

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

September 18, 2023

Christopher M. Wolpert
Clerk of Court

DAVID ANGEL SIFUENTES, III,

Plaintiff - Appellant,

v.

CAPITAL ONE,

Defendant - Appellee.

No. 23-4088
(D.C. No. 2:22-CV-00190-JCB)
(D. Utah)

ORDER AND JUDGMENT*

Before **MATHESON, BRISCOE, and EID**, Circuit Judges.

Plaintiff David Angel Sifuentes III, appearing pro se and proceeding in forma pauperis, filed a complaint asserting federal and state claims against defendant Capital One arising out of Capital One’s decision to deny Sifuentes’s application for credit. The magistrate judge reviewed the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B), concluded that it failed to state a claim upon which relief could be granted, and authorized Sifuentes to file an amended complaint correcting the

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

deficiencies the magistrate judge identified in the original complaint. After Sifuentes filed an amended complaint, the magistrate judge reviewed the amended complaint, concluded that it failed to state any federal claims upon which relief could be granted, and declined to exercise supplemental jurisdiction over the state law claims asserted by Sifuentes. Sifuentes now appeals, arguing that the district court failed to consider whether it had diversity jurisdiction over the state law claims. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we reject Sifuentes’s claim of error and affirm the judgment of the district court.

I

We assume without deciding that the following facts, all taken from Sifuentes’s pleadings in this case, are true. On or about December 8, 2021, Sifuentes received an email from Capital One encouraging him to apply for credit under their preapproval process. Sifuentes responded to the advertisement and submitted a preapproval application with Capital One. Capital One preapproved Sifuentes. Sifuentes subsequently “went through the whole application process and was denied.” ROA, Vol. 1 at 6, 34. Capital One “state[d] that there was a freeze on [Sifuentes’s] Credit report.” *Id.* at 34. The denial resulted in a reduction in Sifuentes’s credit score.

Sifuentes contacted Capital One regarding the denial and advised a customer service representative that the freeze “had been lifted.” *Id.* The customer service representative “claimed a freeze was [still] there.” *Id.* Notwithstanding the customer

service representative's claim, "[t]here was no freeze at the time and it had been temporarily lifted from all three credit bureaus." *Id.*

On or about November 30, 2022, "Sifuentes disputed Capital One[']s hard inquiry with Experian and TransUnion, which was verified and still on Sifuentes[']s credit report on TransUnion." *Id.* "Experian removed the hard inquiry around December 8, 2022." *Id.*

II

On March 21, 2022, Sifuentes initiated these proceedings by filing in the United States District Court for the District of Utah a motion for leave to proceed in forma pauperis. The magistrate judge granted Sifuentes's motion and advised Sifuentes that the court would screen his complaint pursuant to 28 U.S.C. § 1915(e) before allowing Sifuentes to file any other pleadings and before allowing Sifuentes to serve his complaint on the defendant.

On March 23, 2022, Sifuentes filed a complaint naming Capital One as defendant. The complaint alleged that Capital One was "in violation of the [Fair Credit Reporting Act] for prescreening, preapproving an offer of credit than [sic] denying that request after Sifuentes applied." *Id.* The complaint alleged that the decrease in credit score that Sifuentes suffered was a "concrete injury." *Id.* at 7. The complaint also alleged that Capital One's actions "caused intentional infliction of emotional distress" because "Sifuentes [wa]s very mad, embarrassed and very upset." *Id.* The complaint requested \$125,000 "in damages, statutory, actual and punitive damages" or, "[i]n the alternative," an award of "\$25,000 in damages and to reapply

on the score Sifuentes had in December 2021 and be offered a line of credit that he was prescreened and approved for.” *Id.*

On November 23, 2022, the magistrate judge, acting pursuant to 28 U.S.C. § 1915(e)(2)(B), issued a memorandum decision and order concluding that Sifuentes’s claims “lack[ed] merit” and that Sifuentes “fail[ed] to demonstrate that venue [wa]s proper in” the District of Utah. *Id.* at 17. “[R]ather than recommending dismissal of th[e] action on those bases,” however, the magistrate judge “provide[d] . . . Sifuentes with the opportunity to amend his complaint to attempt to cure his pleading deficiencies.” *Id.* The magistrate judge directed Sifuentes to file an amended complaint within thirty days “that cure[d] the pleading deficiencies” identified by the magistrate judge. *Id.* at 30. The magistrate judge advised Sifuentes that the “failure to file an amended complaint . . . w[ould] result in the court recommending dismissal of th[e] action.” *Id.* at 31. Sifuentes was also advised that any amended complaint he filed would be reviewed by the magistrate judge pursuant to 28 U.S.C. § 1915(e)(2)(B).

