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UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 22-1955

DELILA UWASOMBA,

Plaintiff - Appellant,

v.

BANK OF AMERICA; MERRILL LYNCH PIERCE
FENNER AND SMITH INC.,

Defendants - Appellees.

Appeal from the United States District Court for the
Eastern District of Virginia, at Richmond. David J.
Novak, District Judge. (3:22-cv-00284-DJN)

Submitted: March 16, 2023 Decided: March 20, 2023

Before WILKINSON, AGEE, and HARRIS, Circuit
Judges.

Affirmed by unpublished per curiam opinion.

Delila Uwasomba, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Delila Uwasomba appeals the district court's order dismissing without prejudice after 28 U.S.C. § 1915 review Uwasomba's amended complaint alleging Virginia claims for fraudulent inducement and equitable estoppel. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *See Uwasomba v. Bank of Am.*, No. 3:22-cv-00284-DJN (E.D. Va. Aug. 22, 2022). 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

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FILED: March 20, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1955
(3:22-cv-00284-DJN)

DELILA UWASOMBA

Plaintiff - Appellant

v.

BANK OF AMERICA; MERRILL LYNCH PIERCE
FENNER AND SMITH INC.

Defendants - Appellees

JUDGMENT

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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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

DELIA UWASOMBA,
Pro se Plaintiff,

v.

BANK OF AMERICA *et al.*,
Defendants.

Civil No.
3:22cv284 (DJN)

MEMORANDUM ORDER
(Dismissing Case)

(Filed Aug. 22, 2022)

This matter comes before the Court on *pro se* Plaintiff Delia Uwasomba's Amended Complaint ("Amended Complaint"). (ECF No. 3.) For the reasons set forth below, the Court hereby **DISMISSES WITHOUT PREJUDICE** Plaintiff's Complaint pursuant to 28 U.S.C. § 1915.

I. STANDARD OF REVIEW

Congress enacted the federal IFP statute, in part, not only to help indigent litigants have meaningful access to the federal courts, but also to help district courts avoid the burden of baseless litigation, the cost of which the public bears. *Neitzke v. Williams*, 490 U.S. 319, 324 (1989). Per that statute, district courts have the authority to review and dismiss a complaint prior to filing or any time thereafter. *See* 28 U.S.C. § 1915(e)(2) (giving the court authority to "dismiss the

case at any time”); *Neitzke*, 490 U.S. at 324 (stating that courts often dismiss cases under § 1915 “*sua sponte* . . . to spare prospective defendants the inconvenience and expense of answering complaints”). Indeed, the statute mandates that the court “shall dismiss the case at any time” if it makes a determination that:

- (A) the allegation of poverty is untrue; or
- (B) the action or appeal –
 - (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).

Of course, the Court affords *pro se* complaints a liberal construction. *Laber v. Harvey*, 438 F.3d 404, 413 n.3 (4th Cir. 2006) (citing *Hemphill v. Melton*, 551 F.2d 589, 590-91 (4th Cir. 1977)). However, the Court need not attempt “to discern the unexpressed interest of the plaintiff.” *Id.* Nor does the requirement of liberal construction excuse a clear failure in the pleading to allege a federally cognizable claim. See *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990) (affirming dismissal of certain claims brought by *pro se* plaintiff despite liberal construction). As the Fourth Circuit explained, “[t]hough [*pro se*] litigants cannot, of course, be expected to frame legal issues with the clarity and precision ideally evident in the work of those trained

in law, neither can district courts be required to conjure up and decide issues never fairly presented to them.” *Beaudett v. City of Hampton*, 775 F.2d 1274, 1276 (4th Cir. 1985). Even with this liberal construction, the Court finds that it must dismiss Plaintiff’s Amended Complaint for failing to state a claim.

II. BACKGROUND

Here, Plaintiff’s Amended Complaint alleges that, on December 2, 2016, Plaintiff completed a skill assessment, interview and background check for a position, presumably with Defendant Merrill Lynch. (Am. Compl. at 1.) Plaintiff’s hiring manager, Zach Vie (“Vie”), informed her that she had cleared her background check, and that her start date would be December 5, 2016. (Am. Compl. at 1.) Shortly after speaking to Vie, Plaintiff resigned from her position at Wells Fargo. (Am. Compl. at 1.) Another individual, Susie Madden (“Madden”), then informed Plaintiff that her background check remained pending, and that her start date would be pushed back to December 6, 2016. (Am. Compl. at 1.) She alleges that “[i]n reliance of these conversations, [she] proceeded to relocate to Maryland from Virginia.” (Am. Compl. at 1.) A few days later, she learned that “there was a mistake and that [she] didn’t meet the requirement[s] to work for a bank.” (Am. Compl. at 1.) Based on the above allegations, Plaintiff asserts claims of fraudulent inducement under Va. Code Ann. § 18.2-216 (Count One) and “equitable estoppel” (Count Two), and seeks damages of \$2,850,000. (Am. Compl. at 1-2.)

