

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
STEVEN C. MANNION
UNITED STATES MAGISTRATE JUDGE

MARTIN LUTHER KING
COURTHOUSE
50 WALNUT ST.
ROOM 3053
NEWARK, NJ 07101
973-645-3827

June 9, 2017

LETTER ORDER

D.E. 6, Motion for Appointment of *Pro Bono* Counsel

**Re: Biton v. United Airlines, *et al.*
Civil Action No. 17-cv-1868 (MCA) (SCM)**

Dear Litigants:

This matter comes before the Court upon review of Plaintiff Crystal Biton's ("Ms. Biton") Motion to Appoint *Pro Bono* Counsel.¹ The Court may appoint a party *pro bono* counsel only if that party has been permitted to proceed *in forma pauperis*.² Ms. Biton has not yet been granted *in forma pauperis* ("IFP") status, therefore her application cannot be considered at this time. The Court therefore **denies without prejudice** Ms. Biton motion for *pro bono* counsel pending the District Judge's decision on her IFP application. Ms. Biton may petition this Court to reconsider her motion for *pro bono* counsel should she be granted IFP status.

Meanwhile, it is Ms. Biton's obligation to have the summons and complaint served upon each of the defendants. Failure to do so may require that this case be dismissed for lack of prosecution. The Clerk of the Court shall terminate the motion to appoint, (D.E. 6) and mail a copy of this Order to Plaintiff Biton.

¹ (ECF Docket Entry No. ("D.E.") 6).

² 28 U.S.C. § 1915(a), 28 U.S.C. § 1915e(1); *Peterson v. Weiss*, No. CIV.A. 12-5431 NLH, 2012 WL 6042795, at *1 (D.N.J. Dec. 3, 2012) (citing *Lister v. Dept. of Treasury*, 408 F.3d 1309, 1312 (10th Cir.2005) ("Section 1915(a) applies to all persons applying for IFP status, and not just to prisoners.")).

IT IS SO ORDERED.



Steve C. Mannion

Honorable Steve Mannion, U.S.M.J.
United States District Court,
for the District of New Jersey
phone: 973-645-3827

6/9/2017 9:58:49 AM

c (via ECF):
All Counsel

c (via U.S. Mail R.R.R.):

Ms. Crystal Biton
Church Street Station
P.O. Box #1008
New York, NY 10008

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CRYSTAL BITON,

Plaintiff,

v.

CHRIS CHRISTIE, et al.,

Defendants.

Civil Action No. 17-1868

ORDER

THIS MATTER comes before the Court by way of Plaintiff Crystal Biton's applications to proceed *in forma pauperis* under 28 U.S.C. § 1915, Dkt. Nos. 4, 5; and it appearing that because Plaintiff has established her inability to pay the costs of the proceeding, the Court grants Plaintiff's application to proceed *in forma pauperis* without prepayment of fees and costs pursuant to 28 U.S.C. § 1915(a); and it appearing that

pursuant to 28 U.S.C. § 1915(e)(2), the Court must also analyze the Complaint to determine if the claims contained therein must be dismissed; and it appearing that

28 U.S.C. § 1915(e)(2)(B)(ii) requires dismissal of the action if the Complaint fails to state a claim on which relief may be granted¹; and it appearing that

Plaintiff is proceeding *pro se*, so the Court construes the pleadings liberally and holds them to a less stringent standard than those filed by attorneys, Haines v. Kerner, 404 U.S. 519, 520

¹ The Court must apply the same standard of review as that for dismissing a complaint under Fed. R. Civ. P. 12(b)(6) when evaluating whether a complaint must be dismissed under § 1915(e) for failure to state a claim on which relief can be granted. Grayson v. Mayview State Hosp., 293 F.3d 103, 112 (3d Cir. 2002). To state a claim that survives a Rule 12(b)(6) motion to dismiss, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

(1972), but the “Court need not . . . credit a pro se plaintiff’s ‘bald assertions’ or ‘legal conclusions,’” Mestman v. Escandon, No. 14-3880, 2014 WL 11398143, at *1 (D.N.J. June 25, 2014); and it appearing that

Plaintiff states that the basis for federal jurisdiction is diversity of citizenship, but has not properly alleged the citizenship of all parties; and it appearing that

Plaintiff’s factual allegations consist of one paragraph of statements that are challenging to discern; and it appearing that

a liberal reading of the Complaint suggests that Plaintiff asserts claims for “exposur[e] to toxic chemicals . . . due to construction conducted by Port Authority of NY/NJ, NHCTA/MTA, Stonewall Construction et al.,” as well as Constitutional claims against United Airlines for “bad faith . . . intentionally switching my daughter’s identity with mine” and giving “fake filing info” to the IRS, which resulted in “another woman falsely claim[ing] [Plaintiff’s] former husband’s social security benefits;” and it appearing that

Plaintiff’s allegations consist only of bald allegations and legal conclusions and do not assert enough facts to state a claim for relief that is plausible on its face;

IT IS on this 14th day of June, 2017,

ORDERED that Plaintiff’s motion to proceed *in forma pauperis* is **GRANTED** but the Complaint is **DISMISSED** for failure to state a claim.

