

UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2150

WARREN D. TISDALE,

Plaintiff - Appellant,

v.

CASA PARTNERS V.L.P. THE PARK AT WINTERSET; PINNACLE PROPERTY
MANAGEMENT SERVICES L.L.C.; FAIR COLLECTIONS AND OUTSOURCING,
INC.,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
George L. Russell, III, District Judge. (1:17-cv-03142-GLR)

Submitted: May 19, 2020

Decided: May 21, 2020

Before NIEMEYER, HARRIS, and RICHARDSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Warren D. Tisdale, Appellant Pro Se. Morgan Ian Marcus, SESSIONS FISHMAN
NATHAN & ISRAEL, LLC, Chicago, Illinois, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Warren D. Tisdale appeals the district court's orders dismissing his civil action for lack of subject matter jurisdiction and denying his Fed. R. Civ. P. 59(e) motion. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Tisdale v. CASA Partners V.L.P. The Park at Winterset*, No. 1:17-cv-03142-GLR (D. Md. Jan. 31, 2019; filed Sept. 26, 2019 & entered Sept. 27, 2019). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: June 30, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2150
(1:17-cv-03142-GLR)

WARREN D. TISDALE

Plaintiff - Appellant

v.

CASA PARTNERS V.L.P. THE PARK AT WINTERSET; PINNACLE
PROPERTY MANAGEMENT SERVICES L.L.C.; FAIR COLLECTIONS AND
OUTSOURCING, INC.

Defendants - Appellees

O R D E R

The court strictly enforces the time limits for filing petitions for rehearing and petitions for rehearing en banc in accordance with Local Rule 40(c). The petition in this case is denied as untimely.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Chambers of
George L. Russell, III
United States District Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-4055

September 26, 2019

MEMORANDUM TO PARTIES RE:

Warren D. Tisdale v. CASA Partners V.L.P.
The Park at Winterset, et al.
Civil Action No. GLR-17-3142

Dear Parties:

Pending before the Court is Plaintiff Warren D. Tisdale's Plaintiff's Motion to Alter or Amend a Judgment Order Pursuant to the Fed. R. Civ. Pro 59(e) (ECF No. 61). The Motion is ripe for disposition, and no hearing is necessary. See Local Rule 105.6 (D.Md. 2018). For the reasons outlined below, the Court will deny the Motion.

Around September 2016, Defendant Fair Collections & Outsourcing, Inc. ("FCO") reported to the three major credit bureaus—Equifax, TransUnion, and Experian—that Tisdale owed a debt of \$1,471.34 to "Park at Winterset." (Prop. Am. Compl. at 6, ECF No. 61-1).¹ On August 29, 2017, Tisdale's Bank of America credit card was declined while renting a truck, causing him embarrassment. (Id.). The next day, Bank of America closed Tisdale's account, noting that it had reviewed his credit report in making the decision. (Id.). Bank of America's action resulted in disruptions to Tisdale's personal finances and business operations, including preventing Tisdale from renewing his state contractor license and prompting Capital One and Discovery to withdraw pre-approved lines of credit. (Id. at 7). Tisdale "disputed with FCO and the credit [agencies]" that he didn't owe anyone \$1,471.34 from [Winterset], but in fact Winterset owed [Tisdale] a security deposit." (Id.).

According to Tisdale's Complaint, which the Court dismissed for lack of subject matter jurisdiction on January 31, 2019, Tisdale rented an apartment from CASA Partners V.L.P. The Park at Winterset ("Winterset") and Pinnacle Property Management ("Pinnacle") from 2013 to 2016. (Compl. at 7, ECF No. 1). Winterset and Pinnacle believed Tisdale still owed rent after moving out, and when he did not pay, they referred the purported debt to FCO for collection. (Id. at 8).

On October 26, 2017, Tisdale sued FCO, Winterset, and Pinnacle, alleging defamation and seeking punitive damages. (Compl. at 1, 11, ECF No. 1). On January 31, 2019, the Court

¹ Unless otherwise noted, the Court takes the following facts from Tisdale's Proposed Amended Complaint, (ECF No. 61-1), and accepts them as true. Citations to Tisdale's Proposed Amended Complaint refer to the pagination the Court's Case Management and Electronic Court Files ("CM/ECF") system assigned.

dismissed the Complaint for lack of subject matter jurisdiction. (Jan. 31, 2019 Order, ECF No. 59).