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On April 20, 2022, Plaintiff filed her Motion for Leave to Proceed *in Forma Pauperis* and original Complaint. (ECF No. 1.) On May 11, 2022, the Court provisionally granted Plaintiff *in forma pauperis* status and ordered her to file a particularized complaint. (ECF No. 2.) Plaintiff filed an Amended Complaint on May 26, 2022. (ECF No. 4.) As the Court stated in its May 11, 2021 Order, Plaintiff's Amended Complaint constitutes the operative complaint in the case. (Order at 2). The Court now dismisses Plaintiff's Amended Complaint on its own initiative.¹

¹ It appears that Plaintiff has already sued Defendant based on the same facts in the District of Maryland. *Uwasomba v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 2020 WL 1529162 (D. Md. Mar. 31, 2020). In that case, Plaintiff alleged that, in November 2016, Defendant made her a job offer, conditioned on her passing the background check. *Id.* at *1. Madden informed her that she should not resign from her current position until Defendant informed her that she had passed the background check. *Id.* Vie mistakenly told Defendant that she was cleared to begin work, but the same day, Madden informed Plaintiff that her background check remained pending. *Id.* at *2. Defendant ultimately revoked her offer, because her background check revealed that she had been convicted of petit larceny. *Id.* at *2-3. Plaintiff asserted various discrimination claims against Defendant based on these allegations. *Id.* at *1.

In light of this prior case, Plaintiff's claims here may be barred under the doctrine of claim preclusion. This doctrine "bars the relitigation of claims that were raised or could have been raised in the prior litigation." *Pittston Co. v. United States*, 199 F.3d 694, 704 (4th Cir. 1999). Essentially, it prevents litigation of "all grounds for . . . recovery that were previously made available to the parties, regardless of whether they were asserted or determined in the prior proceeding." *Meekins v. United Transp. Union*, 946 F.2d 1054, 1057 (4th Cir. 1991). A finding of claim preclusion, permitting dismissal, requires that: 1) the prior judgment be final

III. ANALYSIS

The Court will dismiss Plaintiff's Amended Complaint for failure to state a claim. Count One, fraudulent inducement, seeks to bring a claim under the Virginia statute that criminalizes untrue, deceptive or misleading advertising, inducements, writings or documents. (Am. Compl. at 2 (citing Va. Code Ann. § 18.2-216).) As a criminal statute, this provision does not confer a standalone right of action that would allow a private citizen to bring suit to enforce it. *See Hilgeford v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 2009 WL 302161, at *4 (E.D. Va. Feb. 6, 2009) (finding that criminal statutes do not provide a standalone civil cause of action).

Moreover, even construing Count One liberally as a civil claim for fraud, Plaintiff's claim fails. To state a claim for fraud under Virginia law, Plaintiffs must show: "(1) a false representation, (2) of a material fact, (3) made intentionally and knowingly, (4) with intent to mislead, (5) reliance by the party misled, and (6) resulting damage to the party misled." *Richmond Metro.*

and on the merits, and rendered by a court of competent jurisdiction; 2) the parties be identical, or in privity, in both actions; and 3) the claims in the second matter be based upon the same nucleus of operative facts involved in the earlier proceeding. *Pittston*, 199 F.3d at 704 (quotation marks and citations omitted). In the previous case, the District of Maryland granted summary judgment in favor of Defendant, and the parties were identical to the ones here. *Id.* at *7. Further, as far as the Court can discern, that case arose from the same facts as here. *Id.* at *1-3. Thus, Plaintiff's claims may be precluded, and the Court could dismiss the Complaint on that ground. Nonetheless, out of an abundance of caution, the Court will address the merits of Plaintiff's claims.