/s Madeline Cox Arleo
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
MADELINE COX ARLEO
UNITED STATES DISTRICT
JUDGE

MARTIN LUTHER KING
COURTHOUSE
50 WALNUT ST. ROOM 4066
NEWARK, NJ 07101
973-297-4903

May 30, 2018

VIA CERTIFIED MAIL

Crystal Biton
Church Street Station
P.O. Box # 1008
New York, NY 10008

LETTER ORDER

Re: Crystal Biton v. United Airlines, et al.,
Civil Action No. 17-1868

Dear Ms. Biton:

Before the Court is Plaintiff Crystal Biton's ("Plaintiff") Motion for Reconsideration, ECF Nos. 16 & 17. For the reasons set forth herein, the Motion is DENIED.

Plaintiff filed this action on March 20, 2017, and sought leave to proceed in forma pauperis on April 17, 2017. See ECF Nos. 1, 4. On June 14, 2017, the Court granted Plaintiff's application and dismissed her Complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), as Plaintiff's Complaint consisted of only "one paragraph" of factual allegations that were "challenging to discern," but which appeared to be only "bald allegations and legal conclusions and [did] not assert enough facts to state a claim for relief." Order, ECF No. 15 at 2.

Plaintiff now moves for reconsideration of this Court's Order of Dismissal. A party may seek reconsideration of matters "which the party believes the [Court] has overlooked" when ruling on the previous motion. L. Civ. R. 7.1(i); see NL Indus. v. Commercial Union Ins., 935 F. Supp. 513, 515 (D.N.J. 1996); Darrian v. Hendricks, No. 01-1372, 2015 WL 2159147, at *2-3 (D.N.J. May 7, 2015). The standard for reconsideration is high; it is to be granted only sparingly. Garcia v. Bartkowski, No. 11-3689, 2017 WL 3671289, at *1 (D.N.J. Aug. 23, 2017). The movant has the burden of demonstrating either: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [issued its order]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). "Evidence or arguments that were available at the time of the original decision will not support a motion for reconsideration." Lampon-Paz v. Dep't of Justice, No. 16-9071, 2017 WL 6403003, at *1 (D.N.J. Sept. 19, 2017).

APPENDIX C

Here, Plaintiff's request for reconsideration, does not identify any intervening change in controlling law, new evidence that was unavailable at the time of the Court's previous decision, or any error of law, fact or manifest injustice resulting from the prior order. Like her Complaint, her "Motion" is difficult to discern with disconnected references to "Superstorm Sandy" and that her daughter "is not accepting chargers that was made false and fraud by NYPD FBI New Scotland Yard et al." As Plaintiff has failed to demonstrate any basis for reconsideration, her motion is DENIED.

IT IS on this 30th day of May, 2019,

ORDERED that Plaintiff's Motion for Reconsideration, ECF Nos. 16 and 17, is **DENIED**.

/s Madeline Cox Arleo

Hon. Madeline Cox Arleo
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 17-3168

Biton v. United Airlines

To: Clerk

- 1) Motion by Appellant to Stay Appeal pending decisions in other District Court proceedings
- 2) Duplicate Motion by Appellant to Stay Appeal pending decisions in other District Court proceedings
- 3) Motion by Appellant for Extension of Time to File a Notice of Appeal and Motion for Court to Appoint Attorney, with copy of Notice of Appeal attached
- 4) Duplicate Motion by Appellant for Extension of Time to File a Notice of Appeal and Motion for Court to Appoint Attorney

The foregoing are hereby referred to a motions panel.

For the Court,

s/ Marcia M. Waldron
Clerk

Dated: November 7, 2017
PDB/SLC/cc: Crystal Biton
Melissa H. Raksa, Esq.

APPENDIX D

BLD-182

May 9, 2019

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **17-3168**

CRYSTAL BITON, Appellant

v.

UNITED AIRLINES; ET AL.

(D.N.J. Civ. No. 2:17-cv-01868)

Present: AMBRO and KRAUSE, Circuit Judges

Submitted are:

- (1) Appellant's motion to stay the appeal pending decisions in other District Court proceedings;
- (2) Appellant's duplicate motion to stay the appeal pending decisions in other District Court proceedings;
- (3) Appellant's combined motion for extension of time to appeal and for appointment of counsel;
- (4) Appellant's duplicate combined motion for an extension of time to appeal and for appointment of counsel; and
- (5) Appellant's March 14, 2018 document in support of the appeal in the above-captioned case.

Respectfully,

Clerk

ORDER

Appellant's motion for appointment of counsel is denied. See Tabron v. Grace, 6 F.3d 147, 155-57 (3d Cir. 1993). Appellant's motion for an extension of time to file a Notice of Appeal is denied. Appellant's motion to stay this appeal, insofar as it seeks a

APPENDIX E

stay pending dispositive decisions by district courts in certain unrelated cases—decisions which have since issued—is denied as moot. Appellant's motion to stay this appeal, insofar as it requests a stay pending the District Court's disposition of a July 5, 2017 motion for reconsideration, is granted. This appeal is stayed until the District Court enters an order disposing of the July 5, 2017 motion. The District Court is directed to rule on the July 5, 2017 motion within 30 days of this Order. The Clerk of this Court is directed to furnish the District Court with a copy of this Order.

