X. APPENDIX

Order of Court of Appeals denying Petitioner's Court of Appeals Motion for Reconsideration -Filed on September 4, 2019

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

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 4th day of September two thousand and nineteen,

Present: Denny Chin,
Raymond J. Lohier, Jr.,
Michael H. Park,

Circuit Judges.

Salim Abdul-Malik,
Plaintiff - Appellant,

ORDER
Docket No. 19-546

v.

City Government Office of Court Administration, New York State Unified Court System, 11th Judicial District, Maria L. Bradley, Sherrill Spatz, Kelly Ann Porter, Tamara Kersh, R. Teichman, Kevin Morrissey, Susan Woods, Audrey I. Pheffer, Francis Kenna, Kevin Rothermel, Pat Kelly, Daniel Friedman,

Defendants - Appellees.

Appellant, Salim Abdul-Malik, filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

Order of Court of Appeals granting Petitioner's Motion to File Late Motion for Reconsideration -Filed on August 20, 2019

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

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
20th day of August, two thousand and nineteen.

Before: Michael H. Park,
Circuit Judge.

Salim Abdul-Malik,
Plaintiff - Appellant,

v.

City Government Office of Court Administration, New York State Unified Court System, 11th Judicial District, Maria L. Bradley, Sherrill Spatz, Kelly Ann Porter, Tamara Kersh, R. Teichman, Kevin Morrissey, Susan Woods, Audrey I. Pheffer, Francis Kenna, Kevin Rothermel, Pat Kelly, Daniel Friedman,

Defendants - Appellees.

ORDER

Docket No. 19-546

Appellant, pro se, moves the Court to accept his late motion for reconsideration.

IT IS HEREBY ORDERED that the motion is GRANTED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court

Order of Court of Appeals denying Petitioner's Appeal-Filed on July 19. 2019

United States Court of Appeals
FOR THE
SECOND CIRCUIT

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 19th day of July, two thousand nineteen.

Present:
Denny Chin,
Raymond J. Lohier, Jr.,
Michael H. Park,
Circuit Judges.

Salim Abdul-Malik,
Plaintiff-Appellant,

v. 19-546

City Government Office of Court Administration,
et al.,
Defendants-Appellees.

Appellant, pro se, moves for leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion is DENIED as unnecessary because Appellant paid the docketing fee. It is further ORDERED that 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); *see also Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995) (per curiam).

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

Order of the District Court denying Petitioner's District Court Motion for Reconsideration-Filed on April 19, 2019d

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
SALIM ABDUL-MALIK, a/k/a MUJTABE ATTIA, f/k/a VON KNOLDEN,

Plaintiff,

v.

OFFICE OF COURT ADMINISTRATION; UNIFIED COURT SYSTEM FOR THE 1ITH JUDICIAL DISTRICT; MARIA L. BRADLEY; SHERRILL SPATZ; KELLY ANN PORTER; TAMARA KERSH; R. TEICHMAN; KEVIN MORRISSEY, ESQ.; SUSAN WOODS; AUDREY PHEFFER; FRANCIS KENNA, ESQ.; KEVIN ROTHERMEL; PAT KELLY; DANIEL FRIEDMAN, ESQ.

Defendants.

IN CLERK'S OFFICE
US DISTRICT COURT,
E.D.N.Y
APRIL 2019
BROOKLYN OFFICE

MEMORANDUM & ORDER
18-CV-7361 (AMD) (SMG)

ANN M. DONNELLY, United States District Judge:

The pro se plaintiff filed this action against the judicial branch of New York state, its administrative office, and individuals involved in his ongoing state court proceeding regarding a parcel of real property located in Queens County alleging, among other things, civil rights violations pursuant to 42 U.S.C. § 1983. On January 29, 2019,1 issued an order dismissing the complaint for failure to satisfy Rule 8 of the Federal Rules of Civil Procedure, for failure to state a claim on which relief may be granted, and because the complaint seeks monetary relief against defendants who are immune from such relief. The plaintiff filed a motion for reconsideration on February 4, 2019. Familiarity with the facts is assumed.

Under Local Civil Rule 6.3, the decision to grant or deny a motion for reconsideration "is within the sound discretion of the district court... and is an extraordinary remedy to be
employed sparingly in the interests of finality and conservation of scarce judicial resources." *Hernandez v. Doe,* No. 16-CV-2375, 2016 WL 7391989, at *2 (E.D.N.Y. Dec. 21, 2016) (citing *Mangino v. Inc. Vill of Patchogue,* 814 F. Supp. 2d 242,247 (E.D.N.Y. 2011)). Generally, a motion for reconsideration will be "denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Transp., Inc.,* 70 F.3d 255, 257 (2d Cir. 1995). A motion for reconsideration is "not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a second bite at the apple.'" *Analytical Surveys, Inc. v. Tonga Partners, L.P.,* 684 F.3d 36, 52 (2d Cir. 2012) (citation omitted).

