

OPINION /APPELLATE COURT ORDER

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

For the Seventh Circuit
Chicago, Illinois 60604

October. 13, 2022

Before:

Amy J. St. Eve, *Circuit Judge*
Thomas L. Kirsch II, *Circuit Judge*
Candace Jackson-Akiwumi, *Circuit Judge*

GEORGE TOLBERT,
Plaintiff-Appellant,

No. 22-2033 v.

NATIONSTAR MORTGAGE, LLC, d/b/a
Mr. Cooper,
Defendant-Appellee.

] Appeal from the United
] States District Court for
] the Northern District of
] Illinois, Eastern Division.
]
] No. 1:21-cv-06922
]
] Mary M. Rowland,
] Judge.

ORDER

On consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

The order appealed from is not a final appealable judgment within the meaning of 28 U.S.C. § 1291. In its order of May 31, 2022 - the order appellant Tolbert appeals - the district court explicitly stated that "Plaintiffs Complaint may proceed." There was clearly no final determination of plaintiff George Tolbert's claims at the time plaintiff Tolbert filed his notice of appeal, and no other basis to exercise appellate jurisdiction is apparent.

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GEORGE TOLBERT

Plaintiff,

v.

NATIONSTAR MORTGAGE LLC
d/b/a MR. COOPER¹,

Defendant.

No. 21-cv-06922

Judge Mary M. Rowland

ORDER

Pending before the Court are Plaintiff George Tolbert's amended application to proceed *in forma pauperis* ("IFP") [9] and Complaint for initial review under 29 U.S.C. § 1915A, along with several motions. [7] [12] [19] [20] and [26]. Plaintiff's Motion to Proceed *in Forma Pauperis* [9] is granted. Plaintiff's Complaint may proceed. However, the Complaint is dismissed in part. The Clerk is directed to accept and file only the Complaint filed on April 6, 2022.² [23] Plaintiff's motions to vacate the state court's default judgment are denied. [19] [26] Plaintiff's Emergency Motion to Stay Conformation [sic] of Sale and Vacate Judgment is denied. [20] The Clerk is directed to strike docket entries [7], [11] and [12] as pending motions. The Clerk is directed to issue a summons for service of the Complaint on the defendant. The

¹ Tolbert incorrectly spells Nationstar as "Nationstarr" throughout his complaint. Further, Nationstar was renamed as "Mr. Cooper" in 2018. The Clerk is directed to substitute the Defendant in accordance with this case caption.

² Tolbert filed another Amended Complaint on May 29, 2022. It purports to bring a class action RICO claim against Nationstar. The Court strikes this Amended Complaint as nonsensical.

United States Marshal's Service is appointed to serve the defendant. The Court advises Plaintiff that a completed USM-285 form is required to serve the defendant. Plaintiff will not be required to pay a fee to the Marshal's Service for service. The Clerk is directed to provide a USM-285 form to Plaintiff with a copy of this order. The Marshal's Service will not attempt service on the defendant unless and until the required form is completed and returned. Therefore, Plaintiff must correctly complete a service form and return the form to the Clerk of Court by **June 30, 2022**. If Plaintiff fails to do so this case may be dismissed for failure to follow a court order and failure to prosecute.

The Marshal is authorized to mail a request for waiver service to the defendant in the manner prescribed by Fed. R. Civ. P. 4(d)(2) before attempting personal service.

A. Tolbert's Application to Proceed IFP

Tolbert's application to proceed IFP is granted. His application shows that Tolbert is currently disabled and unemployed with minimal savings. Dkt. 9 at 1. Further, Tolbert's application shows that he receives less than \$14,000 a year in income from pensions and disability *Id.* This Court considers the federal poverty guidelines as instructive—although by no means determinative—in determining whether a plaintiff should be granted IFP status. Tolbert's income falls considerably below the poverty guideline, showing indigency. Therefore, Tolbert's application to proceed IFP [9] is granted.

B. Initial Review of Tolbert's Complaint

Because Tolbert is proceeding IFP, the Complaint is governed by 28 U.S.C. § 1915(e)(2)(B), which requires the dismissal of (1) “frivolous” claims, § 1915(e)(2)(B)(i), *see Vey v. Clinton*, 520 U.S. 937, 937 (1997); (2) complaints that fail to state a claim, § 1915(e)(2)(B)(ii), *Jaros v. IDOC*, 684 F.3d 667, 669 n.1 (7th Cir. 2012); *Rowe v. Shake*, 196 F.3d 778, 783 (7th Cir. 1999); and (3) complaints that seek monetary damages against a defendant who is immune from such damages, § 1915(e)(2)(B)(iii). Section 1915(e)(2) applies to all litigants who seek to proceed IFP. *See Vey*, 520 U.S. at 937 (denying IFP status to file certiorari petition from appeal and applying § 1915(e)(2)(B)(i) to non-inmate); *Jaros*, 684 F.3d at 669 n.1 (explaining that § 1915(e)(2) screening applies to non-prisoner suits); *Rowe*, 196 F.3d at 783.

