

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 10-11701-RGS

ALFRED FORSBERG,
PLAINTIFF,

v.

SUNTRUST, LLC, ET AL.,
DEFENDANTS.

MEMORANDUM AND ORDER

November 9, 2010

STEARNS, D.J.

BACKGROUND

On October 5, 2010, plaintiff Alfred Forsberg, a resident of Yonkers, New York, filed a skeletal Complaint seeking to prevent a foreclosure of his real property in Hyannis, Massachusetts. The property was scheduled to be sold at public auction by Harmon Law, the attorneys for Sun Trust Mortgage (Sun Trust). Forsberg sought an immediate cease and desist Order against Sun Trust prohibiting the sale of his property. As grounds for the requested relief, Forsberg contends that he was granted full bankruptcy protection by Judge Drain in the Southern District of New York, and this protection included the Hyannis property.

On October 7, 2010, this court issued a Memorandum and Order (Docket No. 4) granting Forsberg's Motion for Leave to Proceed *in forma pauperis* and directing Forsberg to demonstrate good cause why this action should not be dismissed, or to file an Amended Complaint curing the pleading deficiencies.

In response, Forsberg filed an Amended Complaint (Docket No. 8) along with a

number of exhibits.¹ He asserts claims under federal security laws alleging that the defendants directly and indirectly used the means or instrumentalities of interstate commerce, banks, and/or the mails in connection with the Hyannis property.² He also asserts state law tort claims and contends that this court has diversity jurisdiction pursuant to 28 U.S.C. § 1332. He asserts that the amount in controversy exceeds \$75,000. He identifies as the defendants as: (1) the Harmon Law Office, located in Newton, Massachusetts; and (2) Sun Trust Bank a/k/a Sun Trust LLC.³

Thereafter, on November 1, 2010, Forsberg filed a Second Amended Complaint (Docket No. 9), seeking to include additional defendants. The pleading sets forth allegations described as various “Lies.” These include disputed statements to the effect that Forsberg no longer owns the Hyannis property and that he is forbidden to contact the tenant or enter the property. These also include statements that the (unidentified) defendant bought the property, claiming it now belongs to Fannie Mae, and that rents previously due to Forsberg will be taken. Forsberg also asserts that he was informed that the orders barring him from his property and confiscating his rent came directly from the

¹Although Forsberg has alleged he has obtained an Order from Judge Drain granting him bankruptcy protection, he again failed to submit this purported Order along with the Amended Complaint.

²Forsberg also refers to the Fifth and Fourteenth Amendment as a basis for due process violations; however, he fails to provide any facts from which these defendants could be considered as state or federal actors. As pled, his claims do not implicate constitutional violations for deprivation of property, and this Court cannot reasonably infer Forsberg has set forth a *bona fide* claim on these grounds.

³According to its website, SunTrust Community Capital, LLC is a wholly-owned subsidiary of SunTrust Banks, Inc. Sun Trust Banks, Inc. Is an Atlanta-based company. See www.suntrust.com

Harmon Law firm and Fannie Mae. Throughout the pleading, Forsberg denies ever having any proper notice of these orders, nor any rulings of the Land Court. He reasserts his allegations of fraud and collusion by Sun Trust and the Harmon Law firm. He raises a new allegation of collusion with "Team 3" of Today Real Estate.

In support of his Second Amended Complaint, Forsberg attaches, inter alia, a Discharge of Debtor Order of Final Decree in his bankruptcy case. The discharge order does not reference the Hyannis property specifically.

Finally, Forsberg seeks immediate relief in his Second Amended Complaint, including a rescission of any actions taken with respect to his rental income, and notification that his tenant must continue to make rental payments to him.

DISCUSSION

Neither the Amended Complaint nor the Second Amended Complaint is entirely coherent; each includes a number of questions posed to the Court as well as extraneous allegations not germane to this matter. Essentially, however, Forsberg contends that he never received notice of any Land Court proceeding, ruling, judgment, or hearing with respect to the Hyannis property. He claims that the defendants were aware that he was entitled to bankruptcy protection. He also contends that Sun Trust already collected on insurance and declared the loss as a tax write-off, and therefore Sun Trust's attempt to foreclose on his property amounts to double-dipping. He claims there was no debt or lien on the property, and that Harmon Law Offices misrepresented the circumstances of the property to the Land Court.

Although the Complaint is not set forth in accordance with Rules 8 and 10 of the

Federal Rules of Civil Procedure, and although the underlying factual and legal bases for Forsberg's claims are not entirely clear, this court will permit this action to proceed against Harmon Law Offices, PC and Sun Trust Bank a/k/a Sun Trust LLC only. Although Forsberg lists John Julius, Doug Holt a/k/a Today Real Estate, he does not plead sufficient facts in accordance with Rule 8 of the Federal Rules of Civil Procedure to set forth plausible claims upon which relief may be granted against them. He alleges collusion with Sun Trust and Harmon Law Offices, but these are mere conclusory and amorphous allegations. As pled, it would be unfair to these defendants to require them to answer the Second Amended Complaint, and they are DISMISSED from this action without prejudice.⁴

With respect to the other defendants, however, they may file a motion pursuant to Rule 12(e) for a more definite statement or some other appropriate motion in this case. Further, all other defendants named in the original Complaint (*i.e.*, the Barnstable District Court, Richard E. Brooks, Mortgage Electronic Registration Systems, Inc., Trustees of Cape Cod's Melody Village Condominium Trust, and Cape Cod Times Newspaper) are terminated as parties in this action.

The Second Amended Complaint shall be the operative pleading in this action, superseding the original Complaint and the Amended Complaint. As a matter of judicial economy, Forsberg is prohibited from filing any other Amended Complaints or supplements without leave of court upon good cause shown. He may seek leave to file a Third Amended Complaint to reinstate parties or add new parties or claims only after the defendants Sun Trust and/or Harmon Law Office have filed a responsive pleading to the Second Amended

⁴This dismissal is not intended as a separate and final judgment.

Complaint. Failure to comply with this directive may result in the imposition of sanctions, including dismissal of this action.

ORDER

Based on the foregoing, it is hereby Ordered that:

1. The Clerk shall issue summonses as to: (1) Harmon Law Offices, PC; and (2) Sun Trust Bank a/k/a Sun Trust LLC only;
2. All claims against John Julius and Doug Holt, a/k/a Today Real Estate are DISMISSED without prejudice;
3. All other defendants named in the original Complaint (*i.e.*, the Barnstable District Court, Richard E. Brooks, Mortgage Electronic Registration Systems, Inc., Trustees of Cape Cod's Melody Village Condominium Trust, and Cape Cod Times Newspaper) are terminated as parties in this action;
4. The Clerk shall send the summonses, Second Amended Complaint, and this Order to the plaintiff, who must thereafter serve the defendant(s) in accordance with Federal Rule of Civil Procedure 4(m). The plaintiff may elect to have service made by the United States Marshal. If directed by the plaintiff to do so, the United States Marshal shall serve the summons(es), complaint, and this Order upon the defendant, in the manner directed by the plaintiff, with all costs of service to be advanced by the United States Marshal Service. Notwithstanding Fed. R. Civ. P. 4(m) and Local Rule 4.1, the plaintiff shall have 120 days from the date of this Order to complete service.

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE