

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-13432-F

MIDLAND FUNDING LLC ASSIGNEE
OF SYNCHRONY BANK/WALMART,

Plaintiff - Appellee,

versus

EDWARD SHANE WEST-EL,

Defendant - Appellant.

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

ORDER: Pursuant to the 11th Cir. R. 42-1(b), this appeal is DISMISSED for want of prosecution because the appellant Edward Shane West-El failed to pay the filing and docketing fees to the district court, or alternatively, file a motion to proceed in forma pauperis in the district court within the time fixed by the rules; Motion to proceed in forma pauperis filed in this court is MOOT due to the clerk's order being entered.

Effective December 13, 2021.

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

FOR THE COURT - BY DIRECTION

EXHIBIT 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

For rules and forms visit
www.ca11.uscourts.gov

October 12, 2021

Edward Shane West-El
PO BOX 172453
HIALEAH, FL 33017

Appeal Number: 21-13432-F
Case Style: Midland Funding LLC v. Edward West-El
District Court Docket No: 1:21-cv-20944-JLK

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov.

The referenced case has been docketed in this court. Please use the appellate docket number noted above when making inquiries.

Attorneys who wish to participate in this appeal must be admitted to the bar of this Court, admitted for this particular proceeding pursuant to 11th Cir. R. 46-3, or admitted pro hac vice pursuant to 11th Cir. R. 46-4. In addition, all attorneys (except court-appointed counsel) who wish to participate in this appeal must file an Appearance of Counsel form within 14 days. The Application for Admission to the Bar and Appearance of Counsel Form are available at www.ca11.uscourts.gov. The clerk generally may not process filings from an attorney until that attorney files an appearance form. See 11th Cir. R. 46-6(b).

Every motion, petition, brief, answer, response and reply filed must contain a Certificate of Interested Persons and Corporate Disclosure Statement (CIP). Appellants/Petitioners must file a CIP within 14 days after the date the case or appeal is docketed in this court; Appellees/Respondents/Intervenors/Other Parties must file a CIP within 28 days after the case or appeal is docketed in this court, regardless of whether appellants/petitioners have filed a CIP. See FRAP 26.1 and 11th Cir. R. 26.1-1.

On the same day a party or amicus curiae first files its paper or e-filed CIP, that filer must also complete the court's web-based CIP at the Web-Based CIP link on the court's website. Pro se

filers (except attorneys appearing in particular cases as pro se parties) are **not required or authorized** to complete the web-based CIP.

Pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of (14) days from this date, this appeal will be dismissed by the clerk without further notice unless the default(s) noted below have been corrected:

Pay to the DISTRICT COURT clerk the docketing and filing fees, with notice to this office, **or** request leave to proceed in forma pauperis on appeal in the district court. See Fed.R. App.P. 24(a). If the district court denies such leave, appellant may file in this court a Motion to Proceed in forma pauperis in this court with a financial affidavit.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Dionne S. Young, F/tjs
Phone #: (404) 335-6224

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:21-cv-20944-JLK

MIDLAND FUNDING LLC
ASIGNEE OF SYNCHRONY BANK/
WALMART,

Plaintiff,

v.

EDWARD SHANE WEST-EL,

Defendant.

**REPORT AND RECOMMENDATION ON DEFENDANT'S
MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

THIS CAUSE came before the Court upon Defendant Edward Shane West-El's ("Defendant") Motion for Leave to Proceed *In Forma Pauperis*. ECF No. [3]. The Honorable James Lawrence King, Senior United States District Judge, referred this case to the undersigned "for all such judicial proceedings as are permissible under the Magistrates' Act and the Rules of Court." ECF No. [6]. Defendant has not paid the required filing fee, but he filed a Motion for Leave to Proceed *In Forma Pauperis*. ECF No. [3]. Therefore, Defendant's Notice of Removal and Complaint are subject to screening under 28 U.S.C. § 1915(e). For the reasons explained below, the undersigned **RECOMMENDS** that Defendant's Notice of Removal and Complaint be **DISMISSED WITH PREJUDICE** and that his Motion for Leave to Proceed *In Forma Pauperis* be **DENIED AS MOOT**.

