dismissing complaint without prejudice); Driessen v. Royal Bank Int'l, Civ. No. 3:14CV01300(VAB), 2015 WL 1245575 (D. Conn. Mar. 18, 2015) (dismissing amended complaint with prejudice); Driessen v. Fed. Bureau of Investigation, Civ. No. 1:15CV00693(UNA) (D.D.C. May 6, 2015); Driessen v. NatWest Bank PLC, Civ. No. 3:14CV01666(MPS) (D. Conn. July 20, 2015) (finding claims were barred by doctrine of res judicata). A District Court may take judicial notice of publicly filed documents. Kavowras v. N.Y. Times Co., 328 F. 3d 50, 57 (2d Cir. 2003).

The Southern District of New York, reviewing a similar complaint by plaintiff, reviewed a number of Driessen's cases:

In each of these filings, Plaintiff alleges that she was notified by email that she had won or inherited an exorbitant sum of money. Each of these emails was riddled with grammatical errors and identified no legitimate reason why Plaintiff would be entitled to the money she claimed to be owed. The domain names of the email addresses from which these notifications were sent do not match those associated with the banks or other institutions purported to have sent the emails. In all of these cases, Plaintiff names a bank as the defendant, asserts that her claims are based on the EFTA, and seeks a judgment ordering the defendant to transmit the funds to her bank account.

In dismissing her claims, courts have repeatedly informed Plaintiff that: (1) the text of the emails indicate that she was not harmed by the named defendant but was possibly "the target of a scam perpetrated by an unknown third party," Driessen v. Woodforest Nat'l Bank, 940 F. Supp. 2d 584, 591 (S.D. Ohio 2013), and (2) the EFTA does not provide a cause

of action where "a third party orders a financial institution to transfer money to a consumer but the financial institution fails to do so," Driessen v. Natwest Bank, PLC, No.13-CV-00217 (D. Conn. Oct. 25, 2013) (citing Household Fin. Realty Corp. v. Dunlap, 834 N.Y.S. 2d 438 (Sup. Ct., N.Y. County 2007)).

Driessen v. Citigroup, Inc., Civ. No. 1:14CV03123(LAP), slip op. at 3 (S.D.N.Y. May 27, 2014).

This case follows the familiar pattern. Here, plaintiff alleges that, without her knowledge and apparently without entering any lottery, she won the "Google lottery" for a very large sum in a foreign currency. The "Google Lottery Department" emails are dubious, originating from "EssentiaHealth.org" and "hotmail.com" email addresses rather than, say, Google.com or Gmail.com addresses. Compl. Ex. A, C. The email and website through which the plaintiff attempted to secure her winnings (transfer@rbs-bank.uk.ht) do not use the domain names normally associated with the defendant (rbs.com, rbs.co.uk, rbsinternational.com), and the people she was communicating with were not actually affiliated with RBS.<sup>6</sup> In light of these discrepancies, and the plaintiff's substantial prior experience with similar issues, she should have concluded that the "Lottery" was a farce.

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<sup>6</sup> It appears that although Bruce Van Saun once worked at RBS, he has been the CEO of Citizens Financial Group, Inc., since 2013. See <https://www.bostonglobe.com/business/2015/07/11/vansaun/zmHIyBIEjDzFHF40KDdDcP/story.html> (last checked Dec. 3, 2015).

In addition, the plaintiff's primary allegation is that RBS's failure to provide her with a "Non Residential Tax Code" violates the EFTA. The Court's finding in Driessen v. Citigroup, Inc. applies equally here: "In light of [plaintiff's] litigation history, Plaintiff should have been aware that the EFTA does not provide for a cause of action against a financial institution under these circumstances when she filed this action." Civ. No. 1:14CV03123(LAP), slip. op. at 3 (S.D.N.Y. May 27, 2014) (citing Sledge v. Kooi, 564 F.3d 105, 109-110 (2d Cir. 2009) (discussing circumstances in which a frequent pro se litigant may be charged with knowledge of particular legal requirements); see also Driessan v. Natwest Bank PLC, Civ. No. 3:13CV00217(MPS), slip op. at 5-6 (D. Conn. Oct. 25, 2013) (finding 15 U.S.C. § 1693(b) does not provide a cause of action as it "merely recites the underlying purpose of the EFTA, and thus, by its plain language, does not entitle individuals to file suit").

Even assuming that the factual allegations contained in her complaint are true, plaintiff should have understood after her repeated attempts to collect money allegedly won that there is no such thing as a Google Lottery that randomly selects winners without their knowledge to award large sums of money. See Driessen v. Citigroup, Inc., Civ. No. 1:14CV03123(LAP), slip op. at 3 (S.D.N.Y. May 27, 2014); Driessen v. Royal Bank Int'l, 2015 WL 1245575, at \*2 (noting the "numerous cases filed by plaintiff

in which she sued commercial banks implausibly alleging ... that she was entitled to a large sum of money the bank failed to transfer to her in violation of 15 U.S.C. § 1696(b)").

The Court finds that the factual allegations in the complaint are clearly baseless and that plaintiff's claim is based on an indisputably meritless legal theory. The complaint should therefore be dismissed. See 28 U.S.C. § 1915(e)(2)(B)(i), (ii). Moreover, because the defects cannot be cured with an amendment, the dismissal should be with prejudice. See Hill v. Curcione, 657 F.3d 116, 123 (2d Cir. 2011) ("Where a proposed amendment would be futile, leave to amend need not be given.").

### **III. Conclusion**

For the reasons set forth herein, plaintiff's Motion for Leave to Proceed in Forma Pauperis [Doc. #2] is **GRANTED**.

The Complaint is **DISMISSED, with prejudice**, pursuant to 28 U.S.C. § 1915(e)(2)(B)(1)(i), (ii).

This is a recommended ruling. **Any objections to this recommended ruling must be filed with the Clerk of the Court within fourteen (14) days of service of this order.** See Fed. R. Civ. P. 72(b)(2). Failure to object with fourteen (14) days may preclude appellate review. See 28 U.S.C. § 636(b)(1); Rules 72, 6(a) and 6(e) of the Federal Rules of Civil Procedure; D. Conn. L. Civ. R. 72.2(a); Small v. Secretary of H.H.S., 892 F.2d 15,

16 (2d Cir. 1989) (per curiam); F.D.I.C. v. Hillcrest Assoc., 66 F.3d 566, 569 (2d Cir. 1995).

SO ORDERED at New Haven this 4th day of December, 2015.

/s/  
HON. SARAH A. L. MERRIAM  
UNITED STATES MAGISTRATE JUDGE