IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:24-CV-217-M-BM

MARQUITA HAGINS, Plaintiff, v. CARRINGTON MORTGAGE LLC, et al., Defendants.	)	**ORDER and MEMORANDUM AND RECOMMENDATION**

This pro se case is before the court on the amended application [DE-6] by plaintiff Marquita Hagins ("plaintiff") to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a)(1) and for a frivolity review pursuant to 28 U.S.C. § 1915(e)(2)(B). These matters were referred to the undersigned magistrate judge, pursuant to 28 U.S.C. § 636(b)(1).

On April 16, 2024, the court issued an order [DE-3] noting the following deficiencies in plaintiff's initial case filing: (i) the application to proceed *in forma pauperis* should be completed on the long form; (ii) a financial disclosure statement was not completed and filed; (iii) a civil cover sheet was not completed and filed; (iv) a notice of self-representation was not completed and filed; and (v) and proposed summonses were not completed and filed. Plaintiff was directed to correct those deficiencies by completing and filing (i) the correct application to proceed *in forma pauperis* on the long form; (ii) a financial disclosure statement; (iii) a civil cover sheet; (iv) a notice of self-representation; and (v) and proposed summonses no later than May 1, 2024. [DE-3] at 1-2. Plaintiff was warned that "[f]ailure by plaintiff to file an amended *in forma pauperis* application and amended proposed complaint by May 1, 2024, may result in the dismissal of this action without prejudice for failure to prosecute." [DE-3] at 2.

On May 7, 2024, plaintiff filed a civil cover sheet [DE-4]; a financial disclosure statement [DE-5]; an amended application to proceed *in forma pauperis* [DE-6]; a notice of self-representation [DE-7]; and a proposed summons [DE-8]. On the same day, the court provided a notice of deficiency with respect to the proposed summons, noting that "[t]he U.S. Marshal will be unable to effect service upon defendant due to insufficient address information included on the summons." Docket Entry May 7, 2024. On May 13, 2024, plaintiff filed a proof of service, indicating that she had mailed a summons to Carrington Mortgage LLC. [DE-9].

For the reasons discussed below, the amended application to proceed *in forma pauperis* [DE-6] will be ALLOWED for the limited purpose of the instant frivolity review. However, for the reasons set forth below, it is RECOMMENDED that plaintiff's complaint [DE-1] be DISMISSED WITHOUT PREJUDICE.

ORDER ON *IN FORMA PAUPERIS* MOTION

To qualify for *in forma pauperis* status, a person must show that she "cannot because of [her] poverty pay or give security for the costs . . . and still be able to provide [her]self and dependents with the necessities of life." *See Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948) (internal quotation marks omitted). Plaintiff's amended application to proceed *in forma pauperis* is deficient in that, while she lists $400 in monthly income from self-employment during the past twelve months ([DE-6] at 1), she does not list any expenses (*id.* at 4-5) and does not otherwise complete the majority of the application. The instruction box on the application form provides, "[d]o not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response." [DE-6] at 1.

However, "[i]n the interest of judicial economy and in the court's broad discretion to

manage its docket," *Mid Atl. Rest. Corp. v. Gumby 1105, Inc.*, No. 5:20-CV-00472-M, 2021 WL 3687029, at *5 (E.D.N.C. Aug. 19, 2021), the court will ALLOW plaintiff's amended application to proceed *in forma pauperis* [DE-6] for the limited purpose of the below frivolity review.

MEMORANDUM AND RECOMMENDATION ON FRIVOLITY REVIEW

I. APPLICABLE LEGAL STANDARDS FOR FRIVOLITY REVIEW

After allowing a party to proceed *in forma pauperis*, as here, the court must conduct a frivolity review of the case pursuant to 28 U.S.C. § 1915(e)(2)(B). In such a review, the court must determine whether the action is frivolous or malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from an immune defendant, and is thereby subject to dismissal. 28 U.S.C. § 1915(e)(2)(B); *see Denton v. Hernandez*, 504 U.S. 25, 31-33 (1992) (standard for frivolousness). A case is frivolous if "it lacks an arguable basis either in law or fact." *Neitzke v. Williams,* 490 U.S. 319, 325 (1989).

