In the Supreme Court of the United States

19-5405

(INDEX NO.)

IN REVIEW OF:

DOCK. NO. 18cv12064(LLS)(SDNY), 19-1392(2ND CIR. CT.)

CESTUI QUE STEVEN

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UNITED STATES

ON MOTION FOR LEAVE TO P

ON PETITION FOR REHEARING

(APPENDICES)

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OCTOBER 9, 2019

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***HON. STANTON's** "ORDER" (Doc "20" of Dock. No. 18cv12064(LLS)(SDNY))*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CESTUI QUE STEVEN TALBERT WILLIAMS,

Plaintiff,

-against-

UNITED STATES, ET AL.,

Defendants.

18-CV-12064 (LLS)

ORDER

LOUIS L. STANTON, United States District Judge:

Plaintiff filed this action *pro se*. On December 26, 2018, the Court dismissed the complaint as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i). Plaintiff has filed a notice of appeal and numerous post-judgment motions.[1] This matter is now before the Court on Plaintiff's motions, which are docketed as docket entries numbers 7 and 9-19.

PROCEDURAL HISTORY

Plaintiff has filed two substantially similar actions in this Court that were dismissed: this action and *Williams v. United States*, No. 15-CV-5114 (LAP) (S.D.N.Y. Dec. 10, 2015).[2] Plaintiff's allegations in these actions can be summarized as follows: After his mother died in 2010, Plaintiff was wrongfully denied assets of her estate, and was evicted from her rent-controlled apartment in Stuyvesant Town in Manhattan while ownership of the building was changing hands; he then endured periods of homelessness, brushes with the law, and

[1] The appeal is pending as *Williams v. United States*, No. 19-0039 (2d Cir.). Plaintiff also brought a petition for a writ of mandamus, which has been opened in the United States Court of Appeals for the Second Circuit as *Williams v. United States*, No. 19-0240-op (2d Cir.).

[2] On direct appeal from the order of dismissal for failure to state a claim in *Williams*, No. 15-CV-5114 (LAP), the Court of Appeals held that "the motions are DENIED and the appeal is DISMISSED because 'it lacks an arguable basis either in law or in fact.' *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)." *Williams v. United States*, No. 16-189-cv (2d Cir. May 15, 2016).

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hospitalization. The 55 defendants named in the caption of the original complaint are listed on the Court's docket. In its December 26, 2018 order of dismissal of this action, the Court concluded that there was no legal theory on which Plaintiff could rely.[3]

DISCUSSION

A. Jurisdiction Over Pending Motions

The district court retains jurisdiction over certain timely filed, postjudgment motions—including motions under Federal Rule of Civil Procedure 59(e) to amend the judgment and motions under Federal Rule of Civil Procedure 60(b) for relief from the judgment—even if a party files a notice of appeal before the court resolves such motions. Fed. R. App. P. 4(a)(4)(A) and (B)(i). "A notice [of appeal] filed before the filing of one of the specified motions or after the filing of a motion but before disposition of the motion is, in effect, suspended until the motion is disposed of . . . ." Fed. R. App. P. 4(a)(4), Advisory Committee Note to Paragraph (a)(4) (1993).

Rule 62.1 of the Federal Rules of Civil Procedure provides a procedure for the district court to follow when a notice of appeal deprives the district court of authority to grant a timely motion. *See* Fed. R. Civ. P. 62.1, Advisory Committee Note (2009) ("Rule 62.1 does not attempt to define the circumstances in which an appeal limits or defeats the district court's authority to act."). "If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may: (1) defer considering the motion;

[3] Among other problems with the complaint, all of these diverse claims and parties are not properly joined in one action; Plaintiff's claims are time-barred, even if he continues to feel the effects of these incidents; many of the defendants are immune or otherwise improper; many of Plaintiff's claims have previously been adjudicated; Plaintiff's allegations are unintelligible and fail to state a claim on which relief can be granted; and this Court cannot overturn the decisions of state courts or other federal district courts.

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(2) deny the motion: or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue." Fed. R. Civ. P. 62.1 (a).