I. BACKGROUND

On March 10, 2021, Defendant filed a "Legal Notice of Removal" and Complaint. ECF No. [1]. Defendant purports to remove an action filed in the County Court for the Eleventh Judicial

Circuit in and for Miami-Dade County, Florida. ECF No. [1] at 1. The state action was filed by Midland Funding LLC, as an assignee of Synchrony Bank/Walmart for Defendant's failure to pay his \$1,361.59 credit card balance. See Complaint, *Midland Funding LLC v. West*, No. 2017-006745-SP-23 (Fla. 11th Cir. Ct. Apr. 17, 2017). In that case, upon conducting a non-jury trial, the state court entered final judgment for Midland Funding. See Final Judgment, *Midland Funding LLC v. West*, No. 2017-006745-SP-23 (Fla. 11th Cir. Ct. Aug. 24, 2017).

In his Legal Notice of Removal and Complaint, Defendant also purports to file suit against Midland Funding, the County Court for the Eleventh Judicial Circuit, Judge Caryn Canner Schwartz, Harvey Ruvin (the Miami-Dade County Clerk of Courts), and Robert A. Winter (counsel for Midland Funding), alleging that the final judgment entered in state court is unconstitutional. ECF No. [1] at 3–4. Therefore, Defendant requests compensatory damages in the amount of \$150,000.00 and punitive damages in the amount of \$150,000.00 from Ruvin and Winter. *Id.* at 14.

II. ANALYSIS

Section 1915 accords litigants “meaningful access to the federal courts” notwithstanding their ability to pay the required filing fee. *Neitzke v. Williams*, 490 U.S. 319, 324 (1989) (noting that the purpose of the *in forma pauperis* statute is to permit litigants to initiate civil or criminal actions despite their inability to pay the filing fee). Specifically, Section 1915(a)(1) allows litigants to forego the filing fee so long as they submit an affidavit that describes their inability to pay the associated costs. *Id.* If deemed indigent for the purposes of proceeding in the lawsuit, the litigant's filing fees are waived. *Id.* However, Congress recognized that these litigants now “lack[] an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits.” *Id.* To prevent these potential abuses, Section 1915(e) provides that the court must dismiss such a case if

it determines that the Complaint “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2).

Moreover, pursuant to Federal Rule of Civil Procedure 8(e), “[p]leadings must be construed so as to do justice.” Therefore, pro se pleadings are held to “less stringent standards than formal pleadings drafted by lawyers.” *Zelaya v. Sec., Fla. Dep’t of Corr.*, 789 F.3d 1360, 1366 (11th Cir. 2015) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972)). To do so, the court “must look beyond the labels of motions filed by pro se inmates to interpret them under whatever statute would provide relief.” *Id.* (quoting *Means v. Alabama*, 209 F.3d 1241, 1242 (11th Cir. 2000)). This allows “meritorious claims to be heard and decided regardless of mere pleading defects introduced by legally unsophisticated litigants.” *Id.* Despite affording a pro se complaint the most liberal reading, the court must dismiss a complaint if it finds that it is frivolous, malicious, or fails to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e)(2).

First, a claim is frivolous “where it lacks an arguable basis either in law or in fact.” *Neitzke*, 490 U.S. at 325. Additionally, a case is frivolous “when it appears the plaintiff ‘has little or no chance of success.’” *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001) (quoting *Carroll v. Gross*, 984 F.2d 392, 393 (11th Cir. 1993)). Therefore, Section 1915 “accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.” *Neitzke*, 490 U.S. at 327. The former includes “claims against which it is clear that the defendants are immune from suit.” *Id.*

Furthermore, as to the sufficiency of the allegations asserted, a pleading must contain “(1) a short and plain statement of the grounds for the court’s jurisdiction . . . (2) a short and plain

statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought” Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), the pleading does not require “detailed factual allegations” but “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Additionally, “formulaic recitation of the elements” supported by mere conclusory statements or “naked assertion[s]” are insufficient. *Id.* at 678. In determining whether a complaint fails to state a claim upon which relief may be granted, the court applies the standard set forth in Federal Rule of Civil Procedure 12(b)(6), taking the factual allegations in the Complaint as true and construing them in the light most favorable to the plaintiff. *See Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997) (“The language of section 1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)”).