By the Court,

s/ Cheryl Ann Krause
Circuit Judge

Dated: May 22, 2019
Lmr/cc: Crystal Biton
Melissa H. Raksa

APPENDIX

BLD-222

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3168

CRYSTAL BITON,
a/k/a Marcelle Biton, a/k/a Bitton, a/k/a Messoda Fhima, a/k/a Saphyre MG Redford

v.

UNITED STATES AIRLINES; GOVERNOR CHRIS CHRISTY'S NEW JERSEY;
HSBC; and PORT AUTHORITY OF NY/NJ

Crystal Biton, Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 2:17-cv-01868)
District Judge: Honorable Madeline C. Arleo

Submitted for Possible Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
June 27, 2019
Before: AMBRO, KRAUSE, and PORTER, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on June 27, 2019. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered June 15, 2017, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: July 8, 2019

BLD-222

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3168

CRYSTAL BITON,
a/k/a Marcelle Biton, a/k/a Bitton, a/k/a Messoda Fhima, a/k/a Saphyre MG Redford

v.

UNITED STATES AIRLINES; GOVERNOR CHRIS CHRISTY'S NEW JERSEY;
HSBC; and PORT AUTHORITY OF NY/NJ

Crystal Biton, Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 2:17-cv-01868)
District Judge: Honorable Madeline C. Arleo

Submitted for Possible Summary Action
Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
June 27, 2019
Before: AMBRO, KRAUSE, and PORTER, Circuit Judges

(Opinion filed: July 8, 2019)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Proceeding pro se, Crystal Biton filed suit against United Airlines, former New Jersey Governor Chris Christie, HSBC Bank, and the Port Authority of New York & New Jersey. The suit appeared to concern alleged identity theft, as well as Biton's daughter's alleged exposure in 2002 to a "toxic unhealthy environment" as a result of construction at the Port Authority. Biton described her legal injuries thusly: "To be determined by trial + jury. I am competent for trial."

The District Court entered an order granting Biton leave to proceed in forma pauperis, and dismissing her complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim. The District Court determined that Biton failed to properly allege diversity of party citizenship under 28 U.S.C. § 1332(a), and that her complaint consisted only of "bald allegations and legal conclusions," which are insufficient to "state a claim for relief that is plausible on its face." Biton then filed a motion for reconsideration; the District Court entered an order denying that motion.

On appeal, we are reviewing only the District Court's order dismissing the complaint under 28 U.S.C. § 1915(e)(2)(B)(ii).¹ Our review is de novo. See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000).

¹ Biton filed a Notice of Appeal while her motion for reconsideration was still pending. The Notice of Appeal was premature, see Fed. R. App. P. 4(a)(4)(A)(iv)-(vi), but became effective to appeal the District Court's order of dismissal once the motion for reconsideration was denied, see Fed. R. App. P. 4(a)(4)(B)(i). We thus have appellate jurisdiction under 28 U.S.C. § 1291 to review the order of dismissal. Had Biton wanted

The District Court did not err in dismissing Biton's complaint. Even with the benefit of liberal construction, we agree with the District Court that Biton's complaint is plainly lacking "sufficient factual allegations, taken as true, [that] 'state a claim to relief that is plausible on its face.'" Fleisher v. Standard Ins., 679 F.3d 116, 120 (3d Cir. 2012) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).² Therefore, because this appeal presents no substantial question, we will summarily affirm. See 3d Cir. L.A.R. 27.4 (2011); 3d Cir. I.O.P. 10.6 (2018).

to also secure appellate review of the District Court's order denying her motion for reconsideration, she was obligated to—but did not—file a timely second or amended Notice of Appeal after that order was entered. See Fed. R. App. P. 4(a)(4)(B)(ii).

² The District Court was not required to, *sua sponte*, grant Biton leave to amend her complaint. Cf. Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc., 482 F.3d 247, 252-53 (3d Cir. 2007). Regardless, the incoherence of Biton's arguments on appeal confirms that allowing her to amend would have been a futile act.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3168

CRYSTAL BITON
a/k/a Marcelle Biton
a/k/a Bitton
a/k/a Messoda Fhima
a/k/a Saphyre MG Redford

v.

UNITED STATES AIRLINES; GOVERNOR CHRIS CHRISTY'S NEW JERSEY;
HSBC; and PORT AUTHORITY OF NY/NJ

Crystal Biton,
Appellant

(D. N.J. No. 2-17-cv-01868)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, JORDAN, HARDIMAN,
GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, and
PORTER, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who

APPENDIX G

concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ David J. Porter
Circuit Judge

Date: August 16, 2019
SLC/cc: Crystal Biton