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Auth. v. McDevitt St. Bovis, 507 S.E.2d 344, 346 (Va. 1998). When alleging a fraud claim, a party must meet the heightened pleading standard of Federal Rule of Civil Procedure 9(b), and “state with particularity the circumstances constituting fraud or mistake.” However, a plaintiff may generally allege conditions of an individual’s mind, including “[m]alice, intent, [and] knowledge.” Fed. R. Civ. P. 9(b).

Virginia has a two-year statute of limitations for fraud claims.² Va. Code Ann. § 8.01243(A). A plaintiff bears the burden “to prove that he acted with due diligence and yet did not discover the fraud or mistake until within the statutory period of limitation immediately preceding the commencement of the action.” *Va. Imports, Inc. v. Kirin Brewery of Am., LLC*, 296 F. Supp. 2d 691, 699 (E.D. Va. 2003) (citing *Hughes v. Foley*, 128 S.E.2d 261, 263 (Va. 1962)). Due diligence constitutes “[s]uch a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.” *STB Mktg. Corp. v. Zolfaghari*, 393 S.E.2d 394, 397 (Va. 1990) (citation omitted).

Plaintiff appears to allege that the events giving rise to her fraud claim took place in or around

² Although the statute of limitations generally constitutes an affirmative defense, the Court may consider the timeliness of Plaintiff’s Amended Complaint at the pleadings stage, because “the time bar is apparent on the face of the complaint.” *Dean v. Pilgrim’s Pride Corp.*, 395 F.3d 471, 474 (4th Cir. 2005).

December 2016, nearly six years ago and several years outside the statute of limitations. (Am. Compl. at 1.) At the latest, she should have known that Defendant did not intend to follow through on its alleged promise of employment by December 6, 2016, the date that she was supposed to begin working there, had she passed the background check. (Am. Compl. at 1.) As such, the Court could dismiss this claim as time barred.

Still, even if she had timely brought this claim, Plaintiff's allegations do not give rise to a fraud claim. For instance, Plaintiff has not adequately alleged facts demonstrating reasonable reliance on the statements of Defendant's hiring managers. Specifically, Plaintiff moved from Virginia to Maryland, even though Madden clearly informed Plaintiff that she had not yet passed the required background check. (Am. Compl. at 1.) Plaintiff may have relied on Madden's statement that she could start with Defendant on December 6, 2016, on the condition that she pass her background check, but her allegations do not indicate that this reliance was reasonable. Consequently, this claim fails.

Additionally, Count Two for "equitable estoppel" also fails. The doctrine of equitable estoppel "bars a statute of limitations defense by a defendant who, by his own conduct, lulls another into a false security." *Datastaff Tech. Group, Inc. v. Centex Const. Co.*, 528 F.Supp.2d 587, 593 (E.D. Va. 2007). A plaintiff asserting equitable estoppel must prove the following elements:

(1) A material fact was falsely represented or concealed; (2) The representation or concealment was made with knowledge of the fact; (3) The party to whom the representation was made was ignorant of the truth of the matter; (4) The representation was made with the intention that the other party should act upon it; (5) The other party was induced to act upon it; and (6) The party claiming estoppel was misled to his injury.

Lamers v. Organizational Strategies, Inc., 2008 WL 779516, at *2 (E.D. Va. Mar. 24, 2008) (quoting *Boykins v. Narrow Fabrics Corp. v. Weldon Roofing & Sheet Metal, Inc.*, 266 S.E.2d 887, 890 (Va. 1980)). “[A] plaintiff must show that his reliance on the defendant’s misrepresentations was *reasonable*.” *Id.* (citing *Tuomala v. Regent Univ.*, 477 S.E.2d 501, 506 (Va. 1996)). The Court construes Count Two to mean that Plaintiff seeks to avoid the statute of limitations on her fraud claim due to the alleged misconduct of Defendant. As discussed above, this argument fails, as her allegations do not demonstrate reasonable reliance on the statements of Defendant’s employees.

IV. CONCLUSION

For the reasons stated above, pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court hereby DISMISSES WITHOUT PREJUDICE Plaintiff’s Amended Complaint (ECF No. 3) against Defendants.

Furthermore, the Court certifies that an appeal *in forma pauperis* would not be taken in good faith

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pursuant to 28 U.S.C. § 1915(a)(3). The Court hereby notifies Plaintiff that should she wish to appeal this Memorandum Order, written notice of the appeal must be filed within thirty (30) days of entry hereof. Failure to file a notice of appeal within the stated period may result in the loss of the right to appeal.

This case is now CLOSED.