Federal Rule of Civil Procedure 60(b)(6), a catch-all provision, allows a court to relieve a party from final judgment for "any other reason that justifies relief not already mentioned in Rule 60(b)(1) through (5). "[T]he standard for granting *Fed. R. Civ. P. 60(b)(6)* motions is strict, and requires [the moving party] to demonstrate 'extraordinary circumstances' to justify relief." *King V. People of the State of New York, No. 1 l-CV-3810,* 2016 WL 1056566, at *2 (E.D.N.Y. Mar. 16, 2016) (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005)).

The plaintiff argues that this action should not be dismissed as duplicative of the pending state court action because they are separate actions with different defendants. I dismissed the plaintiffs complaint for other reasons— ^ failure to satisfy Federal Rule of Civil Procedure 8, failure to state a claim under 42 U.S.C. § 1983, and judicial and Eleventh Amendment immunity.

I have reviewed the remainder of the plaintiff's arguments, and find no reason to reconsider my determination.

SO ORDERED.

s/Ann M. Donnelly

Dated: April 18, 2019
Brooklyn, New York

Ann M. Donnelly
United States District Judge

Decision, Order and Judgement of the District Court dismissing Petitioner's Complaint Filed on January 31, 2019

UNITED STATES DISTRICTCOURT
EASTERN DISTRICT OF NEW YORK

IN CLERK'S OFFICE
US DISTRICT COURT
E.D.N.Y

SALIM ABDUL-MALIK
a/k/a MUJTABE ATTIA,
f/k/a VON KNOLDEN,

Plaintiff

BROOKLYN OFFICE

MEMORANDUM & ORDER

'18-cv-7361 (AMD) (SMG)

v.

OFFICE OF COURT ADMINISTRATION;
UNIFIED COURT SYSTEM FOR THE 11TH
JUDICIAL DISTRICT;MARIA L. BRADLEY;
SHERILL SPATZ; KELLY ANN PORTER;
TAMARA KERSH;R. TEICHMAN;
KEVIN MORRISSEY, ESQ.;SUSAN WOODS;
AUDREY PHEFFER; FRANCIS KENNA, ESQ.;
KEVIN ROTHERMEL; PATKELLY; DANIEL
FRIEDMAN, ESQ.,

Defendants.

ANN M. DONNELLY, United States District Judge:

On December 21, 2019,the pro se plaintiff filed the above-captioned action against the branch of New York state, its administrative office, and individuals involved in his ongoing state court proceeding regarding a parcel of real property located in alleging, among other things, civil rights violations pursuant to 42 U.S.C § 1983 also filed a request to proceed in forma pauperis. The issue underlying this and the state court action is whether the plaintiff or his brother inherited the family home from their father. The Court grants the plaintiffs request to proceed in forma pauperis pursuant to 28 U.S.C. §1915 solely for the purpose of this Order. The complaint is dismissed for the reasons set forth below.

I. BACKGROUND

The following information is drawn from the plaintiff s complaint and the attached documents, the allegations of which are assumed to be true for purposes of this Memorandum and Order. The plaintiff is a citizen of Liberia, and has lived in Accra, Ghana since his 2006 deportation from the United States because of a criminal conviction. On December 21, 2018 he submitted two spiral-bound volumes: a 261-page rambling and incoherent complaint, and 253 pages of exhibits relating to his lawsuit against his brother and his communications with and complaints against court employees.

The Court was able to extract the following relevant information from the plaintiff s submission. The plaintiff filed a lawsuit, *Salim Abdul-Malik v. Gerald Knowlden*, Index Number I817/18 , in April of 2018 in New York State Supreme Court, Queens County. The case concerns the ownership of property located at 120-28 198th Street in Queens County Block 12683 , Lot 0017).

The plaintiff claims that he owns the property, while his brother, Gerald Knowlden, says that he is the owner. It appears that in 1996 the plaintiff filed a deed in New York City claiming that he owned the property as the sole heir of their father, Kaiser Knowlden' Gerald Knowlden argues that he is the rightful owner and acquired title by adverse possession, because he and his family have lived in the home for more than ten years, paying all taxes and utilities, and because the plaintiff has been in Ghana since 2006. Knowlden also says that the deed the plaintiff filed was fraudulent because the plaintiff is not the sole heir. The state court denied the plaintiff s order to show cause on October 26,2018. (ECF No. 1-1 at 168-69') The state court action is apparently still pending. (See id. at32-33.)

