

APPENDIX A

A Neutral
As of: June 3, 2022 12:59 AM Z

Ouyang v. Borenstein

United States Court of Appeals for the Ninth Circuit

April 27, 2022, Filed

No. 21-55647

Reporter

2022 U.S. App. LEXIS 11389 *

LIN OUYANG, Plaintiff-Appellant, v. **MARK A. BORENSTEIN**, in his official capacity as Judge of Los Angeles Superior Court; **DOES, 1 through 10 inclusive**, Defendants-Appellees.

Prior History: [*1] Central District of California, Los Angeles. D.C. No. 2:21-cv-03773-SVW-ADS.

Ouyang v. Borenstein, 2022 U.S. App. LEXIS 7248 (9th Cir. Cal., Mar. 18, 2022)

Core Terms

filings

Counsel: **LIN OUYANG**, Plaintiff - Appellant, Pro se, Los Angeles, CA.

Judges: Before: **SILVERMAN, MILLER, and BUMATAY**, Circuit Judges.

Opinion

ORDER

Because the court's March 18, 2022 order dismissing this appeal as frivolous stated that no further filings will be entertained, the Clerk is directed to strike the filings submitted at Docket Entry Nos. 8 and 10.

End of Document

APPENDIX B

Case: 21-55647, 04/11/2022, ID: 12416950, DktEntry: 9, Page 1 of 1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 11 2022

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

LIN OUYANG,

Plaintiff - Appellant,

v.

MARK A. BORENSTEIN, in his
official capacity as Judge of Los
Angeles Superior Court and DOES, 1
through 10 inclusive,

Defendants - Appellees.

No. 21-55647

D.C. No. 2:21-cv-03773-SVW-ADS
U.S. District Court for Central
California, Los Angeles

MANDATE

The judgment of this Court, entered March 18, 2022, 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: Jessica Flores
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX C

 Neutral
As of: June 8, 2022 8:42 PM Z

Ouyang v. Borenstein

United States Court of Appeals for the Ninth Circuit

March 18, 2022, Filed

No. 21-55647

Reporter

2022 U.S. App. LEXIS 7248 *

LIN OUYANG, Plaintiff-Appellant, v. MARK A. BORENSTEIN, in his official capacity as Judge of Los Angeles Superior Court; DOES, 1 through 10 inclusive, Defendants-Appellees.

Subsequent History: Later proceeding at Ouyang v. Borenstein, 2022 U.S. App. LEXIS 11389 (9th Cir. Cal., Apr. 27, 2022)

Prior History: [*1] D.C. No. 2:21-cv-03773-SVW-ADS. Central District of California, Los Angeles.

Disposition: DISMISSED.

Core Terms

frivolous, in forma pauperis

Counsel: LIN OUYANG, Plaintiff - Appellant, Pro se, Los Angeles, CA.

Judges: Before: SILVERMAN, MILLER, and BUMATAY, Circuit Judges.

Opinion**ORDER**

The district court certified that this appeal is not taken in good faith and has denied appellant leave to proceed on appeal in forma pauperis. See 28 U.S.C. § 1915(a). On June 23, 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 and the responses to the court's June 23, 2021 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 2) and

dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

No further filings will be entertained in this closed case.

DISMISSED.

End of Document

APPENDIX D

A Neutral
As of: June 24, 2022 8:33 PM Z

Ouyang v. Borenstein

United States District Court for the Central District of California

June 30, 2021, Decided; June 30, 2021, Filed

CASE NUMBER: 2:21-03773-SVW-ADS

Reporter

2021 U.S. Dist. LEXIS 258935 *

LIN OUYANG, PLAINTIFF(S), v. MARK A.
BORENSTEIN, et al., DEFENDANT(S).

United States District Judge

Prior History: Ouyang v. Borenstein, 2021 U.S. Dist.
LEXIS 258937 (C.D. Cal., May 20, 2021)

End of Document

Counsel: [*1] Lin Ouyang, Plaintiff, Pro se, Los Angeles, CA USA.