Sifuentes filed an amended complaint and accompanying memorandum of law. The amended complaint alleged facts similar to those alleged in the original complaint. Unlike the original complaint, however, the amended complaint alleged six claims for relief. The first claim for relief alleged that Capital One violated “the Fair Credit Reporting Act . . . by invasion of privacy by deceptive means of a pre offer to credit and causing harm to Sifuentes[’s] Credit Score” and by “accessing his personal data that is property by deceptive means.” *Id.* at 34. The second claim for

relief alleged that Capital One violated the “Federal Trade Commission deceptive practice act, 15 U.S.C. § 45, and Michigan Consumer Protection Act MCL 445.903, by obtaining personal information of Sifuentes by deceptive means that is a guarantee offer of credit.” *Id.* The third claim for relief alleged that Capital One violated “The Equal Credit Opportunity Act.” *Id.* The fourth claim for relief alleged that Capital One violated “the Telephone Consumer Protection Act . . . by deceptive means of using cell phone data and ads that were used to solicit Sifuentes into applying for the proffered loan that is credit, than [sic] denying it.” *Id.* The fifth claim for relief alleged that Capital One violated “The Gramm leach Bliley Act 15 U.S.C. § 6801 et seq. by collecting personal information and financial data and storing it after promising credit than [sic] refusing to offer it,” by “disclosing that information to the Credit Bureau that is notice of the hard inquiry,” and by “promising and then denying credit after obtaining financial information.” *Id.* The sixth claim for relief alleged that “Capital One . . . caused ‘negligent’ and or ‘intentional infliction’ of emotional distress where Sifuentes is mad, very angry embarrassed and upset, under stress by way of their deceptive tactics, and denial of credit.” *Id.* The amended complaint sought relief in the form of “\$300,000.00 in actual damages for negligent and intentional infliction of ongoing emotional distress for being mad upset and under stress” and “\$650,000.00 in exemplary, compensatory and punitive damages,” as well as “injunctive and declaratory relief.” *Id.* at 36. Alternatively, the amended complaint asked for “\$150,000.00 in actual damages and a line of credit.” *Id.*

On May 4, 2023, the magistrate judge, again acting pursuant to 28 U.S.C. § 1915(e)(2)(B), issued a memorandum decision and order dismissing Sifuentes’s “federal causes of action with prejudice.”¹ *Id.* at 43. In support, the order reviewed in detail each of the federal claims alleged in the amended complaint and concluded that none of them stated a valid claim for relief. As for Sifuentes’s “claim under the Michigan Consumer Protection Act and his claims for negligent and intentional infliction of emotional distress,” the magistrate judge “decline[d] to exercise supplemental jurisdiction over those claims.” *Id.* at 54. The magistrate judge also concluded that it would be futile to allow Sifuentes an opportunity to amend his complaint a second time.

After final judgment was entered in the case, Sifuentes filed a motion for relief from judgment asking the magistrate judge to “dismiss the federal claims without prejudice and allow [him] to dismiss the entire complaint without prejudice.” *Id.* at 59. The magistrate judge denied Sifuentes’s motion, concluding that Sifuentes “fail[ed] to demonstrate that he [wa]s entitled to relief under Rule 60(b)(1).” *Id.* at 64.

Thereafter, Sifuentes filed a timely notice of appeal, as well as a second motion for relief from judgment, which has not been ruled on by the district court.²

¹ Earlier in the proceedings, Sifuentes consented to the magistrate judge conducting all proceedings in the case. ECF No. 13.