Here, the undersigned finds that the Notice of Removal and Complaint are frivolous and fail to state a claim on which relief may be granted. First, a review of the state court docket reveals that Defendant litigated the state action on the merits. Indeed, after a non-jury trial, the state court entered a final judgment for Midland Funding in the amount of \$1,592.09. *See Final Judgment, Midland Funding LLC v. West*, No. 2017-006745-SP-23 (Fla. 11th Cir. Ct. Aug. 24, 2017). Thus, Defendant has waived any right he had to remove. *See Yusefzadeh v. Nelson, Mullins, Riley & Scarborough, LLP*, 365 F.3d 1244, 1246 (11th Cir. 2004) (noting that litigation on the merits in state court waives the right to remove). Moreover, to the extent Defendant purports to challenge the constitutionality of the state court final judgment, this Court does not have authority to review that judgment or grant any relief pursuant to the *Rooker-Feldman* doctrine. *See Siegel v. LePore*, 234 F.3d 1163, 1172 (11th Cir.2000) (“The Rooker–Feldman doctrine provides that federal courts, other than the United States Supreme Court, have no authority to review the final judgments of

state courts.”). Accordingly, given the insufficiency of the claims here, the undersigned recommends that Defendant’s Notice of Removal and Complaint be dismissed with prejudice.

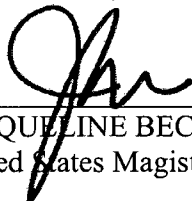
II. RECOMMENDATION

As set forth above, the undersigned **RECOMMENDS** that Defendant’s Notice of Removal and Complaint, ECF No. [1], be **DISMISSED WITH PREJUDICE** and that his Motion for Leave to Proceed *In Forma Pauperis*, ECF No. [3], be **DENIED AS MOOT**.

III. OBJECTIONS

A party shall serve and file written objections, if any, to this Report and Recommendation with the United States District Court Judge for the Southern District of Florida, within **FOURTEEN (14) DAYS** of being served with a copy of this Report and Recommendation. Any request for an extension of this deadline must be made within seven (7) calendar days from the date of this Report and Recommendation. Failure to timely file objections will bar a *de novo* determination by the District Judge of anything in this Recommendation and shall constitute a waiver of a party’s “right to challenge on appeal the district court’s order based on unobjected-to factual and legal conclusions.” 11th Cir. R. 3-1 (2016); 28 U.S.C. § 636(b)(1)(C); *see also Harrigan v. Metro-Dade Police Dep’t Station #4*, 977 F.3d 1185, 1191–92 (11th Cir. 2020).

DONE AND SUBMITTED in chambers at Miami, Florida on August 2, 2021.



JACQUELINE BECERRA
United States Magistrate Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No.: 1:21-cv-20944-JLK

MIDLAND FUNDING LLC
ASIGNEE OF SYNCHRONY BANK/
WALMART,

Plaintiff,

v.

EDWARD SHANE WEST-EL,

Defendant.

**ORDER DENYING MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS AND DISMISSING CASE**

THIS CAUSE comes before the Court upon the August 2, 2021 Report and Recommendation (“R&R”) of Magistrate Judge Jacqueline Becerra (DE 9), recommending that Defendant’s Motion for Leave to Proceed in *forma pauperis* (DE 3) be denied and Defendant’s Notice of Removal and Complaint (DE 1) be dismissed with prejudice.

On March 9, 2021, the *pro se* Defendant removed this case to this Court. DE 1. Also on March 9, 2021, Defendant filed his Motion for Leave to Proceed in *forma pauperis*. On August 2, 2021, Judge Becerra entered the R&R. DE 9. On August 26, 2021, Defendant filed a Motion for Extension of Time to File Response to the R&R. DE 11. On August 27, 2021, the Court granted Defendant’s Motion for Extension, allowing the Defendant to file until September 10, 2021.

