FILED: November 3, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1683
(2:22-cv-00533-DCN-MGB)

BEATRICE NEWSOME, a/k/a Beatrice Wilson Newsome; EARL LEON NEWSOME

Plaintiffs - Appellants

v.

FESTIVA RESORTS REAL ESTATE HOLDINGS, LLC; SCOTT STYRON, Director of Resort Operations; ELLINGTON AT WACHESAW PLANTATION EAST HOMEOWNERS ASSOCIATION, INC.; JEREMY MOSER, General Manager of Elllington and Manager of Festiva; LATOUR HOTELS & RESORTS, INC.; KEVIN BLOCKER, Senior Vice President of Operations

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

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FILED: December 13, 2022

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Plaintiffs - Appellants

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Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Wynn, and Senior Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Beatrice Newsome, and Earl Leon Newsome, Plaintiffs, v. Festiva Resorts Real Estate Holdings, LLC; Ellington at Wachesaw Planation East Homeowners Association, Inc.; LaTour Hotels and Resorts, Inc.; Scott Styron; Jeremy Moser; and Kevin Blocker, Defendants.	)	Case No. 2:22-cv-00533-DCN-MGB **REPORT AND RECOMMENDATION**

Beatrice Newsome ("Mrs. Newsome") and Earl Leon Newsome ("Mr. Newsome") (collectively, "Plaintiffs"), proceeding *pro se* and *in forma pauperis*, bring this civil action challenging the alleged termination and sale of a certain timeshare. Under Local Civil Rule 73.02(B)(2) (D.S.C.), the assigned United States Magistrate Judge is authorized to review this case and submit a recommendation to the United States District Judge. For the reasons discussed below, the undersigned recommends that this action be summarily dismissed without prejudice.

BACKGROUND

In 2001, Plaintiffs purchased a timeshare interest in certain property at Ellington at Wachesaw Plantation East ("Ellington"), a resort located in Murrells Inlet, South Carolina. (Dkt. No. 11-1 at 26–27.) Plaintiffs maintained their interest until November 22, 2021, when the Ellington at Wachesaw Plantation East Homeowners Association, Inc. (the "Homeowners Association") voted to terminate their timeshare regime pursuant to South Carolina Code § 27-

32-520, and subsequently sold the same to BrewTown Living, LLC.[1] (*Id.* at 5.) Plaintiffs were given the option to accept their pro-rata share of the sale proceeds, which amounted to $1,927.27, or to move their timeshare to a different part of the resort referred to as Ellington at Wachesaw Plantation East "Phase II." (*Id.*) Plaintiffs then brought the instant action against the Homeowners Association and Festiva Resorts Real Estate Holdings, LLC ("Festiva"),[2] alleging that the termination and sale of their timeshare interest occurred without their consent and constituted breach of contract, civil conspiracy, and unfair trade practices. (Dkt. No. 1 at 7.) Plaintiffs asked that they be reimbursed for all previous maintenance payments made pursuant to their timeshare agreement, in addition to the "current value of said property." (*Id.* at 7, 9–10.)

After reviewing Plaintiffs' initial filings in the instant case, the undersigned issued an order dated February 24, 2022, notifying Plaintiffs that their claims were subject to summary dismissal for lack of subject matter jurisdiction. (Dkt. No. 7.) In light of Plaintiffs' *pro se* status, however, the undersigned granted them twenty-one days to cure the pleading deficiencies by filing an amended complaint with the Court, which they did on March 4, 2022. (Dkt. No. 11.) Although the substantive allegations in the Amended Complaint are largely the same as those raised in the initial pleading, Plaintiffs added several new parties to the action: LaTour Hotels and Resorts, Inc. ("LaTour");[3] Scott Styron, President of LaTour and former Director of Resort Operations for Festiva ("Mr. Styron"); Jeremy Moser, Vice President of Operations at LaTour and former General Manager at Ellington ("Mr. Moser"); and Kevin Blocker, Senior Vice

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1 Plaintiffs seem to acknowledge that they received notice of the vote scheduled for November 22, 2021, but claim they were under the impression that the proposed termination of the timeshare regime did not apply to them. (*See* Dkt. No. 11-1 at 2–3, 18.)