In addressing any *pro se* litigant’s complaint, the Court must construe the complaint expansively. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). If there is an arguable basis for a claim in fact or law, then leave to proceed will be granted. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). But dismissal of the complaint is the proper course where it is clearly baseless or fanciful, *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992), or fails to state a claim, or seeks monetary damages against a defendant who is immune from such damages. § 1915(e)(2)(B)(ii)-(iii).

Finally, a complaint must include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The short and plain statement must “give the defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). The statement also must contain sufficient factual matter,

accepted as true, to “state a claim to relief that is plausible on its face,” which means that the pleaded facts must show there is “more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Courts also must “accept all well-pleaded facts as true and draw reasonable inference in the plaintiff’s favor.” *Roberts v. City of Chicago*, 817 F.3d 561, 564 (7th Cir. 2016).

Screening Tolbert’s Complaint is extremely challenging. At the time of this order, Tolbert has filed seven distinct complaints in this case, all before the Court has screened his initial amended complaint. *See* Dkts. 10, 15, 16, and 23. This case stems from extensive state court litigation regarding a foreclosure action on his home. This Court previously dismissed his initial complaint (Dkt. 1) for lack of subject matter jurisdiction and gave Tolbert leave to amend. Dkt. 6. In review of his initial motion for a temporary injunction this Court finds that two of Tolbert’s additional motions for temporary injunctions are substantively additional complaints, not motions, and the Court acknowledges them as such. *See* Dkts. 7, 12. Each filed complaint alleges various and different claims against Nationstar.

However, a complaint must stand on its own. *Flannery v. Recording Indus. Ass’n of Am.*, 354 F.3d 632, 638 n. 1 (7th Cir. 2004) (holding that because an amended complaint supersedes an original complaint, any amended complaint must stand on its own without other filings or supplements to support it). The Court will not accept piecemeal amendments to the original complaint and therefore only reviews the complaint under Docket Entry No. 23.

From what the Court can discern, Defendant Nationstar is a mortgage company that, at some point, held the mortgage on Tolbert's property in Chicago, Illinois. Dkt. 23 at ¶ 1. He brings two claims against Nationstar alleging (1) violation of the Residential Mortgage Lending Act (RMLA) under Ohio law R.C. 1322.01 (2) violation of "CFR 1024.35(e) and 12 U.S.C. 2605(e) and (k)." *Id.* at 8, 11.

Ohio law provides a private right of action under R.C. 1322 in limited circumstances, which Tolbert relies on in his second claim. OHIO CONSUMER L. §24:20 ("Buyers have a private right of action under R.C. 1322.11" and other parts of the act). However, Tolbert's claim faces a roadblock. He does not plead that he, his property, or Nationstar are located in Ohio. Specifically, Tolbert states that he lives in Illinois (Dkt. 1 at ¶ 2), the property at issue is located in Illinois (*Id.* at ¶ 1), and Nationstar is organized under the laws of Illinois with its principal place of business in Illinois. *Id.* at ¶ 4. He also states that Nationstar has another principal place of business in Texas. *Id.* at ¶ 4. Without any ties to Ohio, this Court sees no basis to apply Ohio law to conduct that Tolbert alleges took place in Illinois. Therefore, this claim is dismissed with prejudice.

Tolbert's second claim comes under 12 U.S.C. § 2605(e) and (k), the Real Estate Settlement Procedures Act (RESPA).³ Tolbert alleges that he sent a Notice of Error (NOE) letter to Nationstar because they "failed to properly accept and/or apply payments to the loan and imposed fees against the loan for which it had no reasonable basic [sic]." Dkt. 23 at ¶ 56. He further alleges that Nationstar failed to timely

³ To clarify, Tolbert also cites 12 CFR § 1024.35 as the basis for his claim. 12 U.S.C. § 2605 is the corresponding statute to 12 CFR § 1024.35, and therefore it is only one cause of action.

respond to the NOE in violation of RESPA. RESPA does provide a private right of action for borrowers. *Catalan v. GMAC Mortg. Corp.*, 629 F.3d 676, 685 (7th Cir. 2011). Read most liberally, but without making a determination on the merits, Tolbert may move forward with his claim against Nationstar for violation of RESPA.