The plaintiff has also filed administrative complaints against a host of state court employees whose duties included processing the plaintiff s case, and against the attorney who

represented his brother in state court. Now, he files this lawsuit, apparently in an effort to relitigate his ownership of the property in federal court and to sue the state court, its office of administration, eleven of its employees, and his brother's lawyer, alleging that they have mishandled his case in violation of his equal protection and due process rights. He seeks an injunction against the court's employees' "tradition of discarding pleadings/papers of litigants" and damages.

II. Standard of Review

A complaint must plead sufficient facts to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly, 550 U.S. 544,570* (2007). At the pleadings stage of the proceeding, the court must assume the truth of "all well-pleaded, non conclusory factual allegations" in the complaint. *Kiobel v. Royal Dutch Petroleum Co.,* 621F.3d I LL,723 (2d Cir.2010) (citing *Ashcroft v. Iqbal*,556 U.S. 662 (2009)). Pro se complaints are held to less stringent standards than pleadings drafted by attorneys; the court must read the plaintiff s pro se complaint liberally and interpret it to raise the strongest arguments it suggests. See, e.g., *Ericson v. Pardus, 55l U.S. 89* (2007); *Hughes v. Rowe*,449 U.S. 5, 9 (1980); Sealed *Plaintiff v. Sealed Defendant #1, 537* F.3d 185, 191-93 (2d Cir. 2008).

Nonetheless, under 28 U.S.C. $ 1915(e)(2)(B), I am required to dismiss a complaint if it (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief from a defendant who is immune from such relief." An action is frivolous as a matter of law when the claim is based on an "indisputably meritless legal theory"-that is, when it "lacks an arguable basis in law. . . or [when] a dispositive defense clearly exists on the face of the complaint." *Livingston v. Adirondack Beverage Co.*,141 F.3d 434,437 (2dCir. 1998).

III. Discussion

A. Prolix Complaint Fails to Satisfy Rule 8

The complaint does not satisfy Federal Rule of Civil Procedure 8' which requires the plaintiff to provide a short, plain statement of claim so that the defendants have adequate notice of the claims against them, and know whether there is a legal basis for recovery' see *Ashcroft v. Iqbal*,556 U.S. 662, 678(2009).(Rule s "demands more than an unadorned ed' the-defendant unlawfully-harmed-me accusation."*); Twombly v. Bell* 425F. 3d 106 (2d Cir. 2005) ("fair notice, is that which will enable the adverse party to answer and prepare for trial' a low the application of res *judicata*, and identify the nature of the case so that it may be assigned the proper form of trial.'") (quoting *Simmons v. Abruzzo* 49 F'3d 83,86 *(*2d. Dept 1995*)); Ricciuti v. N.Y.C. Transit Auth.*,947 F'2d119, 123 (2d Cir. 1991).

The Court's obligation to construe a *pro se* complaint liberally does not require the court to hunt through a voluminous submission to figure out what it means, whether there is a valid claim, or whether the Court has jurisdiction. "The statement [of claim required by Fed. R. Civ. P. 8 . should be short because unnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from amass of verbiage." *Salahuddin v. Cuomo,*861 F.2d 40,42 (2d Cir. 1988); see also *Shomo v. State of New York,374* Fed. Appx. 180, 182 (2dCir. Apr.22, 2010) (unpublished opinion) ("a court has the power to dismiss a complaint that is prolix' or has a' surfeit of detail'"); *Gonzalez v. Wing,* 113 F.3d 1229, at *1 (2d Cir. . 1997) (unpublished opinion) (affirming dismissal of *pro se* plaintiffs' 287-page "incredibly dense and verbose" complaint); *Prezzi v. Schelter,* 469 F.2d,691, 692 (2d Cir. 1972) (*per curium*) (affirming dismissal of *pro se* plaintiff s - page, single-spaced complaint that "contained a labyrinthine prolixity of unrelated and vituperative charges that defied comprehension[,] fail[ing] to comply with the requirement of Rule 8").