Because Plaintiff filed a number of postjudgment applications, both before and after his notice of appeal, the Court considers whether any of his applications qualify as a motion over which the Court retains jurisdiction under Rules 4(a)(4)(A) and (B)(i) of the Federal Rules of Appellate Procedure. *See Jones v. UNUM Life Ins. Co. of Am.*, 223 F.3d 130, 136–37 (2d Cir. 2000) ("Regardless of the label the movant places on her postjudgment motion, [it is] appropriate to examine the timing and substance of the motion in order to determine whether it should be deemed to extend the time for appeal."). Plaintiff's applications, docketed as docket entries numbers 7 and 9-19, were all filed within 28 days of entry of judgment on December 26, 2018. The Court therefore considers whether any of the applications can be construed as a motion under Rule 59(e) to alter or amend the judgment, or a motion under Rule 60(b) for relief from a judgment or order. [4]

B. Standards for Motions Under Federal Rules of Civil Procedure 59(e) and 60(b)

A motion to alter or amend a judgment under Rule 59(e) is generally appropriate only where the moving party "demonstrate[s] that the Court overlooked controlling decisions or factual matters that were put before it on the underlying motion, which had they been considered might reasonably have altered the result reached by the court." *SimplexGrinnell LP v. Integrated Sys. & Power, Inc.*, 642 F. Supp. 2d 206, 210 (S.D.N.Y. 2009). A Rule 59(e) motion is not an opportunity to present "new facts, issues or arguments not previously presented to the court."

[4] Although Fed. R. App. P. 4(a)(4)(A)(iv) does not explicitly provide a 28 day limit for Rule 59(e) motions, it states that qualifying motions must be filed "within the time allowed by [the Federal Rules of Civil Procedure," and under Rule 59(e), "[a] motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment."

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Maalouf v. Salomon Smith Barney, Inc., No. 02-CV-4770, 2004 WL 2782876, at *1 (S.D.N.Y. Dec. 3, 2004).

Rule 60(b) provides the following grounds for relief from a district court's order or judgment:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason justifying relief.

Fed. R. Civ. P. 60(b).

C. "Affidavits in Support of Complaint"

Plaintiff brings three applications, each of which is styled as an "Affidavit in Support of Complaint."[5] In Affidavit Part I, Plaintiff describes complex financial transactions among the defendants who were engaged in buying and selling the Stuyvesant Town apartments — the building from which he alleges that he was illegally evicted after Housing Court proceedings. Plaintiff explains that at some point, he was "forced . . . to seek an alternative living environment" after "having an argument with his father." In addition, Plaintiff describes his efforts in the Surrogate's Court in 2013-2015, in connection with his mother's estate after her

[5] These include his (1) 313-page "Affidavit . . . in Support of Complaint (Part I)" (hereinafter "Affidavit Part I") filed January 2, 2019 (ECF No. 7); (2) his 120-page "Affidavit . . . in Support of Complaint (Part II)" (hereinafter "Affidavit Part II"), filed on January 3, 2019 (ECF No. 10); (3) and his 86-page "Affidavit . . . in Support of Complaint (Part III)" (hereinafter "Affidavit Part III") and exhibits, filed on January 4, 2019 (ECF Nos. 11-12). Plaintiff also submits a letter stating that his Affidavit Part IV and "Petition for Permission to Appeal to the Supreme Court," submitted on January 7, 2019, do not appear on the docket. (Letter, ECF No. 18.) Plaintiff gives no explanation of what information is included in the latter two filings.

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death in 2010. Plaintiff also discusses his contacts with the Vanguard Group and the New York Times Guild/Pension office regarding his mother's assets.

Plaintiff further includes allegations about his pre-2015 illegal arrest and mistreatment at the hands of the Police Department in Montgomery County, Maryland, and his arrest in 2012 or 2013, in Manhattan in a "banking vestibule" where he was allegedly "forced . . . to urinate in the vestibule's garbage can." (ECF No. 7, at 47). Plaintiff also challenges then-Chief Judge Loretta A. Preska's dismissal of his amended complaint in *Williams*, No. 15-CV-5114 (LAP) (S.D.N.Y. Dec. 10, 2015). Plaintiff lists approximately 100 hundred defendants, some of whom may overlap with the defendants currently on the docket (*see* Affidavit, ECF No. 7, at 71-103), and seeks reopening of twelve closed actions that were brought in state and federal court (*id.* at 140).