On February 12, 2019, Tisdale filed Plaintiff's Motion to Alter or Amend a Judgment Order Pursuant to the Fed. R. Civ. Pro 59(e). (ECF No. 61). On March 14, 2019, FCO filed an Opposition. (ECF No. 62). On March 28, 2019, Tisdale filed a Reply. (ECF No. 63).

The caption of Tisdale's Motion indicates that he seeks reconsideration under Federal Rule of Civil Procedure 59, though after citing the relevant case law from the United States Court of Appeals for the Fourth Circuit, see infra, Tisdale also indicates that he seeks to amend his Complaint.

A district court may not grant a plaintiff's post-judgment motion to amend his complaint unless the court first vacates its judgment under Rule 59 or 60. Katyle v. Penn Nat. Gaming, Inc., 637 F.3d 462, 470 (4th Cir. 2011) (citing Laber v. Harvey, 438 F.3d 404, 427 (4th Cir. 2006) (en banc)). To determine whether vacatur is appropriate, the court does not apply the usual standards under those rules, but rather "need only ask whether the amendment should be granted, just as it would on a prejudgment motion to amend" under Rule 15(a). Id. at 471. That is, the district court evaluates the postjudgment motion and the proposed amended complaint with an eye toward prejudice, bad faith, and futility. Id. (citing Laber, 438 F.3d at 427).

In its Opposition, FCO only challenges Tisdale's Motion on the basis of futility, so the Court will confine its analysis to that ground. Leave to amend would be futile when an amended complaint could not survive a motion to dismiss for failure to state a claim. See United States ex rel. Wilson v. Kellogg Brown & Root, Inc., 525 F.3d 370, 376 (4th Cir. 2008). "Leave to amend, however, should only be denied on the ground of futility when the proposed amendment is clearly insufficient or frivolous on its face." Johnson v. Oroweat Foods Co., 785 F.2d 503, 510 (4th Cir. 1986) (citing Davis v. Piper Aircraft Corp., 615 F.2d 606, 613 (4th Cir. 1980)). Pro se pleadings are liberally construed and held to a less stringent standard than pleadings drafted by lawyers. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)); accord Brown v. N.C. Dep't of Corr., 612 F.3d 720, 722 (4th Cir. 2010). Pro se complaints are entitled to special care to determine whether any possible set of facts would entitle the plaintiff to relief. Hughes v. Rowe, 449 U.S. 5, 9–10 (1980). But even a pro se complaint must be dismissed if it does not allege "a plausible claim for relief." Forquer v. Schlee, No. RDB–12–969, 2012 WL 6087491, at *3 (D.Md. Dec. 4, 2012) (citation and internal quotation marks omitted).

Tisdale argues that his Proposed Amended Complaint states a claim against FCO under the Fair Credit Reporting Act² and that it is not in bad faith or prejudicial to FCO. FCO counters that Tisdale does not plead a plausible FCRA claim. The Court agrees with FCO.

² In his Motion, Tisdale characterizes his Proposed Amended Complaint as "under the FCRA and violations of Consumer Credit all involving a federal question." (Pl.'s Mot. Alter Amend J. Order Pursuant Fed.R.Civ.P. 59(e) ["Pl.'s Mot."] at 3, ECF No. 61). In the section of the Proposed Amended Complaint that states its jurisdictional basis, Tisdale wrote "15 USC 1681 et seq.," which is the FCRA as codified. Without further information from Tisdale

Tisdale does not specify which subsection of the FCRA forms the basis of the Proposed Amended Complaint—he simply cites the entire law as codified. (See Prop. Am. Compl. at 4). FCO notes this issue in its Opposition, but Tisdale still does not specify in his Reply which part of the FCRA he believes FCO violated, instead reminding the Court of its obligation to construe liberally the pleadings of pro se litigants like himself. In its Opposition, FCO assumes that Tisdale means to bring his claim under 15 U.S.C. § 1681s-2(b), which concerns furnishers of consumer information to the credit agencies, and cites case law under that section. Tisdale does not dispute that assumption or cite a different subsection of the FCRA under which he intended to bring suit. With that in mind, the Court will analyze the futility of Tisdale’s Proposed Amended Complaint assuming he intends to bring a claim under § 1681s-2(b).