Judges: Stephen V. Wilson, United States District Judge.

Opinion by: Stephen V. Wilson

Opinion

**ORDER ON MOTION FOR LEAVE TO APPEAL IN
FORMA PAUPERIS: 28 U.S.C. 1915**

The Court, having reviewed the Motion for Leave to Appeal In Forma Pauperis and Affidavit thereto, hereby ORDERS: (*The check mark in the appropriate box indicates the Order made.*)

The court has considered the motion and the motion is DENIED. The Court certifies that the proposed appeal is not taken in good faith under 28 U.S.C. 1915(a) and is frivolous, without merit and does not present a substantial question within the meaning of 28 U.S.C. 753(f).

The Clerk is directed to serve copies of this Order, by United States mail, upon the parties appearing in this cause.

June 30, 2021

Date

/s/ Stephen V. Wilson

APPENDIX E

 Neutral
As of: June 24, 2022 8:32 PM Z

Ouyang v. Borenstein

United States District Court for the Central District of California

May 20, 2021, Decided; May 20, 2021, Filed

CASE NUMBER 2:21-03773 SVW(ADS)

Reporter

2021 U.S. Dist. LEXIS 258937 *

LIN OUYANG, PLAINTIFF(S) v. MARK A. BORENSTEIN, et al., DEFENDANT(S)

Subsequent History: Motion denied by Ouyang v. Borenstein, 2021 U.S. Dist. LEXIS 258935 (C.D. Cal., June 30, 2021)

Core Terms

frivolous, exemptions, judgment debtor, in forma pauperis, turnover order, statutory scheme, state court, challenging, issuance, procedural due process rights, claim of exemption, exempt property, natural person, state statute, proper party, state law, RECOMMENDED, Comments, Appeals, asserts

Counsel: [*1] Lin Ouyang, Plaintiff, Pro se, Los Angeles, CA USA.

Judges: Autumn D. Spaeth, United States Magistrate Judge.

Opinion by: Autumn D. Spaeth

Opinion**ORDER RE REQUEST TO PROCEED *IN FORMA PAUPERIS***

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby GRANTED.

—

Date

—
United States Magistrate Judge

IT IS RECOMMENDED that the Request to Proceed *In Forma Pauperis* be DENIED for the following reason(s):

Inadequate showing of indigency
 Legally and/or factually patently frivolous
 District Court lacks jurisdiction

Immunity as to __

Other: __

Comments:

Please see attached.

May 20, 2021

Date

/s/ Autumn D. Spaeth

United States Magistrate Judge

IT IS ORDERED that the Request to Proceed *In Forma Pauperis* is hereby:

GRANTED
 DENIED (see comments above). IT IS FURTHER ORDERED that:
 Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
 This case is hereby DISMISSED immediately.
 This case is hereby REMANDED to state court.

May 20, 2021

Date

/s/ Stephen V. Wilson

United States District Judge

ATTACHMENT TO CV-73

On April 30, 2021, pro se Plaintiff Lin Ouyang filed a civil rights Complaint against Judge Mark A. Borenstein of Los Angeles Superior Court. [Dkt. No. 1]. Plaintiff

asserts the [*2] statutory scheme governing judgment debtor examinations, upheld by Judge Borenstein, denies due process pursuant to the Fourteenth Amendment of the United States Constitution. Plaintiff asserts the provisions regarding exemption of certain types of property from the satisfaction of a monetary judgment (*California Code of Civil Procedure* §§ 703.140, 704.010 et seq.) violate the Due Process Clause because it does not require that a judgment debtor be informed of the possible exemptions before issuance of a turnover order. See generally [id.]. Plaintiff also claims the statutory scheme is unconstitutional because it does not adequately specify how a judgment debtor may claim an exemption after the order. [id.]. Plaintiff seeks an injunction requiring the state of California to notify judgment debtors of the right to claim exemptions prior to the issuance of a turnover order and to establish a procedure for claiming exemptions. [id.]. Plaintiff also seeks a declaration that California's enforcement of judgment law is in violation of the Due Process Clause of the Fourteenth Amendment. [id.]