² This second motion did not toll the time to appeal from the final judgment and does not impact our appellate jurisdiction. *See Ysais v. Richardson*, 603 F.3d

III

Sifuentes raises a single issue on appeal. Specifically, he argues that “[t]he district court should of [sic] sua sponte considered diversity jurisdiction under § 1332(a)(1)” in order “to allow his state law claims to proceed in federal court.” Aplt. Br. at 3. Sifuentes asserts in support that he “resides in Michigan and Capital One does business in Utah,” and his “state law claims [were] over \$75,000.” *Id.* at 3, 4.

“[W]e review de novo a district court’s sua sponte dismissal pursuant to 28 U.S.C. § 1915(e)(2) in an in forma pauperis proceeding.” *Vasquez Arroyo v. Starks*, 589 F.3d 1091, 1094 (10th Cir. 2009) (emphasis omitted).

Section 1332 of Title 28 provides, in relevant part, that “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.” 28 U.S.C. § 1332(a)(1). “For purposes of federal diversity jurisdiction, an individual’s state citizenship is equivalent to domicile.” *Smith v. Cummings*, 445 F.3d 1254, 1259 (10th Cir. 2006). A corporation is deemed to be a citizen of “every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1).

1175, 1178–79 (10th Cir. 2010); *Venable v. Haislip*, 721 F.2d 297, 299 (10th Cir. 1983).

Notably, the magistrate judge in this case addressed the issue of diversity jurisdiction in his initial memorandum decision and order. In discussing Sifuentes’s claim for intentional infliction of emotional distress, the magistrate judge “acknowledge[d] that . . . Sifuentes m[ight] be able to establish diversity jurisdiction for that claim,” but concluded that the complaint “d[id] not contain sufficient allegations concerning his citizenship and Capital One’s citizenship that would allow the court to determine whether there [wa]s complete diversity.” ROA, Vol. 1 at 27. The magistrate judge also noted that “Sifuentes’s conclusory allegations about his damages [we]re insufficient to allow the court to determine whether the minimum amount in controversy for diversity jurisdiction [wa]s satisfied.” *Id.*

The magistrate judge did not revisit the issue of diversity jurisdiction in his second and final memorandum decision and order. But we have conducted our own de novo review of Sifuentes’s amended complaint and conclude that it fails to set forth sufficient allegations to establish diversity jurisdiction over his state law claims. To begin with, the amended complaint contains no allegation regarding Sifuentes’s place of residence. To be sure, the signature line on the amended complaint lists an address for Sifuentes in Grand Rapids, Michigan. Otherwise, however, the amended complaint does not allege that the address is his domicile. Even assuming that Sifuentes is a resident of Michigan, that is not enough, standing alone, to establish diversity jurisdiction. That is because the amended complaint fails to allege that defendant Capital One is either incorporated, or has its principal place of business, in Utah. 28 U.S.C. § 1332(c)(1).

Finally, we note that the amended complaint fails to remedy the concerns expressed by the magistrate judge regarding the conclusory nature of the amount of Sifuentes’s claimed damages. In the original complaint, Sifuentes alleged that he was entitled to \$125,000 “in damages, statutory, actual and punitive damages,” but did not specify how these damages were allocated between his federal and state claims. ROA, Vol. 1 at 7. In his amended complaint, Sifuentes alleged that he was entitled to “\$300,000.00 in actual damages for negligent and intentional infliction of ongoing emotional distress for being mad upset and under stress” and “\$650,000.00 in exemplary, compensatory and punitive damages.” *Id.* at 36. The amended complaint, however, provided no additional allegations in support of these claimed amounts, and we are left to conclude that Sifuentes has failed to allege a plausible claim that he sustained damages in these amounts. *See generally Gibson v. Jeffers*, 478 F.2d 216, 221 (10th Cir. 1973) (“Although allegations in the complaint need not be specific or technical in nature, sufficient facts must be alleged to convince the district court that recoverable damages will bear a reasonable relation to the minimum jurisdictional floor.” (footnote omitted)).

IV

The judgment of the district court is AFFIRMED.

Entered for the Court

Mary Beck Briscoe
Circuit Judge