2 Festiva appears to be a commercial real estate asset management company with holdings throughout the United States. With respect to the instant case, records indicate that Festiva assisted in the management of Ellington at Wachesaw Plantation East and collected Plaintiffs' periodic maintenance payments and installments towards their vacation interval. (*See, e.g.*, Dkt. No. 11-1 at 2, 16, 21–22, 24, 33–34.)

3 Although not entirely clear, LaTour appears to be a management company assisting Festiva with the Ellington properties. (*See* Dkt. No. 11-1 at 2.)

President of Operations at LaTour[4] ("Mr. Blocker") (collectively, with the Homeowners Association and Festiva, "Defendants").[5] (*Id.* at 2–3; Dkt. No. 11-1 at 12–14.) Unfortunately, for the reasons discussed below, Plaintiffs' claims are still subject to summary dismissal for lack of subject matter jurisdiction.

LEGAL STANDARD

Plaintiffs filed this action pursuant to 28 U.S.C. § 1915, which permits indigent litigants to commence actions in federal court without prepaying the administrative costs of proceeding with such lawsuits. To protect against possible abuses, the court must dismiss any complaints, or portions of complaints, that are frivolous or malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B).

A complaint is frivolous if it lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). Thus, a claim based on a "meritless legal theory" or a "fantastic or delusional" factual scenario may be dismissed *sua sponte* at any time under 28 U.S.C. § 1915(e)(2)(B). *Neitzke v. Williams*, 490 U.S. 319, 324–25, 327–28 (1989). As to failure to state a claim, a complaint filed in federal court must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). In order to satisfy this standard, a plaintiff must do more than make conclusory statements. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (explaining that the court need not accept as true a complaint's legal conclusions). Rather, the complaint "must contain sufficient factual matter, accepted as true, to

[4] It appears Mr. Blocker was also serving as President of the Homeowners Association at the time of the termination vote in November 2021. (*See* Dkt. No. 11-1 at 7.)

[5] Due to certain inconsistencies within the pleadings, the undersigned notes that it is difficult to determine whether Plaintiffs intended to name only the individual Defendants, the companies with which they are and/or were associated, or both. In an abundance of caution, however, the undersigned considers each of the Defendants referenced above in conducting the initial review of this case.

'state a claim to relief that is plausible on its face.'" *See id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations," *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984), the complaint fails to state a claim.

Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is therefore charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure to allege facts that set forth a cognizable claim under Rule 8(a)(2). *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990); *see also Iqbal*, 556 U.S. at 684 (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for "all civil actions").

DISCUSSION

There is no presumption that a federal court has jurisdiction over a case, *Pinkley, Inc. v. City of Frederick*, 191 F.3d 394, 399 (4th Cir. 1999), and a plaintiff must allege facts essential to show jurisdiction in his or her pleadings. *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *see also Dracos v. Hellenic Lines, Ltd.*, 762 F.2d 348, 350 (4th Cir. 1985) ("[P]laintiffs must affirmatively plead the jurisdiction of the federal court."). To this end, Rule 8(a)(1), Fed. R. Civ. P., requires that the complaint provide "a short and plain statement of the grounds for the court's jurisdiction. . . ."

Because federal courts are courts of limited jurisdiction, they possess only that power authorized by Article III of the United States Constitution and affirmatively granted by federal statute. *Willy v. Coastal Corp.*, 503 U.S. 131, 136–37 (1992); *In re Bulldog Trucking, Inc.*, 147

F.3d 347, 352 (4th Cir. 1998). Pursuant to this limited power, there are two primary bases for asserting original federal jurisdiction: (1) "federal question," under 28 U.S.C. § 1331, and (2) "diversity of citizenship," under 28 U.S.C. § 1332. The Amended Complaint asserts that both bases for jurisdiction apply here. (Dkt. No. 11 at 3.) The undersigned addresses each in turn.

A. Federal Question Jurisdiction

Federal question jurisdiction covers causes of action "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. The complaint must contain allegations "affirmatively and distinctly establishing federal grounds not in mere form, but in substance and not in mere assertion, but in essence and effect." *Burgess v. Charlottesville Savings and Loan Assoc.*, 477 F.2d 40, 43 (4th Cir. 1973) (internal quotation marks and citations omitted). In other words, the court "must look beyond the verbiage of a complaint to the substance of the plaintiff's grievance. . . . " *Id.* As the undersigned previously explained to Plaintiffs, federal jurisdiction therefore requires "more than a simple allegation that jurisdiction exists or citation to a federal statute, and a mere allegation that a federal statute has been violated is not sufficient to invoke federal jurisdiction." (*See* Dkt. No. 7 at 3, referencing *Brantley v. Nationstar Mortg. LLC*, No. 9:19-cv-0490-BHH-BM, 2019 WL 8918793, at *3 (D.S.C. Oct. 8, 2019), *adopted*, 2020 WL 1181309 (D.S.C. Mar. 11, 2020).)