Plaintiff's Affidavit Part II relates in part to the loss of his tax documents. Plaintiff contends that the inability to access tax documents, as well as the denial of access to his mother's individual retirement account for which he was the beneficiary, caused his "illegal eviction." (ECF No. 10, at 8.) Plaintiff discusses his claims against the Internal Revenue Service (IRS), various IRS agents, and others.

In his Affidavit Part III, Plaintiff explains the difficulties that caused his filings in *Williams*, No. 15-CV-5114 (LAP), to be incomplete. (ECF No. 12.) Plaintiff also contends that the Clerk's Office rejected the filing of certain evidence, including video testimony and a picture demonstrating "a rare form of eczema [on] his left foot," and that he was counseled to file a motion requesting leave to submit evidence. (ECF No. 11, at 19-20.)[6]

[6] Plaintiff's complaints in *Williams*, No. 15-CV-5114 (LAP), and this action were dismissed because of defects in the legal theories and allegations of the complaints—not for lack of evidence, which is not required at the pleading stage.

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The multi-part Affidavit thus apparently seeks to add new claims and parties or supplement the factual allegations of the complaint that the Court dismissed. "[O]nce judgment is entered[,] the filing of an amended complaint is not permissible until judgment is set aside or vacated pursuant to Fed. R. Civ. P. 59(e) or 60(b)." *Nat'l Petrochem. Co. of Iran v. M/T Stolt Sheaf*, 930 F.2d 240, 244 (2d Cir. 1991); *see also Hernandez v. Coughlin*, 18 F.3d 133, 138 (2d Cir. 1994) (district court lacked jurisdiction to rule on a motion to amend complaint after notice of appeal was filed).

Because Plaintiff proceeds *pro se*, the Court considers whether the Affidavit could be liberally construed as a Rule 59(e) or 60(b) motion. Plaintiff's notice of appeal and associated documents make passing reference to Rule 60(b) of the Federal Rules of Civil Procedure. (*See* Notice of Appeal, ECF No. 8, at 8.) Moreover, the day after filing his Affidavit Part I, Plaintiff submitted a letter stating that "due to an error," a "new title page is submitted" to retitle an unspecified application as a "Motion for Fed. R. Civ. P. 60." (Letter, ECF No. 13 at 1.) The Court therefore liberally construes Plaintiff's Affidavit Part I as a motion under Rule 60(b).

Plaintiff submitted a letter on January 3, 2019, explaining that his Affidavit was submitted in parts due to "lack of funds" to print it as a single document. (Letter filed January 3, ECF No. 9, at 1.) It therefore appears that Plaintiff's Affidavit Part II and Affidavit Part III, which were intended as parts of the same application, could also be liberally construed as motions under Rule 60(b). Because these applications were submitted within 28 days of entry of judgment, the Court has authority to address the motions. Fed. R. App. P. 4(a)(4)(A).

Plaintiff's Affidavits Parts I-III, which seek to add irrelevant factual material, name new defendants, rehash arguments that have been rejected, or reopen closed state or federal actions, do not allege facts demonstrating that any of the grounds listed in the first five clauses of Rule

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60(b) apply. Plaintiff has also failed to allege any facts demonstrating that extraordinary circumstances exist to warrant relief under Rule 60(b)(6). *See Ackermann v. United States*, 340 U.S. 193, 199-202 (1950). The Court therefore denies relief under Rule 60(b) as to the motions docketed under ECF numbers 7 and 10-12.[7]

D. Reconsideration of Order Revoking IFP

Plaintiff seeks reconsideration of the order revoking Plaintiff's *in forma pauperis* (IFP) status in the December 26, 2018 order of dismissal. (ECF No. 15.) The Court liberally construes this request as a motion under Rule 60(b) of the Federal Rules of Civil Procedure.

The Court revoked IFP because it concluded that any appeal from its order would not be taken in good faith. Good faith for purposes of § 1915 does not mean "good faith from [a litigant's] subjective point of view." *Coppedge v. U.S.*, 369 U.S. 438, 445 (1962). Rather, a litigant demonstrates good faith when the litigant "seeks appellate review of any issue not frivolous." *Id.* Because Plaintiff's appeal does not, in this Court's view, satisfy that standard, the Court declines to reconsider its revocation of Plaintiff's IFP status, and therefore denies Plaintiff's motion. Plaintiff can renew in the Court of Appeals any argument that IFP status is warranted. *See Coppedge*, 369 U.S. at 445 ("If the District Court finds the application is not in good faith, and therefore denies leave to appeal *in forma pauperis*, the defendant may seek identical relief from the Court of Appeals.").