On September 1, 2021, Defendant timely filed objections. DE 13. On September 16 and 17, 2021, Defendant filed corrections to the objections. DE 16, 18.

Upon screening the Notice of Removal and Complaint pursuant to 28 U.S.C. § 1915(e), Magistrate Becerra correctly found that the Notice of Removal and Complaint are frivolous and

fail to state a claim for which relief may be granted. *See* R&R. Additionally, Defendant already litigated this matter in state court, waiving Defendant's right to remove this matter to federal court and barring this Court's review under the *Rooker-Feldman* doctrine. R&R at 4.

Upon consideration of the Notice of Removal, the Complaint, the record, the R&R, and the Defendant's objections, the Court finds that Magistrate Judge Becerra's R&R is well-reasoned and accurately states the law of the case. Accordingly, it is **ORDERED, ADJUDGED, and DECREED** as follows:

1. Magistrate Judge Becerra's Report and Recommendation (**DE 9**) be, and the same is, hereby **AFFIRMED and ADOPTED** as an Order of this Court;
2. Defendant's Notice of Removal and Complaint (**DE 1**) is **DISMISSED with prejudice**;
3. All pending motions are **denied as moot**;
4. No certificate of appealability shall issue;
5. The Clerk of Court shall **CLOSE** this case.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 20th day of September, 2021.


JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

cc: All counsel of record
Magistrate Judge Jacqueline Becerra
Clerk of Court
Edward Shane West-El, *pro se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ANGELA E. NOBLE
CLERK OF COURT

APPEALS SECTION
305-523-5080



DATE: 10/6/2021

TO: COUNSEL OF RECORD/APPELLANT

IN RE: District Court No: 21-CV-20944-JLK
Style: MIDLAND FUNDING LLC ASSIGNEE OF SYNCHRONY BANK/WAL

ORDERING AND DESIGNATION OF REPORTER'S TRANSCRIPTS [Pursuant to FRAP 10(b)]

This will acknowledge the Notice of Appeal filed in the above case which has been transmitted to the Eleventh Circuit Court of Appeals in Atlanta, GA.

WITHIN FOURTEEN (14) DAYS from the date of the Notice of Appeal being filed, the appellant must complete the attached *Transcript Information Form (TIF)*, **REGARDLESS OF WHETHER TRANSCRIPTS ARE BEING ORDERED OR NOT**. The *TIF* must be completed and mailed to the District Court Clerk at 400 N. Miami Avenue, Room 8N09, Miami, FL 33128-7716, **ATTN: COURT REPORTER COORDINATOR** in the attached envelope.

COMPLETE THE SECTION REQUESTING TRANSCRIPTS ONLY WHEN REQUESTING TRANSCRIPTS OF HEARINGS WHICH TOOK PLACE IN THE DISTRICT COURT. Arrangements for payment must be made with the court reporter within ten (10) days of the request.

Counsel appointed pursuant to the Criminal Justice Act must complete a CJA 24, *Authorization and Voucher for Payment of Transcript*, attach it to this form and forward them to the **COURT REPORTER COORDINATOR** at the above mentioned address. These forms are available at the Intake Section of the Clerk's Office.

If opposing counsel wishes to file a supplemental designation of a transcript, **you must file a motion to supplement the record with the Court of Appeals in Atlanta**. If granted, a supplemental *TIF* must be prepared and forwarded to the court reporter. The District Court **cannot** file a late designation without an order from the Court of Appeals. The court reporter **cannot** accept any further designations for the purpose of appeal other than the appellant's original unless the Court of Appeals has granted permission.

The **CERTIFICATE OF READINESS OF THE RECORD ON APPEAL** will be transmitted upon the filing of the court reporter's transcript or upon notice that a transcript will NOT be ordered.

If you have any questions, please contact the Court Reporter Coordinator at 305-523-5635.

