

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 10-11701-RGS

ALFRED FORSBERG,
PLAINTIFF,

v.

LAND COURT OF THE
COMMONWEALTH OF MASSACHUSETTS, ET AL.,
DEFENDANTS.

MEMORANDUM AND ORDER

October 7, 2010

STEARNS, D.J.

On October 5, 2010, plaintiff Alfred Forsberg ("Forsberg"), a resident of Yonkers, New York, filed a skeletal one-page Complaint seeking to prevent a foreclosure of his real property in Hyannis, Massachusetts. The property is scheduled to be sold at public auction on October 21, 2010, by Harmon Law, the attorneys for Sun Trust Mortgage ("Sun Trust"). Forsberg fails to identify the defendant(s) to this action in the Complaint itself, but seeks an immediate cease and desist Order against Sun Trust prohibiting the sale of his property. As grounds for the requested relief, Forsberg states that he was granted full bankruptcy protection by Judge Drain in the Southern District of New York, and asks this Court to answer a question and explain to him how his home can be taken from him.¹

¹Forsberg failed to submit any evidence of the discharge of all debts by the bankruptcy court. The public records from PACER indicate that the bankruptcy case was filed in the United States Bankruptcy Court for the Southern District of New York (White Plains), *In re: Alfred Olof Forsberg*, Bankruptcy Petition No. 09-23715-rdd, filed September 15, 2000. Forsberg was discharged on April 19, 2010 pursuant to a Standard Discharge. The underlying pleadings were not available for electronic view on PACER.

Accompanying his Complaint, Forsberg filed a Motion for Leave to Proceed *in forma pauperis* (Docket No. 2), along with an Emergency Motion for Cease and Desist Order (Docket No. 3).

In his emergency motion, Forsberg includes a caption of this case, and lists as defendants: (1) the Land Court of Massachusetts; (2) Sun Trust Bank and Sun Trust LLC (in Atlanta, Georgia); (3) the Barnstable District Court; (4) Richard E. Brooks (of Braintree, MA); (5) Mortgage Electronic Registration Systems, Inc./CT Corporation Systems; (6) Trustees of Cape Cod's Melody Village Condominium Trust; (7) Harmon Law Offices, PC; and (8) the Cape Cod Newspaper. Forsberg does not provide any argument in support of his motion, but simply states that he needs an emergency cease and desist order to prevent the sale of his property at public auction.

DISCUSSION

A. The Motion for Leave to Proceed *In Forma Pauperis*

Upon review of Forsberg's financial disclosures indicating that he is unemployed and that his only source of income is rental payments and social security benefits, this court finds that he has demonstrated sufficiently that he lacks funds to pay the \$350.00 filing fee for this action. Accordingly, his Motion for Leave to Proceed *in forma pauperis* (Docket No. 2) is ALLOWED.

B. The Court May Screen The Complaint

Because Forsberg is proceeding *in forma pauperis*, his Complaint is subject to screening under 28 U.S.C. § 1915(e)(2).² Further, in addition to the statutory screening

²This statute authorizes federal courts to dismiss actions in which a plaintiff seeks to proceed without prepayment of fees if the action is malicious, frivolous, fails to state a claim

requirements under § 1915, this court has an independent obligation to inquire, *sua sponte*, into its subject matter jurisdiction.³

For purposes of preliminary screening, the court will liberally construe the pleadings because Forsberg is proceeding *pro se*. See Hughes v. Rowe, 449 U.S. 5, 9 (1980); Haines v. Kerner, 404 U.S. 519, 520 (1972); Instituto de Educacion Universal Corp. v. U.S. Dept. of Education, 209 F.3d 18, 23 (1st Cir. 2000).

C. Failure to Set Forth a Basis for Subject Matter Jurisdiction

Here, Forsberg fails to set forth a basis for the subject matter jurisdiction of this Court.⁴ First, Forsberg fails to identify clearly the defendant(s) in his Complaint, although he lists a number of defendants in his emergency motion. While there might be diversity

upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. § 1915(e)(2); Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Neitzke v. Williams, 490 U.S. 319, 325 (1989).