In evaluating frivolity specifically, a pro se plaintiff's pleadings are held to "less stringent standards" than those drafted by attorneys. *White v. White*, 886 F.2d 721, 722-23 (4th Cir. 1989). Nonetheless, the court is not required to accept a pro se plaintiff's contentions as true. *Denton*, 504 U.S. at 32. The court is permitted to "pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Neitzke*, 490 U.S. at 327. Such baseless claims include those that describe "fantastic or delusional scenarios." *Id.* at 328. Provided that a plaintiff's claims are not clearly baseless, the court must weigh the factual allegations in plaintiff's favor in its frivolity analysis. *Denton*, 504 U.S. at 32. The court must read the complaint carefully to determine if a plaintiff has alleged specific facts sufficient to support the claims asserted. *White*, 886 F.2d at 724.

Under Rule 8 of the Federal Rules of Civil Procedure, a pleading that states a claim for relief must contain "a short and plain statement of the grounds for the court's jurisdiction . . . [and] a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(1), (2). Case law explains that the factual allegations in the complaint must create more than a mere possibility of misconduct. *Coleman v. Md. Ct. Appeals*, 626 F.3d 187, 190-91 (4th Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Likewise, a complaint is insufficient if it offers merely "labels and conclusions," "a formulaic recitation of the elements of a cause of action," or "naked assertion[s] devoid of further factual enhancement." *Iqbal*, 556 U.S. at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007) (alterations in original) (internal quotation marks omitted)).

A court may also consider subject matter jurisdiction as part of the frivolity review. *See Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir. 1999) (holding that "[d]etermining the question of subject matter jurisdiction at the outset of the litigation is often the most efficient procedure"); *Hill v. Se. Reg'l Med. Ctr.,* No. 7:19-CV-60-BO, 2019 WL 7041893, at *2 (E.D.N.C. Oct. 21, 2019), *mem. & recomm. adopted*, No. 7:19-CV-60-BO, 2019 WL 7163434 (E.D.N.C. Dec. 20, 2019), *aff'd*, 818 F. App'x 261 (4th Cir. 2020) (discussing the lack of federal question jurisdiction and diversity jurisdiction during frivolity review as a basis for dismissal). "Federal courts are courts of limited jurisdiction and are empowered to act only in those specific instances authorized by Congress." *Bowman v. White*, 388 F.2d 756, 760 (4th Cir. 1968). The presumption is that a federal court lacks jurisdiction in a particular case unless it is demonstrated that jurisdiction exists. *Lehigh Min. & Mfg. Co. v. Kelly*, 160 U.S. 327, 337 (1895). The burden of establishing subject matter jurisdiction rests on the party invoking jurisdiction, here, the plaintiff. *Adams v. Bain*, 697

F.2d 1213, 1219 (4th Cir. 1982) ("The burden of proving subject matter jurisdiction . . . is on the plaintiff, the party asserting jurisdiction."). The complaint must affirmatively allege the grounds for jurisdiction. *Bowman*, 388 F.2d at 760. If the court determines that it lacks subject matter jurisdiction, it must dismiss the action. Fed. R. Civ. P. 12(h)(3). One basis for subject matter jurisdiction, so-called federal question jurisdiction, is that a claim arises under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331. Another basis is diversity of citizenship or so-called diversity jurisdiction, which requires that the citizenship of each plaintiff be different from that of each defendant. *Id.* § 1332; *see Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 372-74 (1978).

II. DISCUSSION

In this action, plaintiff asserts claims against Carrington Mortgage Services, LLC and Shannon Mitchell appearing to arise from, or relate to, an allegedly fraudulent conveyance of a mortgage deed. *See* Compl. [DE-1]. The entirety of the factual allegations in plaintiff's complaint is as follows:

> I Marquita Hagins, have proof to believe that CARRINGTON MORTGAGE SERVICES LLC. has used My Cestui que vie Trust association in a fraudulent conveyance of mortgage deed absent a CONTRACT and indeed has also utilized My Trust illegally absent a SSA-89; which is indeed COMMERCIAL FRAUD. I have NOT given express consent for the mortgage company to SELL any DEBT on My behalf thus [constituting] [misrepresentation.] They have not honored [multiple] correspondences concerning Debt Validation per Fair Debt collection Practices Act. Using My trust (ending in 1866); which is a violation of Federal Law.

[DE-1] at 4.