E. Other Motions

Plaintiff brings other motions that are not included in Rule 4(a)(4)(A) of the Federal Rules of Appellate Procedure, and which therefore do not suspend the appeal until resolution of the

[7] Plaintiff's applications also do not satisfy the "strict" standards for reconsideration under Rule 59(e). *Analytical Surveys, Inc. v. Tonga Partners*, 684 F.3d 36, 52 (2d Cir. 2012).

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motion. In these circumstances, the Court may: (1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue." Fed. R. Civ. P. 62.1 (a).

Plaintiff brings an "Emergency Motion to Direct the Clerk to Perform Duty (Not All Defendants on Docket)" (ECF No. 14), in which he seeks to require the Clerk's Office to include 176 defendants on the docket. Plaintiff's "Petition for Peremptory Writ of Mandamus" (ECF No. 17) appears to seek the same relief. Plaintiff states that 176 defendants are "depicted in Doc 2," that is, the complaint, which is filed as docket entry 2. He argues that failure to include all defendants on the district court's docket may lead to "dismissal of the trial on appeal for [delay] in serving all of the defendants." (ECF No. 14, at 2.) Plaintiff has sought mandamus relief in the Court of Appeals on this issue. *Williams v. United States*, No.19-0240-op (2d Cir.).

The Clerk has listed on the Court's docket the 55 defendants that could be discerned from the caption (and the margins) of Plaintiff's handwritten complaint. (Compl. at 1.) Plaintiff includes in the middle of his complaint a 20-page list labeled "Primary Defendants," which begins with state court judges and concludes with individuals affiliated with the New York Public Library. (Compl. at 12-31.) Some of the 176 defendants on this list are among the 55 defendants named in the caption and listed on the docket; others listed in the body of the complaint are not named in the caption. Because the complaint was dismissed as frivolous, and the Court determined that it would be futile to allow Plaintiff to replead his claims, he had no opportunity to replead to clarify the properly named defendants.

Plaintiff failed to clearly plead the names of the defendants in the complaint, either by listing all of them in the caption, or by listing some in the caption and the remaining defendants as a supplement to the caption. Plaintiff does not identify in his motion which defendants have

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been excluded from the Court's docket. The Clerk is not required to sort through the 176 names in the body of the complaint to ascertain which of them were not included in the caption of the complaint. Plaintiff is thus not entitled to the relief that he seeks, and the Court denies his Emergency Motion (ECF No. 14).[8]

Plaintiff also filed a "Motion to Separate & Title the Exhibits of Doc. 12." which includes arguments about trade secrets in connection with a real property venture. (ECF No. 16.) The Court cannot ascertain what relief Plaintiff seeks in this application and denies the motion.

Plaintiff requests permission for electronic filing (ECF No. 19) and for access to the Court's printers (ECF No. 9). The Court denies Plaintiff's requests. If the Court of Appeals directs the Court to reopen this matter, then Plaintiff can renew his request for electronic filing in the district court at that time. The Court does not provide access to its printers.

F. Warning

Plaintiff's voluminous and repetitive filings consume enormous resources, on the part of the Court and likely for the Plaintiff. But this action is closed and will remain so unless Plaintiff obtains some relief in the Court of Appeals for the Second Circuit. The Court cautions Plaintiff that if he continues to inundate the Court with additional filings in this closed action, the Court will direct Plaintiff to show cause why he should not be barred from filing further documents in this closed action, other than documents that are directed to the United States Court of Appeals for the Second Circuit.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on

[8] Because of this action's many other defects, failing to include defendant(s) on the docket will not materially affect the outcome of this matter.

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the docket. The Court denies all of Plaintiff's motions, including the applications entered on the docket under numbers 7 and 9-19. This action, under docket number 18-CV-12064 (LLS), remains closed, and any further filings must be directed to the United States Court of Appeals for the Second Circuit.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: March 22, 2019
New York, New York

Louis L. Stanton
Louis L. Stanton
U.S.D.J.

Additional material from this filing is available in the Clerk's Office.