³See McCulloch v. Velez, 364 F.3d 1, 5 (1st Cir. 2004); Fed. R. Civ. P. 12(h)(3) (“If the court determines ... it lacks subject matter jurisdiction, the court must dismiss the action.”). See also In re Recticel Foam Corp., 859 F.2d 1000, 1002 (1st Cir. 1988) (“It is too elementary to warrant citation of authority that a court has an obligation to inquire *sua sponte* into its subject matter jurisdiction, and to proceed no further if such jurisdiction is wanting.”).

⁴Federal district courts have original jurisdiction over “federal question” cases. A federal question “aris[es] under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331; Viqueira v. First Bank, 140 F.3d 12, 17 (1st Cir. 1998). A claim arises under federal law within the meaning of § 1331 if a federal cause of action emerges from the face of a well-pleaded complaint. See City of Chicago v. International College of Surgeons, 522 U.S. 156, 163 (1997). The well-pleaded complaint rule generally restricts the exercise of federal question jurisdiction to instances in which a federal claim is made manifest within the four corners of a plaintiff’s complaint. Viqueira, 140 F.3d at 17. District courts also have original jurisdiction over civil actions between citizens of different states where the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). Diversity must be complete: the citizenship of each plaintiff must be shown to be diverse from that of each defendant. Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373-74 (1978).

of citizenship of the parties, Forsberg fails to include any information from which this Court could find the amount in controversy exceeds \$75,000.00. In short, Forsberg fails to demonstrate that this court has diversity jurisdiction under 28 U.S.C. § 1332 to grant the relief requested.

Next, Forsberg has failed to identify any question of federal law upon which he bases his claim for relief. Based on Forsberg's inclusion of the Land Court of Massachusetts and the Barnstable District Court as parties in his emergency motion, the court presumes that there was a state court Order authorizing the foreclosure of his real property in Hyannis. Thus, Forsberg's unsubstantiated claims that the underlying debt giving rise to the foreclosure Order appears to be a defense to the validity of the state foreclosure Order rather than a separate basis for jurisdiction over this action. He has not alleged any federal law underlying a mortgage transaction that would give rise to a federal question.

Moreover, to the extent that there is a final order of the state court with respect to foreclosure of the real property, this court lacks jurisdiction to review the judgment of the state court, pursuant to the Rooker-Feldman doctrine. The Rooker-Feldman doctrine is a distillation of two Supreme Court decisions: Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). The doctrine precludes a federal action if the relief requested in that action would effectively reverse a state court decision or void its holding or if the plaintiff's claims are "inextricably intertwined" with the state court's decision. See Johnson v. De Grandy, 512 U.S. 997, 1005-1006 (1994); Exxon Mobil Corp. v. Saudi Basic Industries Corp., Inc., 544 U.S. 280

(2005) (doctrine applies to cases by state court losers seeking review and rejection of state court judgments rendered prior to commencement of federal suit). Here, Forsberg's request for relief from the state court foreclosure falls within the purview of this doctrine.

D. Failure to Set Forth Claims Under Fed. R. Civ. P. 8(a)

Rule 8(a) requires a plaintiff to include in a complaint, *inter alia*, "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This statement must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests," Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (alteration in original)(quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)); see Rivera v. Rhode Island, 402 F.3d 27, 33 (1st Cir. 2005). It must afford the defendant(s) a "[]meaningful opportunity to mount a defense." Díaz-Rivera v. Rivera-Rodríguez, 377 F.3d 119, 123 (1st Cir. 2004)(quoting Rodríguez v. Doral Mortgage Corp., 57 F.3d 1168, 1172 (1st Cir. 1995)). See Redondo-Borges v. U.S. Dept. of Housing and Urban Dev., 421 F.3d 1, 5 (1st Cir. 2005). "In a civil rights action as in any other action . . . , the complaint should at least set forth minimal facts as to who did what to whom, when, where, and why." Educadores Puertorriqueños en Acción v. Hernández, 367 F.3d 61, 68 (1st Cir. 2004). Although "the requirements of Rule 8(a)(2) are minimal . . . [,] 'minimal requirements are not tantamount to nonexistent requirements.'" Id. (quoting Gooley v. Mobil Oil Corp., 851 F.2d 513, 514 (1st Cir. 1988)).⁵

⁵As the United States Supreme Court has recently stated, under Rule 8, a plaintiff must plead more than a mere allegation that the defendant has harmed him. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (detailed factual allegations are not required under Rule 8, but a complaint "demands more than an unadorned, the defendant-unlawfully-harmed-me accusation" quoting Twombly, 550 U.S. at 555). See Chiang v. Skeirik, 582 F.3d 238, 244 (1st Cir. 2009) ("Threadbare recitals of the elements of a cause of action, supported by

Here, Forsberg's Complaint is beyond sparse -- it does not remotely meet the required pleading standards. As noted above, Forsberg does not identify the defendants clearly, nor does he state any underlying factual information necessary to set forth plausible claims against Sun Trust or any other purported defendant. There is nothing whatsoever alleged with respect to the actions or inactions of those parties named in the Complaint or the emergency motion.