Let the Clerk file a copy of this Memorandum Order electronically, notify all counsel of record and forward a copy to Plaintiff at her address of record.

It is so ORDERED.

/s/ [DV]
David J. Novak
United States District Judge

Richmond, Virginia

Date: August [22], 2022

App. 13

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

DELIA UWASOMBA,
Pro se Plaintiff,

Civil No.
3:22cv284 (DJN)

v.

BANK OF AMERICA *et al.*,
Defendants.

ORDER

**(Granting Leave to Proceed *In Forma Pauperis*
and Ordering Particularized Complaint)**

(Filed May 11, 2022)

This matter comes before the Court on *pro se* Plaintiff Delila Uwasombelfs (“Plaintiff”) Motion for Leave to Proceed *in forma pauperis* (ECF No. 1) and Complaint (ECF No. 1-1). The Court finds Plaintiff qualified to proceed *in forma pauperis* and, therefore, the Court hereby GRANTS the Motion for Leave to Proceed *in forma pauperis*.

The Court has reviewed the Complaint and finds that it does not satisfy Federal Rule of Civil Procedure 8, which requires a short and plain statement of the grounds for this Court’s jurisdiction and a short and plain statement of the claims showing that a plaintiff is entitled to relief. Accordingly, it is hereby ORDERED that, within twenty-one (21) days of this Order, Plaintiff shall file a particularized amended complaint that outlines in simple and straightforward terms why Plaintiff thinks that she is entitled to relief and why

the Court has jurisdiction over this case, pursuant to Federal Rule of Civil Procedure 8(a)(1) and (2). The particularized amended complaint must be legible and preferably created using a word processing software program, such as Microsoft Word.

The particularized amended complaint SHALL COMPLY with the following directions:

1. The caption of the particularized amended complaint must identify it as the "Amended Complaint for Civil Action No. 3:22cv284."
2. The first paragraph of the particularized amended complaint must contain a list of the defendant(s). Thereafter, in the body of the particularized amended complaint, Plaintiff must set forth legibly, in separately numbered paragraphs, a short statement of the facts giving rise to his claims for relief. Thereafter, in separately captioned sections as "Count One," "Count Two," etc., Plaintiff must clearly identify each federal or state law allegedly violated. Under each section, Plaintiff must list each defendant purportedly liable under that legal theory and explain why he believes each defendant is liable to her. Such explanation should reference the specific numbered factual paragraphs in the body of the particularized amended complaint that support that assertion.
3. Plaintiff should also include the relief that she seeks. If she seeks money damages, Plaintiff should include the dollar amount of damages.

If Plaintiff seeks injunctive relief, she should state what she would like the injunction to do.

4. The particularized amended complaint must stand or fall on its own accord. Plaintiff may not reference statements in the prior Complaint (ECF No. 1-1).
5. The particularized amended complaint must omit any unnecessary incorporation of factual allegations for particular claims and any claim against any defendant that is not well-grounded in the law and fact. *See Sewraz v. Guice*, 2008 WL 3926443, at *2 (E.D. Va. Aug. 26, 2008).

Once filed, the particularized amended complaint will become the operative complaint in this case.

The failure to strictly comply with the Court's directive and with applicable rules will result in DISMISSAL of this action for failure to prosecute under Federal Rule of Civil Procedure 41(b).

Let the Clerk file a copy of this Order electronically, notify all counsel of record and send a copy to Plaintiff at her address of record.

It is so ORDERED.

_____/s/ [DV]
David J. Novak
United States District Judge

Richmond, Virginia
Dated: May 11, 2022

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FILED: April 17, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1955
(3:22-cv-00284-DJN)

DELILA UWASOMBA

Plaintiff - Appellant

v.

BANK OF AMERICA; MERRILL LYNCH PIERCE
FENNER AND SMITH INC.

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 Wilkinson, Judge Agee, and Judge Harris.

For the Court

/s/ Patricia S. Connor, Clerk

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Voicemail Recording Transcript

Below is the voicemail transcript left by the hiring manager Zach Vie. The first initial call to provide start date instruction went to the voicemail message below:

“Hello, this is Zachary, I’m the new hiring manager over at Merrill Edge trying to get a hold of Delila. I’m just calling to go over some stuff before you start on Monday. Um, so definitely give me a call if you have any questions. My phone number is 443.541.2707 and again my number is 44.541.2707”.

We did communicate shortly afterwards, where I confirmed my start date of December 5th.
