

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10548-H

DONALD JONES,

Plaintiff - Appellant,

versus

BANK OF AMERICA,
STATE OF FLORIDA,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Donald Jones has failed to pay the filing and docketing fees to the district court within the time fixed by the rules., effective October 15, 2020.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Gerald B. Frost, H, Deputy Clerk

FOR THE COURT - BY DIRECTION

APPENDIX A

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

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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October 15, 2020

Clerk - Middle District of Florida
U.S. District Court
U.S. Courthouse and Federal Building
2110 1ST ST
FORT MYERS, FL 33901

Appeal Number: 20-10548-H
Case Style: Donald Jones v. Bank of America, et al
District Court Docket No: 2:19-cv-00646-SPC-NPM

The enclosed copy of the Clerk's Entry of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court. See 11th Cir. R. 41-4.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Gerald B. Frost, H
Phone #: (404) 335-6182

Enclosure(s)

DIS-2 Letter and Entry of Dismissal

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DONALD JONES,

Plaintiff,

v.

Case No.: 2:19-cv-646-FtM-38NPM

BANK OF AMERICA and STATE OF
FLORIDA,

Defendants.

ORDER¹

Before the Court is a *sua sponte* review of the Amended Complaint. (Doc. 11). Because the Court does not have subject-matter jurisdiction, it must dismiss the case without proceeding any further. *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999) (“Simply put, once a federal court determines that it is without subject matter jurisdiction, the court is powerless to continue.”).

Federal courts have limited subject-matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). So courts must inquire into jurisdiction *sua sponte* whenever it may be lacking. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). Once a court determines it has no subject-matter jurisdiction, it “must dismiss the complaint in its entirety.” *Id.* In federal court, there are two types of original jurisdiction: (1) federal question under 28 U.S.C. § 1331; and (2) diversity under 28 U.S.C. § 1332(a).

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink’s availability and functionality, and a failed hyperlink does not affect this Order.

First, to have subject-matter jurisdiction under § 1331, a question “arising under” federal law must appear on the face of a well-pled complaint. *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 830-31 (2002). “A district court may dismiss a federal question claim for lack of subject matter jurisdiction when: (1) the alleged federal claim ‘clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction;’ or (2) the claim is ‘wholly insubstantial and frivolous.’” *Douse v. Metro Storage, LLC*, 770 F. App’x 550, 550 (11th Cir. 2019) (quoting *Blue Cross & Blue Shield of Ala. v. Sanders*, 138 F.3d 1347, 1352 (11th Cir. 1998)). Claims are wholly insubstantial and frivolous when they have “no plausible foundation.” *Foley v. Orange Cty.*, 638 F. App’x 941, 943 (11th Cir. 2016) (quoting *Sanders*, 138 F.3d at 1352).

Even liberally construed, any allegations on a federal question here are insubstantial and frivolous. See *id.* at 945-46. Under Plaintiff’s theory, Defendant filed a frivolous case in state court, which is “a violation of the plaintiff constitution right.” (Doc. 17 at 1) (errors in original). This does not help clarify Plaintiff’s claims or—more important—how any of them vests the Court with jurisdiction. The Amended Complaint seeks “\$650,000.00 for civil rights violation, age discriminate, Fraud, Suffening and pain.” (Doc. 11 at 2) (errors in original). Yet it never sets out a cause of action or any basic facts that could plausibly support a claim. Likewise, there is no alleged constitutional violation. While Plaintiff’s claims are construed liberally, the Court cannot “serve as *de facto* counsel” or “rewrite an otherwise deficient pleading.” *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168-69 (11th Cir. 2014) (citation omitted). Pro se or not, the Court cannot “hypothesize federal claims” for litigants. *Caldwell v. U.S. Dep’t of Veterans Affairs*, No.

8:14-cv-2708-T-33EAJ, 2015 WL 370012, at *3 (M.D. Fla. Jan. 27, 2015). And the Court will not start doing so here.

Second, to have subject-matter jurisdiction under § 1332, the parties must be completely diverse with an amount in controversy over \$75,000. *Arbaugh*, 546 U.S. at 513. Like the allegations on federal question, the Amended Complaint does not establish diversity jurisdiction. Except for an alleged amount in controversy, nothing hints at either citizenship or completely diversity of the parties.

Because the Amended Complaint fails to establish either basis, there is no subject-matter jurisdiction and the Court must dismiss. *E.g.*, *Travaglio v. Am. Express Co.*, 735 F.3d 1266, 1268 (11th Cir. 2013) (“Without [sufficient jurisdictional] allegations, district courts are constitutionally obligated to dismiss the action altogether if the plaintiff does not cure the deficiency.”).