Plaintiff seeks the following relief:

> Per the Provision of USC 15 ss. 1 I would like the sum total of $15,000.000.00 on behalf of CARRINGTON MORTGAGE SERVICES LLC. for Violation of Federal Law concerning Commercial Fraud. As per violation for Shannon Mitchell

> 1,000;000.00 for her interference in My commercial affairs involving the loan #4001054483 per document preparation. Damages of $20[,234.00] and 49 cents ($20,234.49) per the fraudulent conveyance.

Id.

Plaintiff alleges that this court has federal question jurisdiction under "USC 1692; 1694 USC 15 ss. 1, 42 UCS 1983, 18 USC ss. 242, [and] 18 USC 245." [DE-1] at 3. Plaintiff's complaint contains no factual allegations from which the court can discern a plausible federal claim under any of these statutes. While pro se litigants are entitled to leniency, such leniency is not without bounds. *See Holder v. U.S. Marshals Office*, No. 5:16-CV-00145-FL, 2016 WL 3919502, at *1 (E.D.N.C. 17 May 2016) ("[T]he principles requiring generous construction of pro se complaints are not without limits."), *mem. & recomm. adopted*, 2016 WL 3920213 (July 15, 2016).

15 U.S.C. § 1692, the Fair Debt Collection Practices Act ("FDCPA"), was enacted in part "to eliminate abusive debt collection practices by debt collectors" and regulate debt collection practices. 15 U.S.C. § 1692(e). The court construes plaintiff's citation as broadly asserting a claim under the FDCPA. To successfully bring an FDCPA claim, "a plaintiff must show that (1) [she] was the object of collection activity arising from a consumer debt as defined by the FDCPA, (2) the defendant is a debt collector as defined by the FDCPA, and (3) the defendant engaged in an act or omission prohibited by the FDCPA." *Guthrie v. PHH Mortg. Corp.*, No. 7:20-CV-43-BO, 2022 WL 706923, at *12 (E.D.N.C. Mar. 4, 2022) (citing *Johnson v. BAC Home Loans Servicing*, 867 F. Supp. 2d 766, 776 (E.D.N.C. 2011)), *aff'd in part*, *vacated in part*, *remanded*, 79 F.4th 328 (4th Cir. 2023), *cert. denied*, No. 23-785, 2024 WL 1839108 (U.S. Apr. 29, 2024).

Here, aside from conclusory accusations of fraudulent conveyances and commercial fraud

related to the unauthorized sale of plaintiff's debt, plaintiff does not allege what specific consumer law was violated, the circumstances of any such violation, or that the defendant engaged in an act or omission prohibited by the FDCPA. *See Iqbal*, 556 U.S. at 678 ("[N]aked assertion[s] devoid of further factual enhancement" are insufficient to state a claim) (citations omitted). Accordingly, the undersigned RECOMMENDS that any claim under 15 U.S.C. § 1692 be DISMISSED for failure to state a claim.

The court is unable to discern what law plaintiff intended to cite by her reference to "1694 USC 15 ss. 1." [DE-1] at 3. Accordingly, the undersigned recommends that any claim associated with this reference be dismissed as frivolous and for failure to state a claim.

18 U.S.C. §§ 242 and 245 are criminal statutes, and do not create private rights of action. *See El Bey v. Celebration Station*, No. 3:02CV461, 2006 WL 2811497, at *3 (W.D.N.C. 28 Sept. 2006) ("[18 U.S.C. § 242] however, do[es] not give rise to a civil action for damages, and neither the plaintiff nor this Court has the authority to issue a criminal complaint."), *aff'd*, 242 F. App'x 917 (4th Cir. 2007); *Lee v. Lewis,* No. 2:10-CV-55-F, 2010 WL 5125327, at *2 (E.D.N.C. Oct. 28, 2010)*, report and recommendation adopted,* No. 2:10-CV-55-F, 2010 WL 5125324 (E.D.N.C. Dec. 8, 2010) (noting that 18 U.S.C. § 245 is a criminal statute and does "not provide for any civil cause of action."). Because these statutes do not create private rights of action, they cannot serve as a basis for subject matter jurisdiction. Accordingly, the undersigned recommends that any claim associated with these statutes be dismissed as frivolous and for failure to state a claim.