Pursuant to 28 U.S.C. § 1915(e)(2), a "court shall dismiss the case at any time if the court determines that . . . the action or appeal — (i) is frivolous or malicious." Plaintiff's complaint is clearly frivolous and must be dismissed. Plaintiff's claim is legally frivolous. A claim is legally frivolous [*3] when it lacks an arguable basis in law. Neitzke v. Williams, 490 U.S. 319, 325, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989). A claim may accordingly be dismissed as frivolous where it is based on an indisputably meritless legal theory. Neitzke, 490 U.S. at 327.

Plaintiff is well aware that her argument is frivolous. She has already presented this argument to the California Court of Appeals, where her argument was rejected in accord with the reasoning in Imperial Bank v. Pim Electric, Inc., 33 Cal. App. 4th 540, 39 Cal. Rptr. 2d 432 (Cal. App. 1st Dist. March 27, 1995). See Ouyang v. Achem Indus. Am., Nos. B267217, B268195, B269209, B270026, B271357, 2019 Cal. App. Unpub. LEXIS 4427, at *34-35 (June 28, 2019). The Court in Imperial Bank noted the statutory scheme Plaintiff contests mandates that a judgment debtor who is a "natural person" must receive a list of the exemptions and be given an opportunity to recover exempt property through a specified motion procedure. 33 Cal. App. 4th at 554. The process at issue requires the levying officer "to serve on the judgment debtor a copy of a writ of execution, a notice of levy, and if the judgment debtor is a natural person, a copy of the form listing exemptions." Id. (referring to *Cal. Code Civ. P.* § 700.010). Imperial

Bank further describes the process to recover exempt property and determined "appellants and any third parties with interests in the property have ample opportunity to file their claims of exemptions," and "the statutory framework within which the turnover order was issued safeguards the judgment debtor's procedural due process rights." Id. The Court found [*4] "no impairment of appellants' procedural due process rights in the issuance of the turnover order prior to determination of claims of exemption." Id. at p. 555.

Moreover, judges are "not proper party defendants in § 1983 actions challenging the constitutionality of state statutes." In re the Justices of the Supreme Court of Puerto Rico, 695 F.2d 17, 22 (1st Cir. 1982). The Ninth Circuit has made clear when a judge acts as an "adjudicator" and applies a state statute, the judge is not a proper defendant in a Section 1983 action challenging the constitutionality of a state law. Wolfe v. Strankman, 392 F.3d 358, 365 (9th Cir. 2004) (citing Grant v. Johnson, 15 F.3d 146, 148 (9th Cir. 1994)); Cunningham v. Coombs, 667 F. App'x 912, 912-13 (9th Cir. 2016) (affirming dismissal of claims against judges because they were not proper parties in a Section 1983 action). Here, Plaintiff is suing a judge solely for his application of California state law. As such, Judge Borenstein is not a proper defendant and the claims against him must be dismissed. See Rupert v. Jones, No. C 10-00721 SI. 2010 U.S. Dist. LEXIS 103108, at *15 (N.D. Cal. Sep. 29, 2010).

It is clear the deficiencies with this Complaint cannot be cured. Moreover, in the course of less than a year, Plaintiff has filed three separate complaints challenging decisions made by state court officials in relation to her various legal entanglements. Plaintiff has also filed numerous plainly frivolous, post-dismissal actions and has been repeatedly denied leave to appeal *in forma pauperis* as she continually files appeals that are [*5] not taken in good faith, are frivolous, and do not present a substantial question. Plaintiff does not have a federal cause of action simply because she disagrees with a decision made in state court.

The Court accordingly recommends that the IFP application be denied and the case dismissed without leave to amend.

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