C. Tolbert's remaining motions

The Court next considers Tolbert's pending motions. [7] [12] [19] [20] and [26]. Tolbert purports to file two motions for temporary injunctions. *See* Dkts. 7, 12. Upon review, this Court interpreted the first motion as Tolbert's First Amended Complaint. Dkt. 8. ("On January 18, 2022, Plaintiff filed a "motion for temporary injunction and other relief. After review, this appears to be Plaintiff's amended complaint."). The second motion, Dkt. 12, is near identical to the first. Therefore, the Court also construes this as another amended complaint that does not require a ruling.

Next, Tolbert brings both an "emergency motion to stay conformation [sic] of sale" and two motions to vacate a state court's default judgment ruling. *See* Dkts. 19, 20, and 26. All three motions are requests for this Court to overturn or stay rulings from the Circuit Court of Cook County, Illinois. The first motion (Dkt. 19) is difficult to comprehend. While it is presented as a motion to vacate the state court's decision, it is at points labeled as a motion to dismiss. *See* Dkt. 19 at 6. (moving to vacate the state court judgment because "defendant misrepresented the true owner of the property mortgage," but also discussing the standard for a motion to dismiss for lack of subject matter jurisdiction).

The second motion comes under Illinois Supreme Court Rule 305(d). Dkt. 20. Federal courts do not have jurisdiction to provide relief under a state court supreme court rule nor to overturn a state court decision. Tolbert's claims are barred by the *Rooker-Feldman* doctrine. Under *Rooker-Feldman*, it is well-settled that federal courts, except for the United States Supreme Court, lack jurisdiction to upset the judgments of state courts. *Taylor v. Fed. Nat. Mortg. Ass'n*, 374 F.3d 529, 532 (7th Cir. 2004) ("Claims that directly seek to set aside a state court judgment are *de facto* appeals and are barred."). Tolbert cannot attack the state court proceedings in this Court.

The third motion is near incomprehensible. Dkt. 26. It seemingly requests for this court to vacate the state court's judgment of foreclosure on "summary judgment" which faces the same issue as motions discussed previously. Again, this Court is without authority to overturn a state court decision. See *Taylor*, 374 F.3d at 533-34 (holding that requesting recovery of the home is tantamount to requesting the federal court vacate the state court judgment foreclosure actions, which is barred by *Rooker-Feldman*).

Rule 11 Sanctions

Plaintiff is also reminded about Federal Rule of Civil Procedure 11. Rule 11 imposes an affirmative obligation on all parties to "conduct a reasonable inquiry into the legal and factual basis of a filing before presenting it to the court." *Lerch v. Boyer*, 929 F. Supp. 319 (N.D. Ind. 1996). *Pro se* litigants are not spared from this rule. See *Vukadinovich v. McCarthy*, 901 F.2d 1439, 1445 (7th Cir.1990), *cert. denied sub nom.*

Vukadinovich v. Krawczyk, 498 U.S. 1050 (1991) (“Status as a pro se litigant may be taken into account, but sanctions can be imposed for any suit that is frivolous.”). The Court expects Plaintiff to comply with this and other Federal Rules of Civil Procedure moving forward.

CONCLUSION

For the reasons stated, Plaintiff George Tolbert’s Motion to Proceed *in Forma Pauperis* [9] is granted. Plaintiff’s Complaint may proceed. The Clerk is directed to accept and file **only** the Complaint filed on April 6, 2022. [23] Plaintiff’s motions to vacate the state court’s default judgment are denied. [19] [26] Plaintiff’s Emergency Motion to Stay Conformation [sic] of Sale and Vacate Judgment is denied. [20] The Clerk is directed to strike docket entries [7], [11] and [12] as pending motions. The Clerk is also directed to rename the defendant as “Nationstar d/b/a Mr. Cooper.”

The Clerk is directed to issue a summons for service of the complaint (Dkt. 23) on the defendant. The United States Marshal’s Service is appointed to serve the defendant. The Court advises Plaintiff that a completed USM-285 form is required to serve the defendant. Plaintiff will not be required to pay a fee to the Marshal’s Service for service. The Clerk is directed to provide a USM-285 form to Plaintiff with a copy of this order. The Marshal’s Service will not attempt service on the defendant unless and until the required form is completed and returned. Therefore, Plaintiff must correctly complete a service form and return the form to the Clerk of Court by June 30, 2022. If plaintiff fails to do so this case may be dismissed for failure to follow a court order and failure to prosecute.

The Marshal is authorized to mail a request for waiver service to the defendant in the manner prescribed by Fed. R. Civ. P. 4(d)(2) before attempting personal service.

E N T E R:

Dated: May 31, 2022



MARY M. ROWLAND
United States District Judge

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