Shortly after Plaintiff sued, Judge Mizell conducted a preliminary screening under 28 U.S.C. § 1915. (Doc. 4). The Order explained all the deficiencies in Plaintiff’s original complaint—including the failure to establish jurisdiction. (Doc. 4 at 3-4). Plaintiff had the chance to amend with a warning that failing to correct the issues may lead to dismissal. (Doc. 4 at 4). And while Plaintiff filed the Amended Complaint, it suffered from all the same shortcomings. In fact, it is nearly identical. While the Court can forgive repeat typos and grammatical missteps, the failure to make any effort to cure fatal pleading deficiencies (particularly jurisdictional ones) buttresses the Court’s conclusion to dismiss. Further these are the same problems Plaintiff had in a similar case before the Court. *Jones v. Bank of Am.*, No. 2:18-cv-00649-SPC-UAM (M.D. Fla.). There, the Court dismissed in part because Plaintiff, after receiving several chances, failed to establish

subject-matter jurisdiction. *Jones v. Bank of Am.*, No. 2:18-cv-649-FtM-38UAM, 2019 WL 2210678, at *3 (M.D. Fla. Mar. 25, 2019), *report and recommendation adopted*, 2019 WL 2206904 (Apr. 16, 2019). Considering all this, the Court concludes that dismissal of the case is proper for lack of jurisdiction.

Accordingly, it is now

ORDERED:

1. The Amended Complaint (Doc. 11) is **DISMISSED** for lack of subject-matter jurisdiction.
2. The pending Report and Recommendation (Doc. 16) is **DENIED as moot**.
3. The Clerk is **DIRECTED** to enter judgment, terminate any pending motions and deadlines, and close the file.

DONE and **ORDERED** in Fort Myers, Florida this 5th day of February, 2020.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DONALD JONES,

Plaintiff,

v.

Case No: 2:19-cv-646-FtM-38NPM

BANK OF AMERICA and STATE OF
FLORIDA,

Defendants.

REPORT AND RECOMMENDATION¹

This matter is before the Court on *pro se* Plaintiff Donald Jones Affidavit of Indigency (Doc. 2), construed as a Motion to Proceed *In Forma Pauperis* ("IFP"). When a litigant seeks to proceed IFP, the Court is obligated to review the file pursuant to 28 U.S.C. § 1915.² The Court previously found Plaintiff demonstrably unable to pay court fees and costs. (Doc. 4). But by statute, the Court is required to dismiss the case if it determines that the action is frivolous or malicious; if it fails to state a claim upon which

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² This statute section governs IFP actions instituted by prisoners but has been interpreted to apply to all litigants requesting leave to proceed IFP. *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1306 n.1 (11th Cir. 2004).

relief may be granted; or if the complaint seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). While the action appears both frivolous and malicious,³ the Amended Complaint makes clear that Plaintiff fails to state a claim upon which relief may be granted because he seeks federal-court review of a state-court judgment – a claim for which this Court lacks jurisdiction.

The Amended Complaint recites some of the procedural history of Plaintiff's state-court proceedings concerning a foreclosure action against him and, as the Court can best tell, complains about the entry of a default based on a failure to answer.

However, the Supreme Court of the United States created a jurisdictional rule known as the *Rooker-Feldman* doctrine precluding lower federal courts from reviewing state-court judgments. See *Castro v. Lewis*, No. 17-15638, 2019 WL 2498803, at *3 (11th Cir. June 17, 2019). This jurisdictional rule applies to a claim that (1) the state court adjudicated; or (2) is "inextricably intertwined" with a state court judgment. *Target Media Partners v. Specialty Mktg. Corp.*, 881 F.3d 1279, 1286 (11th Cir. 2018). The *Rooker-Feldman* doctrine "is confined to cases of the kind from which it acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. *Exxon Mobil Corp. v. Saudi Basic Indus.*

³ The Amended Complaint does not sufficiently allege either subject-matter jurisdiction or a claim for relief, and "[t]he Court has no obligation to hypothesize federal claims, even considering [Plaintiff's] pro se status". *Caldwell v. U.S. Dept. of Veterans Affairs*, No. 8:14-cv-2708-T-33EAJ, 2015 WL 370012, at *3 (M.D. Fla. Jan. 27, 2015). For these reasons, the Court denied IFP status for this Plaintiff in a previous action concerning his mortgage. See *Jones v. Bank of America*, No. 2:18-cv-00649-SPC-UAM (M.D. Fla. Apr. 16, 2019) (Doc. 53); see also *id.* at Doc. 57 (certifying the Plaintiff's appeal was not taken in good faith).

Corp., 544 U.S. 280, 284 (2005) (quotations omitted). Such is the case here, and Plaintiff's action is therefore barred for lack of jurisdiction.

Accordingly, it is recommended that Plaintiff's Amended Complaint be dismissed, and that the Clerk be directed to terminate any pending motions and close the file.

Respectfully recommended in Chambers in Fort Myers, Florida on January 13, 2020.



NICHOLAS P. MIZELL
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. See 11th Cir. R. 3-1.

Copies furnished to:

Counsel of Record
Unrepresented Parties

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