Sincerely,
Angela E. Noble, Clerk of Court

By: A. Perez
Deputy Clerk

attachment

<input type="checkbox"/> 400 North Miami Avenue Room 8N09 Miami, FL 33128-7716 305-523-5100	<input type="checkbox"/> 299 E. Broward Boulevard Ft. Lauderdale, FL 33301 954-769-5400	<input type="checkbox"/> 701 Clematis Street West Palm Beach, FL 33401 561-803-3400	<input type="checkbox"/> 301 Simonton Street, Rm 130 Key West, FL 33040 305-296-4947	<input type="checkbox"/> 300 South 6 th Street Ft. Pierce, FL 34950 561-595-9691
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PART I. TRANSCRIPT ORDER INFORMATION

Appellant to complete and file with the District Court Clerk and the Court of Appeals Clerk within 14 days of the filing of the notice of appeal in all cases, including those in which there was no hearing or for which no transcript is ordered.

Short Case Style: _____ vs _____
District Court No.: _____ Date Notice of Appeal Filed: _____ Court of Appeals No.: _____
(If Available)

CHOOSE ONE: ☐ No hearing ☐ No transcript is required for appeal purposes ☐ All necessary transcript(s) on file
☐ I AM ORDERING A TRANSCRIPT OF THE FOLLOWING PROCEEDINGS:

Check appropriate box(es) and provide all information requested:

HEARING DATE(S) JUDGE/MAGISTRATE COURT REPORTER NAME(S)
☐ Pre-Trial Proceedings _____
☐ Trial _____
☐ Sentence _____
☐ Plea _____
☐ Other _____

METHOD OF PAYMENT:

- ☐ I CERTIFY THAT I HAVE CONTACTED THE COURT REPORTER(S) AND HAVE MADE SATISFACTORY ARRANGEMENTS WITH THE COURT REPORTER(S) FOR PAYING THE COST OF THE TRANSCRIPT.
- ☐ CRIMINAL JUSTICE ACT. My completed AUTH-24 requesting authorization for government payment of transcripts has been uploaded in eVoucher and is ready for submission to the magistrate judge or district judge [if appointed by the district court] or to the circuit judge [if ordered by or appointed by the circuit court]. [A transcript of the following proceedings will be provided ONLY IF SPECIFICALLY AUTHORIZED in Item 13 on the AUTH-24: Voir Dire; Opening and Closing Statements of Prosecution and Defense; Prosecution Rebuttal; Jury Instructions.]

Ordering Counsel/Party: _____
Name of Firm: _____
Address: _____
E-mail: _____ Phone No.: _____

I certify that I have completed and filed PART I with the District Court Clerk and the Court of Appeals Clerk, sent a copy to the appropriate Court Reporter(s) if ordering a transcript, and served all parties.

DATE: _____ SIGNED: _____ Attorney for: _____

PART II. COURT REPORTER ACKNOWLEDGMENT

Court Reporter to complete and file with the District Court Clerk within 14 days of receipt. The Court Reporter shall send a copy to the Court of Appeals Clerk and to all parties.

Date Transcript Order received: _____

- ☐ Satisfactory arrangements for paying the cost of the transcript were completed on: _____
☐ Satisfactory arrangements for paying the cost of the transcript have not been made.

No. of hearing days: _____ Estimated no. of transcript pages: _____ Estimated filing date: _____
DATE: _____ SIGNED: _____ Phone No.: _____

NOTE: The transcript is due to be filed within 30 days of the date satisfactory arrangements for paying the cost of the transcript were completed unless the Court Reporter obtains an extension of time to file the transcript. _____

PART III. NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN DISTRICT COURT

Court Reporter to complete and file with the District Court Clerk on date of filing transcript in District Court. The Court Reporter shall send a copy to the Court of Appeals Clerk on the same date.

This is to certify that the transcript has been completed and filed with the district court on (date): _____

Actual No. of Volumes and Hearing Dates: _____

Date: 10/6/2021 Signature of Court Reporter: _____

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