A consumer who disputes the accuracy of information in a credit report “may have a private right of action against the furnisher of the inaccurate information if the furnisher fails to properly investigate a dispute.” Jackson v. Convergent Outsourcing, Inc., No. RDB-13-1755, 2014 WL 722116, at *2 (D.Md. Feb. 25, 2014) (citing § 1681s-2(b)). To state a claim under that section of the FCRA, the plaintiff must plead that: (1) the plaintiff “notified the consumer reporting agency of the disputed information”; (2) “the consumer reporting agency notified the defendant furnisher of the dispute”; and (3) “the furnisher then failed to [reasonably] investigate and modify the inaccurate information.” Alston v. Wells Fargo Bank, N.A., No. 8:12-CV-03671-AW, 2013 WL 990416, at *4 (D.Md. 2013) (quoting Ausar-El v. Barclay Bank Del., 2012 WL 3137151, at *3 (D.Md. 2012)). A complaint that does not plead all three of those required elements is subject to dismissal. See Jackson, 2014 WL 722116, at *2; Wright v. Bank of Am., No. 3:14-CV-94-RJC-DCK, 2014 WL 1775992, at *2 (W.D.N.C. May 5, 2014); White v. Fannie Mae, No. CIV.A. 1:13-29923, 2014 WL 5442970, at *6 n.4 (S.D.W.Va. Oct. 24, 2014) (“Plaintiff appears to merely contend that he notified [the furnisher defendant] directly of the dispute, which is insufficient to state a claim under the FCRA.”).

Here, Tisdale pleads the first element in his Proposed Amended Complaint, that is, he disputed the debt with the credit agencies. (See Prop. Am. Compl. at 7). But he does not plead facts in his Proposed Amended Complaint to support the second or third elements of this FCRA claim. (Id. at 7–8). In his Reply, Tisdale correctly notes that the reasonableness of FCO’s investigation is a jury question, but he does not dispute that he failed to even plead the unreasonableness of FCO’s investigation in the Proposed Amended Complaint. Instead, Tisdale asserts that he “set forth in his previous filing that FCO’s investigation was unreasonable.” (Pl.’s Reply FCO Resp. Pl.’s Mot. Alter Am. J. [“Pl.’s Reply”] at 3, ECF No. 63). The Court assumes that Tisdale’s “previous filing” is his initial Complaint in this case, but the Court dismissed that pleading, so Tisdale cannot rely on its allegations to support his Proposed Amended Complaint.³

regarding what “Consumer Credit” means, the Court will not construe that reference to be a claim separate from and in addition to the FCRA claim.

³ Further, “[a]s a general rule, ‘an amended pleading ordinarily supersedes the original and renders it of no legal effect.’” Young v. City of Mount Ranier, 238 F.3d 567, 572 (4th Cir. 2001) (quoting In re Crysen/Montenay Energy Co., 226 F.3d 160, 162 (2d Cir. 2000)). Even if Tisdale’s Complaint had not been dismissed or superseded, however, it does not allege that one of the consumer reporting agencies notified FCO of Tisdale’s dispute regarding the debt. (See generally Compl.).

Because Tisdale has not pleaded all three elements of his FCRA claim in his Proposed Amended Complaint, see Alston, 2013 WL 990416, at *4, the Proposed Amended Complaint would not survive a motion to dismiss and is, therefore, futile, see Wilson, 525 F.3d at 376; Katyle, 637 F.3d at 471. Accordingly, the Court will deny Tisdale's Motion.

For the foregoing reasons, Tisdale's Motion to Alter or Amend a Judgment Order Pursuant to the Fed. R. Civ. Pro 59(e) (ECF No. 61) is DENIED. Despite the informal nature of this memorandum, it shall constitute an Order of the Court, and the Clerk is directed to docket it accordingly and mail a copy to Tisdale at his address of record.

Very truly yours,

/s/

George L. Russell, III
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

Chambers of
George L. Russell, III
United States District Judge

101 West Lombard Street
Baltimore, Maryland 21201
410-962-4055

January 31, 2019

MEMORANDUM TO PARTIES RE:

Warren D. Tisdale v. Casa Partners V.L.P.
The Park at Winterset, et al.
Civil Action No. GLR-17-3142

Dear Parties:

Pending before the Court are Plaintiff Warren D. Tisdale's Motion for Summary Judgment (ECF No. 42) and Defendant Fair Collections & Outsourcing, Inc.'s ("FCO") Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment (ECF No. 52).¹ For the reasons that follow, the Court concludes it does not have subject-matter jurisdiction over this case and, therefore, must dismiss it without ruling on the Motions.