42 U.S.C. § 1983 is a statute which provides a cause of action for alleged constitutional violations. However, any such claims would fail due to the lack of state action. To establish a claim under § 1983, a plaintiff must prove: "(1) the violation of a right secured by the Constitution and laws of the United States, and (2) that the alleged deprivation was committed by a person

acting under the color of state law." *Hill v. Revells*, No. 4:20-CV-233-FL, 2021 WL 312621, at *2 (E.D.N.C. Jan. 6, 2021), *mem. & recomm. adopted*, No. 4:20-CV-233-FL, 2021 WL 308592 (E.D.N.C. Jan. 29, 2021), *aff'd*, No. 21-2110, 2021 WL 5985559 (4th Cir. Dec. 17, 2021) (quoting *Williams v. Studivent*, No. 1:09CV414, 2012 WL 1230833, at *4 (M.D.N.C. 12 Apr. 2012)) (internal citations omitted) (internal quotation marks omitted). Plaintiff alleges no facts from which the court could find that either defendant Carrington Mortgage Services, LLC or defendant Shannon Mitchell is a state actor. As there is no indication in the filings that the defendants were anything but non-state parties engaged in private action, any § 1983 claim against defendants would fail.

Finally, the court notes that plaintiff alleges complete diversity between the parties and requests over $15,000,000 in damages. However, despite plaintiff's references to "a fraudulent conveyance" and "commercial fraud," she does not allege sufficient facts to satisfy the elements of any such state law claims.[1] Rule 8 of the Federal Rules of Civil Procedure requires that a claimant provide a "short plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8. "The statement must give a defendant fair notice of what the claim is and the grounds upon which it rests." *Spence v. Willis*, No. 5:17-CV-272-D, 2017 WL 6460235, at *2 (E.D.N.C. Oct. 31, 2017), *report and recommendation adopted*, No. 5:17-CV-272-D, 2017 WL 6454011 (E.D.N.C. Dec. 18, 2017) (citing *Twombly*, 550 U.S. at 555); *Trulock v. Freeh*, 275 F.3d 391, 405 (4th Cir. 2001) ("A plaintiff often must offer more detail . . . than the bald statement that he has a valid claim of some type against the defendant."). The court does not discern any cognizable state law claims in plaintiff's complaint that would support diversity jurisdiction. *See*

[1] The court additionally notes that plaintiff has not alleged which state law would govern any diversity action, and there is insufficient information in her complaint for the court to make a definitive finding on this point at this time.

[DE-1] at 4. However, because the court cannot say with certainty that the facts underlying plaintiff's complaint do not contain one or more cognizable, though currently undiscernible, legal claim, the undersigned RECOMMENDS that plaintiff's complaint [DE-1] be DISMISSED WITHOUT PREJUDICE.

III. CONCLUSION

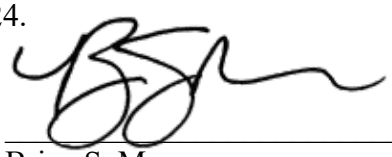
For the reasons set forth above, it is RECOMMENDED that plaintiff's complaint be DISMISSED WITHOUT PREJUDICE as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii).

IT IS DIRECTED that a copy of this Memorandum and Recommendation be served on plaintiff. Plaintiff shall have until **June 5, 2024**, to file written objections to this Memorandum and Recommendation. The presiding district judge must conduct his own review (that is, make a de novo determination) of those portions of the Memorandum and Recommendation to which objection is properly made and may accept, reject, or modify the determinations in the Memorandum and Recommendation; receive further evidence; or return the matter to the magistrate judge with instructions. *See, e.g.*, 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3); Local Civ. R. 1.1 (permitting modification of deadlines specified in local rules), 72.4(b), E.D.N.C.

If a party does not file written objections to the Memorandum and Recommendation by the foregoing deadline, the party will be giving up the right to review of the Memorandum and Recommendation by the presiding district judge as described above, and the presiding district judge may enter an order or judgment based on the Memorandum and Recommendation without such review. In addition, the party's failure to file written objections by the foregoing deadline will bar defendant from appealing to the Court of

Appeals from an order or judgment of the presiding district judge based on the Memorandum and Recommendation. ***See Wright v. Collins*****, 766 F.2d 841, 846-47 (4th Cir. 1985).**

Submitted, this 20th day of May, 2024.



Brian S. Meyers
United States Magistrate Judge