In the instant case, Plaintiffs' claims are plainly grounded in state law, as the Amended Complaint renews the initial allegations of breach of contract and unfair trade practices based on Defendants' termination and sale of the timeshare interest. (Dkt. No. 11 at 1, 3.) Notably, the Amended Complaint's only mention of federal law is the bare allegation that Defendants "equally violated [Plaintiffs'] civil rights and [f]raudulently sold property that they did not own." (*Id.* at 2–3.) Beyond this conclusory reference, however, the Amended Complaint is devoid of any

substantive factual allegations that logically connect Defendants' purported conduct to Plaintiffs' civil rights. Although the undersigned explicitly warned Plaintiffs that a pleading must provide more than unsupported references to federal authorities in order to invoke federal question jurisdiction (Dkt. No. 7 at 3), they have failed to do that here. *See, e.g.*, *Hamilton v. United States*, No. 2:20-cv-1666-RMG-MHC, 2020 WL 7001153, at *4 (D.S.C. Aug. 26, 2020), *adopted*, 2020 WL 5939235 (D.S.C. Oct. 7, 2020) (finding no basis for federal question jurisdiction where complaint failed to allege sufficient facts in support of conclusory references to purported federal violations); *Jones v. Cherry*, No. 0:20-cv-3489-JFA-PJG, 2020 WL 7055562, at *2 (D.S.C. Dec. 1, 2020), *adopted*, 2020 WL 7332876 (D.S.C. Dec. 14, 2020) (same). Therefore, the undersigned finds no basis for applying federal question jurisdiction in the instant case.

B. Diversity Jurisdiction

With respect to the diversity statute, 28 U.S.C. § 1332(a) requires that a plaintiff demonstrate complete diversity of parties and an amount in controversy in excess of $75,000. Complete diversity of parties means that no party on one side may be a citizen of the same state as any party on the other side. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 372–74 (1978). Here, the Homeowners Association is considered a citizen of South Carolina for purposes of diversity jurisdiction. *See Peamon v. Verizon Cable Corp.*, No. 1:21-cv-1023-DKC, 2021 WL 1751129, at *2 (D. Md. May 4, 2021) ("For purposes of diversity, a corporation is deemed to be a citizen of any state by which it has been incorporated. . . .") (referencing 28 U.S.C. § 1332(c)(1)); *see also https://businessfilings.sc.gov/BusinessFiling/entity/Search* (last visited May 18, 2022) (confirming that the Homeowners Association was incorporated under the laws of South

Carolina).[6] (*See also* Dkt. No. 7 at 3, informing Plaintiffs that the Homeowners Association is a South Carolina citizen.) Because Plaintiffs are also citizens of South Carolina (Dkt. No. 11 at 2; Dkt. No. 11-1 at 2), the Amended Complaint does not demonstrate complete diversity as required under 28 U.S.C. § 1332.

Moreover, even if Plaintiffs had properly pled complete diversity, the amount in controversy still falls below the statutory threshold in this case. Indeed, in establishing diversity jurisdiction, the plaintiff "bears the burden of showing to a legal certainty that his claim satisfies the jurisdictional amount." *See Peamon*, 2021 WL 1751129, at *2 (referencing 14B Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 3702, at 33–34 (3rd ed. 2004)). Thus, "where the amount in controversy is clearly and unambiguously set forth in good faith on the face of the complaint, that amount should control." *Burdick v. Teal*, No. 1:02-cv-727, 2003 WL 1937118, at *1 (M.D.N.C. Apr. 22, 2003).

The plain language of the Amended Complaint expressly states that the amount in controversy is "under $75,000." (Dkt. No. 11 at 5.) Specifically, Plaintiffs request $18, 233.33 for "property and maintenance payments [made] over the years" and $17,995.00 for the "current value" of the timeshare property, totaling approximately $36,228.33 in damages. (Dkt. No. 11-1 at 1; Dkt. No. 1 at 5.) Consequently, Plaintiffs have failed to show that their claims satisfy the jurisdictional minimum amount. *See Burdick*, 2003 WL 1937118, at *1 (allowing the "complaint [to] speak for itself," and finding no diversity jurisdiction where "the complaint fixe[d] the amount in controversy at an amount below the jurisdictional minimum").