Tisdale rented an apartment from Defendants CASA Partners V.L.P. The Park at Winterset ("CASA") and Pinnacle Property Management ("Pinnacle") from 2013 to 2016. (Compl. at 7, ECF No. 1).² CASA and Pinnacle believed Tisdale still owed rent after moving out, and when he did not pay, they referred the alleged debt to FCO for collection. (*Id.* at 8). FCO reported the \$1,471.00³ debt to the credit reporting agencies, Equifax, Experian, and TransUnion. (*Id.*). When he learned of the debt from TransUnion, Tisdale disputed it with both FCO and TransUnion. (*Id.*)

¹ Also pending are Tisdale's Motion for Default Judgment (ECF No. 16); "Motion Pursuant [to Federal Rule of Civil Procedure] 69 Execution" (ECF No. 35); Defendant Fair Collections & Outsourcing Inc.'s ("FCO") Motion to Extend Date to Respond to Plaintiff's Motion for Summary Judgment (ECF No. 43); five nearly identical Objections to Subpoena Demands Pursuant to Fed.R.Civ.P. 45 Filed or Requested by Fair Collection & Outsourcing, Inc. ("FCO"), filed by Tisdale (ECF No. 44) and third parties Johnny E. Garle (ECF No. 45), William G. Jenkins (ECF No. 46), Kevin Williams (ECF No. 47), and Joseph L. Dyson (ECF No. 48); and Tisdale's Motion for a Speedy Trial to the United States District Court of Maryland (ECF No. 50); and Motion to Compel for Answers for the Purposes of [Trial] and to Subpoena Witnesses (ECF No. 51). The Court will not address these Motions because it concludes it does not have jurisdiction over this case.

² Unless otherwise noted, the Court takes the following facts from Tisdale's Complaint. (ECF No. 1). Citations to Tisdale's Complaint and Motions refer to the pagination the Court's Case Management and Electronic Court Files ("CM/ECF") system assigned.

³ In the Affidavit attached to his Motion for Summary Judgment, Tisdale further specifies the alleged amount owed: \$1,471.34. (Pl.'s Aff. ¶ 1, 2, 5, 6, ECF No. 42-1).

In 2017, Tisdale's Bank of America credit card was declined, causing him embarrassment. (Id. at 9). Bank of America later closed Tisdale's account, noting that the bank had reviewed his credit report in making the decision. (Id.). On October 26, 2017, Tisdale filed the Complaint against CASA, Pinnacle, and FCO, alleging defamation and seeking punitive damages. (Id. at 11).

On November 27, 2018, Tisdale filed his Motion for Summary Judgment. (ECF No. 42). On December 28, 2018, FCO filed its Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment. (ECF No. 52). On January 22, 2019, Tisdale filed his Opposition/Reply. (ECF No. 56). On January 28, 2019, FCO filed its Reply. (ECF No. 57).

"Federal courts are courts of limited jurisdiction." Home Buyers Warranty Corp. v. Hanna, 750 F.3d 427, 432 (4th Cir. 2014) (quoting Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994)). Federal district courts have subject-matter jurisdiction over civil actions that arise under federal law ("federal question jurisdiction"), 28 U.S.C. § 1331 (2018), or have an amount in controversy exceeding \$75,000.00, exclusive of interests and costs, and complete diversity of citizenship ("diversity jurisdiction"), 28 U.S.C. § 1332(a) (2018). To establish the Court's diversity jurisdiction, diversity must be "complete"—in other words, that no defendant in the case is a citizen of the same state as the plaintiff. See Cent. W.Va. Energy Co. v. Mountain State Carbon, LLC, 636 F.3d 101, 103 (4th Cir. 2011) (citing Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68 (1996)). A corporation "shall be deemed to be a citizen of any State . . . by which it has been incorporated and of the State . . . where it has its principal place of business." 28 U.S.C. § 1332(c)(1).