The plaintiff's complaint is overly long, circuitous, and confusing. It is impossible to determine from the plaintiff's submission-which is more than 500 pages long - the factual basis for his claims or even the nature of his claims; he cites an assortment of

federal and state provisions, but none of them provide a basis for this lawsuit[1]. The most that can be gleaned from the complaint is that the plaintiff is dissatisfied with the process in state court. The complaint fails to comply with Rule 8 and is dismissed for failure to state a claim on which relief may be granted. 28 U.S.C. 191s(e)(2)(B) (ii).

B. Judicial and Eleventh Amendment Immunity

Moreover, eleven of the twelve defendants are immune from this lawsuit. Although his claims against them are unclear, the plaintiff has named the following defendants: the Office of Court Administration, Unified Court System for the 11th Judicial District; Maria L. Bradley, law clerk to the Honorable Jeremy Weinstein; Kevin Morrissey, Esq., legal secretary to the Honorable Leonard Livote, the state court justice assigned to the plaintiffs case; Sherrill Spatz and Kelly Ann Porter, Inspector General and Managing Inspector General, respectively, of the Office of Court Administration and to whom the plaintiff made complaints about Queens County Supreme Court employees; and Tamara Kersh, R. Teichman, Susan Woods, Audrey Pheffer,

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[1] For example, the plaintiff cites federal criminal statutes, but a private citizen does not have a constitutional right to initiate or to compel the initiation of criminal proceedings against another person. See *Leeke v. Timmerman,454 U.S. 83, 87* (1981) ("the decision to prosecute is solely within the discretion of the prosecutor"); *Robinson v. Overseas Military Sales Corp., ZI F.3d 502, 511* (2d Cir. . 1994) (affirming dismissal of claims brought under "criminal statutes that do not provide private causes of action"). Nor does the complaint state a claim under any of the civil statutes to which he cites.

[2] Only one defendant is not a state agency or employee: Daniel Friedman, the attorney who represented the plaintiff s brother in the state court action.

Francis Kenna, Kevin Rothermel and Pat Kelly, all employees of the Queens County Clerk's Office. "

Stated as simply as possible, the Eleventh Amendment means that, as a general rule, state governments may not be sued in federal court unless they have waived their Eleventh Amendment immunity, or unless congress has abrogate[d] the states, Eleventh Amendment immunity when acting pursuant to its authority under Section 5 of the Fourteenth Amendment, *Gollomp v. Spitzer,*568 F"3d 355,366 (2d. Cir. 2009) (internal quotation marks and citation omitted)' The unified court System is the judicial branch of New York state government, and the office of court Administration is a state agency; both therefore have Eleventh Amendment sovereign immunity from suit. see *Gollomp, 568 F.3d at368* (holding that ,.the New York State Unified court system is unquestionably an "arm of the state" and is entitled to Eleventh Amendment sovereign immunity" (quoting *Woods v. Rondout Valley Cent. Sch. Dist. Bd. of Educ.,* 466 F.3d 232,236 .(2006)); *Posr v. Court Officer Shield No. 207, tglF.3d 409, 414* (2d. Cir' 1999) (the Office of Court Administration "is an arm of the state,, and therefore enjoys the same Eleventh Amendment immunity as the state itself). Likewise, the claims for monetary damages against the defendant court clerks and the Inspectors General of the office of Court Administration in their official capacities are barred by the Eleventh Amendment. See *Caldwell v. James, No. 14-CV-5384,2015 WL 427gg0,at *3* (E.D.N.Y. Jan. 3a,2015)(claims against state officers, including court clerks, are "clearly barred by the Eleventh Amendment,,); Edelman v. Jordan,415 U.S. 651, 663; Ward v. Thomas, 207 F.3d ll4, (2d. 2000) ("suits against states and their officials seeking damages for past injuries are firmly foreclosed by the Eleventh Amendment").

Judicial immunity protects the remaining two state employee defendants: Maria L. Bradley' law clerk to the Honorable Jeremy Weinstein and Kevin Morrissey, Esq., legal secretary to the Honorable Leonard Livote, with respect to discretionary acts that implement judicial decisions or that are performed at the discretion or under the supervision of a judge. *Mireles v Waco' 502,* U.S. 9,11 (199l) (per curiam) ("Judicial immunity is an immunity from suit' not just from the ultimate assessment of damages") (citation omitted); *Gollomp v. Spitzer,* 568 F'3d 355' 365 (2d Cir 2009) (extending immunity to state court judge's law secretary); *Olivia v. Heller'* 839 F 2d 37, 40 (2d Cir. 1988) (extending absolute judicial immunity,, to a law clerk to a federal judge because "law clerks are simply extensions of the judges at whose pleasure they serve' . [F]or purposes of absolute judicial immunity, judges and their law clerks are as one.") (internal citation and quotation marks omitted)).

