

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 28 2024

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

EDDIE TURNER,

Plaintiff - Appellant,

v.

DOJ - UNITED STATES DEPARTMENT
OF JUSTICE, Office of
Administration and CALIFORNIA
DEPARTMENT OF JUSTICE, Office of
the Attorney General,

Defendants - Appellees.

No. 24-2465

D.C. No.

2:23-cv-09026-AB-KS

Central District of California,
Los Angeles

ORDER

Before: SCHROEDER, M. SMITH, and HURWITZ, Circuit Judges.

Upon a review of the record and the response to the court's June 17, 2024 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 5), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

APPENDIX B:4

X

If the court dismisses the appeal as frivolous, this appeal may be counted as a strike under 28 U.S.C. § 1915(g).

If appellant does not respond to this order, the court may dismiss this appeal without further notice.

Briefing is stayed.

The Clerk will serve on appellant: (1) a form motion to voluntarily dismiss the appeal, and (2) a form statement that the appeal should go forward.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Eddie Turner,

PLAINTIFF(S)

v.

U.S. Department of Justice Office of Administration, et al.,

DEFENDANT(S)

CASE NUMBER

2:23-cv-09026-AB-KS

ORDER ON REQUEST TO PROCEED
IN FORMA PAUPERIS
(NON-PRISONER CASE)

The Court has reviewed the Request to Proceed *In Forma Pauperis* (the "Request") and the documents submitted with it. On the question of indigency, the Court finds that the party who filed the Request:

- ☒ is not able to pay the filing fees. ☐ is able to pay the filing fees.
☐ has not submitted enough information for the Court to tell if the filer is able to pay the filing fees. This is what is missing:

NOT ABLE TO PAY NOTED

IT IS THEREFORE ORDERED that:

- ☐ The Request is GRANTED.
☐ Ruling on the Request is POSTPONED for 30 days so that the filer may provide additional information.
☐ The Request is DENIED because the filer has the ability to pay.
☒ As explained in the attached statement, the Request is DENIED because:
☒ The District Court lacks ☒ subject matter jurisdiction ☐ removal jurisdiction.
☐ The action is frivolous or malicious.
☐ The action fails to state a claim upon which relief may be granted.
☐ The action seeks monetary relief against defendant(s) immune from such relief.

REASONS UNCHECKED

IT IS FURTHER ORDERED that:

- ☐ Within 30 days of the date of this Order, the filer must do the following:

If the filer does not comply with these instructions within 30 days, this case will be DISMISSED without prejudice.

- ☒ As explained in the attached statement, because it is absolutely clear that the deficiencies in the complaint cannot be cured by amendment, this case is hereby DISMISSED ☒ WITHOUT PREJUDICE ☐ WITH PREJUDICE.
☐ This case is REMANDED to state court as explained in the attached statement.

October 31, 2023

Date

United States District Judge

On October 25, 2023, Plaintiff filed a Complaint and a Request to Proceed In Forma Pauperis. (ECF Nos. 1, 3.) In 2016, Plaintiff was convicted of crimes that involved providing false employment and financial information to obtain real estate loans in 2005 and refinance loans in 2007, and he was sentenced to eight years and eight months in state prison. *Turner v. Diaz*, Case No. 20-830 AB (KS), 2021 WL 2458679, at *1, *2 (C.D. Cal. Apr. 1, 2021). In the instant Complaint, Plaintiff alleges that the 2007 deed of trust recorded against the property was “forged or fraudulent” and “void,” according to the jury’s verdict. (ECF No. 1 at 4.) It allegedly follows that Plaintiff, the purchaser of the property in 2005, now has “superior title to the property” (id. at 5) and that his property has been foreclosed upon unlawfully under a “void” deed of trust (id. at 9). Plaintiff seeks an “alternative writ of mandate” under California law that declares the 2007 deed of trust void and that cancels the foreclosure. (Id. at 10.)

“A party invoking the federal court’s jurisdiction has the burden of proving the actual existence of subject matter jurisdiction.” *Thompson v. McCombe*, 99 F.3d 352, 353 (9th Cir. 1996) (per curiam). For the following reasons, Plaintiff has not proven that this action arises “under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

First, a claim of “superiority of title” does not raise a federal question. *Yokeno v. Mafnas*, 973 F.2d 803, 808 (9th Cir. 1992). Indeed, Plaintiff seeks a writ of mandate under state law (ECF No. 1 at 6-7), which does not raise a federal question. *Negrete v. City of Oakland*, 46 F.4th 811, 817 (9th Cir. 2002) (holding that a federal court lacks jurisdiction to review a state law cause of action for a writ of mandate under California law). Although Plaintiff does allege, without specifics, an “equal protection” violation (ECF No. 1 at 14), this is not enough to raise a federal question. *Hoye v. Sullivan*, 985 F.2d 990, 991-92 (9th Cir. 1992) (“A constitutional claim is not colorable if it clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction[.]”) (citation omitted).

Second, the Defendants are immune from suit. *Balser v. Department of Justice, Office of U.S. Trustee*, 327 F.3d 903, 907 (9th Cir. 2003) (United States Department of Justice); *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 124-25 (1984) (Eleventh Amendment bars suits in federal court against states on the basis of violations of state law).

Third, the Court lacks subject matter jurisdiction to review any state court judgment regarding the disposition of the property. *Henrichs v. Valley View Development*, 474 F.3d 609, 616 (9th Cir. 2007) (holding that the Rooker-Feldman doctrine barred a claim of legal injuries arising from a state court’s purportedly erroneous judgment involving real property).

For these reasons, the Complaint is dismissed for lack of jurisdiction.

Finally, the Court has no power to grant leave to amend. “Subject matter jurisdiction must exist as of the time the action is commenced.” *Morongo Band of Mission Indians v. Cal. St. Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir.1988). “[T]he defect in the present case is one of substance -- the case does not arise under federal law. The district court, therefore, ha[s] no power to grant [Plaintiff] leave to amend [his] complaint.” Id. at 1380 n.3; see also *Orff v. United States*, 358 F.3d 1137, 1149 (9th Cir.2004) (“If jurisdiction is lacking at the outset, the district court has no power to do anything with the case except dismiss.”). Accordingly, the Complaint is dismissed without leave to amend, but without prejudice to Plaintiff raising his claims in state court. *Frigard v. United States*, 862 F.2d 201, 203 (9th Cir. 1988) (“Ordinarily, a case dismissed for lack of subject matter jurisdiction should be dismissed without prejudice so that a plaintiff may reassert his claims in a competent court.”).

(attach additional pages if necessary)

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