Under Federal Rule of Civil Procedure 12(h)(3), "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Further, "questions of subject-matter jurisdiction may be raised at any point during the proceedings and may (or, more precisely, must) be raised sua sponte by the court." Brickwood Contractors, Inc. v. Datanet Eng'g, Inc., 369 F.3d 385, 390 (4th Cir. 2004). Under Federal Rule of Evidence 201, the Court is free to take judicial notice of a matter of public record, as "is not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed.R.Evid. 201(b)(2); see also Kim v. MedImmune, Inc., No. PJM 03 CV 3149, 2004 WL 3313219, at *3 (D.Md. Aug. 17, 2004) (citing O'Connor v. United States, 159 F.R.D. 22, 25 (D.Md. 1994)) (stating the rule in the analogous context of a Fed.R.Civ.P. 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction), aff'd, 122 F.App'x 41 (4th Cir. 2005).

Because Tisdale and FCO are not diverse, there is not complete diversity in this case. As a result, the Court does not have diversity jurisdiction over this case. Based on the Owings Mills, Maryland address listed in the Complaint and subsequent filings, Tisdale is a citizen of Maryland. (Compl. at 1, ECF No. 1; Obj. to Subpoena at 2, ECF No. 44). As for FCO, Tisdale listed a Beltsville, Maryland address on the Complaint and FCO Summons, (Compl. at 2; Summonses at 3, ECF No. 3), where Tisdale successfully served FCO by certified mail, (Certif. Serv., ECF No. 4). The Court takes judicial notice of the fact that FCO was incorporated in Maryland, with its principal place of business at the Beltsville address. See Maryland Department of Assessment and Taxation, Business Entity Search,

<https://egov.maryland.gov/BusinessExpress/EntitySearch> (search “Business Name” field for “Fair Collections & Outsourcing” and then click “View Business Details”) (last visited Jan. 23, 2019). FCO, therefore, is also a citizen of Maryland. As a result, there is not complete diversity between the parties, and, therefore, no diversity jurisdiction. See Cent. W.Va. Energy Co., 636 F.3d at 103.

The Court also does not have federal question jurisdiction. The Complaint does not include a claim that arises under federal law. Tisdale also never amended the Complaint to include one. In the Civil Cover Sheet that accompanies the Complaint, Tisdale cites “15 USC 1692”⁴ and “unfair debt collection practices” as part of his response to the form’s “Cause of Action” section.⁵ (Civil Cover Sheet, ECF No. 1-1). But the top line of the Civil Cover Sheet states that it “and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court.” (*Id.*). Any indication of federal question jurisdiction on the Civil Cover Sheet, therefore, does not cure the lack of federal question jurisdiction on the face of the Complaint. Further, in his Motion, Tisdale alleges a violation of another federal law, the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681 *et seq.* (2018) (Pl.’s Mot. at 2, ECF No. 42-2). A plaintiff is “bound by the allegations contained in its complaint and cannot, through the use of motion briefs, amend the complaint.” Zachair, Ltd. v. Driggs, 965 F.Supp. 741, 748 n.4 (D.Md. 1997) *aff’d*, 141 F.3d 1162 (4th Cir. 1998). Because Tisdale attempts to amend the Complaint through his brief, the Court will not consider his FCRA claim. In sum, the face of the Complaint contains no claims over which the Court has federal question jurisdiction. The Court, therefore, lacks federal question jurisdiction.

Having neither diversity jurisdiction nor federal question jurisdiction, the Court does not have subject-matter jurisdiction over this case. As a result, the Court will dismiss the Complaint without prejudice.⁶

Despite the informal nature of this memorandum, it shall constitute an Order of the Court, and the Clerk is directed to docket it accordingly, mail a copy to Tisdale at his address of record, and CLOSE the case.

Very truly yours,

/s/
George L. Russell, III
United States District Judge

⁴ 15 U.S.C. §§ 1692 *et seq.* (2018) is the Fair Debt Collection Practices Act (“FDCPA”), as codified.

⁵ Tisdale makes contrary indications elsewhere on the Civil Cover Sheet. Under “Basis of Jurisdiction,” Tisdale marked “Diversity,” but not “Federal Question.” (Civil Cover Sheet, ECF No. 1-1). Under “Nature of Suit,” Tisdale chose “Rent Lease & Ejectment,” not “Consumer Credit.” (*Id.*).

⁶ If he wishes, Tisdale may re-file his suit in this Court, properly stating an FCRA or an FDCPA claim.

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