[6] The court may take judicial notice of factual information located in postings on government web sites. *Tisdale v. South Carolina Highway Patrol*, No. 0:09-cv-1009-HFF-PJG, 2009 WL 1491409, at *1 n.1 (D.S.C. May 27, 2009), *aff'd*, 347 F. App'x 965 (4th Cir. Aug. 27, 2009).

C. State Law Claims

If a federal district court has original jurisdiction over a civil action, it shall also have supplemental jurisdiction over any state law claims that are "so related" to the claims under the court's original jurisdiction "that they form part of the same case or controversy." 28 U.S.C. § 1367(a). On the other hand, without original jurisdiction, a federal court generally cannot exercise supplemental jurisdiction over state law claims. *See id.* § 1367(c)(3) (stating that the district court may decline to exercise supplemental jurisdiction over state law claims if it has dismissed all claims over which it has original jurisdiction); *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) (stating that "if the federal claims are dismissed . . . , the state claims should be dismissed as well"); *see also Lovern v. Edwards*, 190 F.3d 648, 655 (4th Cir. 1999) ("[T]he Constitution does not contemplate the federal judiciary deciding issues of state law among non-diverse litigants."). Given that the Amended Complaint fails to allege a valid federal cause of action or complete diversity, the undersigned finds that the Court still lacks subject matter jurisdiction over Plaintiffs' claims in the instant case.

CONCLUSION

In light of the foregoing, the undersigned therefore **RECOMMENDS** that this action be dismissed without prejudice and without issuance and service of process.[7]

[7] "[D]ismissals for lack of jurisdiction should be without prejudice because the court, having determined that it lacks jurisdiction over the action, is incapable of reaching a disposition on the merits of the underlying claims." *See S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013). Additionally, because Plaintiffs had an opportunity to amend their pleading and were warned of the jurisdictional issues in their original Complaint (*see* Dkt. No. 7), the undersigned also recommends that the Court dismiss this action without further leave to amend. *See Workman v. Morrison Healthcare*, 724 F. App'x 280, 281 (4th Cir. June 4, 2018) (explaining that, where the district court has already afforded a plaintiff the opportunity to amend, the district court, in its discretion, can either afford the plaintiff an additional opportunity to file an amended complaint or dismiss the complaint).

IT IS SO RECOMMENDED.

MARY GORDON BAKER
UNITED STATES MAGISTRATE JUDGE

May 25, 2022
Charleston, South Carolina

Plaintiffs' attention is directed to the **important notice** on the next page.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Beatrice Newson and Earl Leon Newsome, Plaintiffs, vs. Festiva Resorts Real Estate Holdings, LLC; Ellington at Wachesaw Plantation East Homeowners Association, Inc.; LaTour Hotels and Resorts, Inc.; Scott Styron; Jeremy Moser; and Kevin Blocker, Defendants.	C/A No.: 2:22-cv-0533 DCN **ORDER**

The above referenced case is before this court upon the magistrate judge's recommendation that the action be dismissed without prejudice and without issuance and service of process.

This court is charged with conducting a de novo review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. Thomas v Arn, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).[1] Objections to the Magistrate Judge's Report and

[1]In Wright v. Collins, 766 F.2d 841 (4th Cir. 1985), the court held "that a pro se litigant must receive fair notification of the consequences of failure to object to a magistrate judge's report before such a procedural default will result in waiver of the right to appeal. The notice

Recommendation were timely filed on June 21, 2021 by plaintiff.

A de novo review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation is **AFFIRMED** and incorporated into this Order. For the reasons articulated by the magistrate judge, this action is **DISMISSED** without prejudice and without issuance and service of process.

AND IT IS SO ORDERED.

David C. Norton
United States District Judge

June 16, 2022
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure

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must be 'sufficiently understandable to one in appellant's circumstances fairly to appraise him of what is required.'" Id. at 846. Plaintiff was advised in a clear manner that his objections had to be filed within ten (10) days, and he received notice of the consequences at the appellate level of his failure to object to the magistrate judge's report.