

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00804-GPG

JONATHAN P. SAUNDERS,

Plaintiff,

v.

CATHERINE FRYE McENTIRE, Individually, and
CATHERINE FRYE McENTIRE, licensed Professional Architect, license, Virginia
Architect license number 0401009441,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Jonathan P. Saunders, initiated this action by filing *pro se* a Complaint (ECF No. 1). Mr. Saunders apparently contends the Court has jurisdiction over this action based on diversity of citizenship pursuant to 28 U.S.C. § 1332, although he does not provide a clear and concise statement of the specific claim or claims he is asserting against Defendant. Mr. Saunders alleges he was falsely charged with identify theft in federal court in San Antonio because Defendant “willfully and knowingly lied to federal prosecutors and investigators.” (ECF No. 1 at 1.) He further alleges that

[t]he Plaintiff at the time this occurred owned an engineering and architectural firm that was doing business with the Veterans Administration under a SBA set aside program for Veteran Owned, and Service Disabled Veteran Owned Small Businesses. By lying about her contact with the Plaintiff and his company, the Defendant caused the Plaintiff to ultimately lose his business, be barred from doing business with the federal government, have irreparable damage done to his personal and business reputation, and has caused the defendant [sic] to lose his home and personal assets leaving

the Plaintiff destitute and homeless.

(*Id.* at 5.) According to the Judgment entered in his criminal case in the United States District Court for the Western District of Texas, San Antonio Division, a copy of which is available on the Public Access to Court Electronic Records (“PACER”) website, Mr. Saunders ultimately agreed to plead guilty to one count of wire fraud. *See United States v. Saunders*, No. 5:13-cr-00197-OLG-1 (W.D. Tex. Feb. 19, 2015). His sentence includes a term of imprisonment for twelve months and one day, three years of supervised release, and an order to pay restitution to the government in the amount of \$1,494,467.29. Mr. Saunders is not required to report for service of his sentence prior to August 4, 2015.

Mr. Saunders alleges that Defendant is a resident of Virginia and there is no indication in the Complaint that any of the acts complained of occurred in the District of Colorado. Therefore, on April 21, 2015, Magistrate Judge Gordon P. Gallagher ordered Mr. Saunders to show cause why this action should not be dismissed or transferred pursuant to 28 U.S.C. § 1406(a) because of improper venue. Mr. Saunders was warned that the action would be dismissed or transferred without further notice if he failed to show good cause within thirty days.

Mr. Saunders has not shown cause as directed and he has failed to respond in any way to Magistrate Judge Gallagher’s April 21 order. However, Mr. Saunders has initiated a separate lawsuit against Defendant in the United States District Court for the Eastern District of Virginia based on the same factual allegations. *See Saunders v. McEntire*, No. 2:15-cv-00190-MSD-TEM (E.D. Va. filed May 7, 2015). Because Mr. Saunders has filed a separate lawsuit against Defendant based on the same factual

allegations, the instant action will not be transferred. Instead, the action will be dismissed without prejudice for improper venue.

Furthermore, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal he also must pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the Complaint (ECF No. 1) and the action are dismissed without prejudice pursuant to 28 U.S.C. § 1406(a) for improper venue. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit.

DATED at Denver, Colorado, this 28th day of May, 2015.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court