

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 07 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RACHEL CROOK,

Plaintiff - Appellant,

v.

SHEA FIDUCIARY SERVICES; et al.,

Defendants - Appellees.

No. 20-56188

D.C. No. 5:20-cv-01277-DMG-SP

U.S. District Court for Central
California, Riverside

MANDATE

The judgment of this Court, entered March 09, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Nixon Antonio Callejas Morales
Deputy Clerk
Ninth Circuit Rule 27-7

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Defendants-Appellees.

No. 20-56188

D.C. No.

5:20-cv-01277-DMG-SP

Central District of California,
Riverside

ORDER

Before: M. SMITH, BADE, and BUMATAY, Circuit Judges.

Appellant has filed a combined motion for reconsideration and motion for reconsideration en banc (Docket Entry No. 13).

The motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

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Central District of California,
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ORDER

Before: M. SMITH, BADE, and BUMATAY, Circuit Judges.

The district court has denied appellant leave to proceed on appeal in forma pauperis. *See* 28 U.S.C. § 1915(a). On January 13, 2021, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, the response to the court's January 13, 2021 order, and the opening brief received on January 8, 2021, we conclude this appeal is frivolous. We therefore deny appellant's motions to proceed in forma pauperis (Docket Entry Nos. 2 and 5) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

DISMISSED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. CV 20-1277-DMG (SPx) Date October 22, 2020
Title Rachel M. Crook v. Shea Fiduciary Servs., et al. Page 1 of 1

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN
Deputy Clerk

NOT REPORTED
Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

**Proceedings: IN CHAMBERS— ORDER DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION [33]**

On September 8, 2020, the Court dismissed this action for lack of subject matter jurisdiction. [Doc. # 32.] On September 28, 2020, *pro se* Plaintiff Rachel M. Crook filed a Motion for Reconsideration (“MTR”) of the Court’s Order. [Doc. # 33.]

Plaintiff has identified no “mistake, inadvertence, surprise, or excusable neglect” that would justify relief from the Court’s dismissal order. Fed. R. Civ. P. 60(b)(1). Nor has she shown “(a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision.” C.D. Cal. L.R. 7-18.

Plaintiff’s MTR cites to a variety of sources for the general proposition that *state* courts are open to all. But *federal* courts are of limited jurisdiction and have “an independent obligation to assure ourselves of our own jurisdiction” before proceeding to the substance of any claims. *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764, 769 n.5 (9th Cir. 2008). Plaintiff also now contends that Defendants Shea Fiduciary Services and Robin J. Shea are state governmental actors, MTR ¶ 12, despite alleging in her Complaint that they are private corporate fiduciaries, Compl. ¶¶ 4, 12-13, and providing no evidence or explanation for this claim, which is facially inaccurate. It remains true, as it was when the Court issued its dismissal order, that Plaintiff’s real estate fraud claims do not arise under the Fourteenth Amendment or any other federal law. Plaintiff’s MTR is therefore **DENIED**. The October 30, 2020 hearing is **VACATED**.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

JS-6

Case No. **ED CV 20-1277-DMG (SPx)**

Date **September 8, 2020**

Title ***Rachel M. Crook v. Shea Fiduciary Servs., et al.***

Page **1 of 2**

Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

KANE TIEN
Deputy Clerk

NOT REPORTED
Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

**Proceedings: IN CHAMBERS— ORDER DISMISSING ACTION WITHOUT
PREJUDICE FOR LACK OF SUBJECT MATTER JURISDICTION**

Pro se Plaintiff Rachel M. Crook filed this action on June 25, 2020. Compl. [Doc. # 1]. On June 29, 2020, the Court issued an Order to Show Cause why the Court should not dismiss the action for lack of subject matter jurisdiction. [Doc. # 8.] After the Court granted her an extension to respond due to the COVID-19 pandemic and to allow her to attempt to obtain counsel, Plaintiff responded on August 17, 2020. [Doc. # 30.]

Plaintiff appears to contend that the Court has both diversity and federal question jurisdiction over the matter. *See* Compl. To give rise to a court's diversity jurisdiction, a lawsuit must place over \$75,000 in controversy and concern parties that have complete diversity of citizenship (i.e., are citizens of different states). 28 U.S.C. § 1332. Plaintiff alleges that Defendants Robin J. Shea and Shea Fiduciary Services are California citizens. Compl. at ¶¶ 2-3. Thus, there is no diversity of citizenship. In her Response, Plaintiff clarifies that she does not know the citizenship of unnamed Doe Defendants. Response at 4. But diversity jurisdiction requires *complete* diversity, i.e., "each defendant must be a citizen of a different state from each plaintiff." *In re Digimarc Corp. Derivative Litig.*, 549 F.3d 1223, 1234 (9th Cir. 2008). Plaintiff and the named Defendants are non-diverse, so there is no diversity of citizenship regardless of the citizenship of unnamed Doe Defendants.

For a court to have federal question jurisdiction over an action, the plaintiff in the action must bring a claim that arises "out of the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. In her Complaint, Plaintiff claims that the Court has jurisdiction "under the Seventh Amendment and [Federal Rule of Civil Procedure 38]." Compl. at ¶ 8. Both the Seventh Amendment and Rule 38 preserve a litigant's right to a jury trial, U.S. Const. Amend. VII; Fed. R. Civ. P. 38, but they do not independently create a cause of action. Plaintiff's Complaint appears to assert a real-estate-related fraud claim against Defendants, which is governed by state law. *See* Compl. In her Response, Plaintiff cites a number of federal criminal law statutes that she alleges

UNITED STATES DISTRICT COURT
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JS-6

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Page **2 of 2**

Defendants have violated: 18 U.S.C. sections 876, 1341, 1343, and 1344; and 10 U.S.C. section 921. Response at 2. These criminal statutes do not provide a private civil cause of action. Plaintiff also alleges violations of her rights under the Fourth, Ninth, Tenth, and Fourteenth Amendments of the U.S. Constitution. These rights protect against governmental actions, and do not provide a cause of action against private citizens. This case therefore does not allege any claim that arises under federal law.

Accordingly, since the parties in this action are non-diverse, and the sole claim arises under state law, the Court **DISMISSES this action, without prejudice**, for lack of subject matter jurisdiction. Because subject matter jurisdiction was lacking, default should not have been entered against Defendants Shea Fiduciary Services and Robin Jean Shea. The Court therefore *sua sponte* sets aside the entry of default against these defendants and **DENIES** their motion to set aside default [Doc. # 31] as moot. Plaintiff's motion for default judgment [Doc. # 29] also is **DENIED** as moot. All dates and deadlines are **VACATED**.

IT IS SO ORDERED.