Thus the plaintiff's claims seeking monetary relief against these defendants who are immune from such relief are dismissed. *28 U.S.C* . § 1915(e)(B) (xiii).

C. Non-State Actor

The plaintiff also names Daniel Friedman, the attorney who represented the plaintiff 's brother in the state court action. A claim for relief under 1983 must allege facts showing that the defendant acted under color of a state 'o statute, ordinance, regulation, custom or usage.,, 42 U.S.C. § 1983. Section 1983 "constrains only state conduct, not the .acts of private persons or entities.'" *Hooda v- Brookhaven Nat. Lab.,*659 F. Supp. 2d.392,393 (E.D.N.Y .2009)(quoting *Rendell-Baker v. Kohn,*457 US. 830, 837 (1982)); *Moose Lodge No. 107 v. Irvis,* 407 U.S. 163, 173 (1972); *Adickes v. 'H. Kress & Co.,* 398 U.S 144, 152 (1970); see also *Am. Mfrs. Mut. Ins. Co. v. Sullivan'* 526 U.S. 40,49-50 (1999). "Because the United States Constitution regulates only the Government, not private parties, a litigant claiming that his constitutional rights have

been violated must first establish that the challenged conduct constitutes state action.," *Flagg v. Yonkers Sav. & Loan Ass'n,* 396 F3d 178, *186* 2d,Cir. 2005) (internal quotation marks omitted). The plaintiff has failed to state a plausible allegation that defendant Friedman acted under color of state law for purposes of § 1983. Accordingly, the claim against him is dismissed because it fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B) (ii).

CONCLUSION

The court does not have the authority to intervene in an ongoing case, which the plaintiff filed in state court, simply because he does not like the pace of the state court proceeding or the methods by which it enforces its procedures. For the reasons set forth above, the plaintiff s complaint is dismissed for failure to state a claim on which relief may be granted and because it seeks monetary relief against defendants who are immune from such relief. 28 U.S.C. § 1915(e)(2)(B). Any state law claims are dismissed without prejudice. The plaintiff's application for the appointment of counsel is denied. The court certifies pursuant to 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 any appeal. see *Coppedge v. United States, 369 U.S. 438, 444-45* (1962). The Clerk of Court is respectfully directed to enter judgment and close this case.

SO ORDERED:

Ann M. Donnelly
United States District Court

Dated: January 29,2019
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SALIM ABDUL.MALIK, a/k/ a
MUJTABE ATTIA,
f/k/a VON KNOLDEN.

Plaintiff

JUDGMENT
18- cv-7361 (AMD) (SMG)

-against

OFFICE OF COURT ADMINISTRATION;
UNIFIED COURT SYSTEM FOR THE
11th JUDICIAL DISTRICT; MARIA L.
BRADLEY; SHERRILL SPATZ; KELLY
ANN PORTER; TAMARA KERSH; R. TEICHMAN;
KEVIN MORRISSEY, ESQ.; SUSAN WOODS;
AUDREY PHEFFER; FRANCIS KENNA, ESQ.;
KEVIN ROTHERMEL; PAT KELLY;
DANIEL FRIEDMAN, ESQ.,

Defendants.

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A Memorandum and Order of Honorable Ann M. Donnelly, United States District Judge, having been filed on January 29, 2019, dismissing plaintiff s complaint for failure to state a claim on which relief may be granted and because it seeks monetary relief against defendants who are immune from such relief, 28 U.S.C. § 1915(e)(2) (B); dismissing any state law claims without prejudice; denying the plaintiff s application for the appointment of counsel; certifying pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good
faith; and denying in forma pauperis status for the purpose of any appeal, See *Coppedge v. United States, 369 U.S.438, 444-45* (1962); it is

ORDERED and ADJUDGED that the plaintiffs complaint is dismissed for failure to state a claim on which relief may be granted and because it seeks monetary relief against defendants who are immune from such relief 28 U.S.C. § 1915 (e)(2)(B);that any state law claims are dismissed without prejudice; that the plaintiff s application for the

appointment of counsel is denied; that pursuant to 28 U.S.C. § 1915 (a)(3), any appeal from this Order would not be taken in good faith; and that in forma pauperis status is denied for the purpose of any appeal'

See *Coppedge v. United States,369 U.S. 438, 444-45* (1962).

Dated: Brooklyn, NY
January 31, 2019

Clerk of Court
Douglas C' Palmer

By:/s/ Jalitza Poveda
Depufy Clerk