This court is not required to frame Forsberg's Complaint for him, and his mere reference to a bankruptcy court Order is insufficient to meet the pleading requirements of Rule 8. See Terrance v. Cuyahoga County, 2005 WL 2491531 at *1 (N.D. Ohio 2005) citing Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985) ("District courts are not required to conjure up questions never squarely presented to them or to construct full blown claims from sentence fragments.").⁶

In short, Forsberg's Complaint fails to meet the pleading requirements for

mere conclusory statements, do not suffice' [citing Maldonado v. Fontanes], 568 F.3d 263, 268 (1st Cir. 2009) (quoting Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009)).

⁶See also McDonald v. Hall, 610 F.2d 16 (1st Cir. 1979) (court is not required to "conjure up unpled allegations," notwithstanding duty to be less stringent with *pro se* complaints). Such an exercise by the court would "require ... [the courts] to explore exhaustively all potential claims of a *pro se* plaintiff, ... [and] would ... transform the district court from its legitimate advisory role to the improper role of an advocate seeking out the strongest arguments and most successful strategies for a party." Terrance, 2005 WL 2491531, at *1, quoting Beaudett, 775 F.2d at 1278. See also Wells v. Brown, 891 F.2d 591, 594 (6th Cir. 1989) ("It is certainly reasonable to ask that all plaintiffs, even *pro se* plaintiffs,.... alert party defendants that they may be individually responsible in damages. The trial and appellate courts should not have to guess at the nature of the claim asserted."). "The failure to identify a particular legal theory ... places an unfair burden on the defendant to speculate on the potential claims that plaintiff may be raising against it and the defenses it might assert in response to each of these possible causes of action." Terrance, 2005 WL 2491531, at *1.

proceeding in this court, and his claims are subject to dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) (failure to state a claim upon which relief may be granted).

E. Sovereign Immunity as Bar to Claims Against State Courts;
Lack of Mandamus Jurisdiction

Assuming that Forsberg intended to include claims against the Land Court and the Barnstable District Court in his Complaint, these claims are, in any event, not plausible because the Commonwealth of Massachusetts and the Courts of the Commonwealth of Massachusetts (as instrumentalities of the State), are not subject to suit in this Court, under the doctrine of sovereign immunity grounded in the Eleventh Amendment.⁷ Therefore any claims against these Defendants must be dismissed. Alabama v. Pugh, 438 U.S. 781, 781 (1978) (*per curiam*) (11th Amendment generally is recognized as a bar to suits against a State, its departments, and agencies unless the State has consented to suit); Kentucky v. Graham, 473 U.S. 159, 167 n. 14 (1985) (citing Pugh) (unless a State has “waived its Eleventh Amendment immunity or Congress has overridden it, . . . a State cannot be sued directly in its own name regardless of the relief sought.”); cf. Will v. Michigan Dep’t of State Police, 491 U.S. 58, 71 (1989) (neither state nor its officials are “persons” for purposes of §1983); Quern v. Jordan, 440 U.S. 332, 344 (1979) (Congress did not override state’s Eleventh

⁷The Eleventh Amendment to the United States Constitution provides that:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. Amend. XI.

Amendment immunity in enacting §1983); Brown v. Newberger, 291 F.3d 89, 92 (1st Cir. 2002) (there has been no unequivocal abrogation of the Commonwealth's 11th Amendment immunity).

Further, to the extent that Forsberg seeks an Order of this Court to direct state officials to act, or prohibiting action by them, or to the extent that Forsberg seeks an Order compelling the state court judges to vacate a foreclosure Order and rule in his favor, this Court lacks mandamus jurisdiction to compel such action. Section 1361 of Title 28 governs the original jurisdiction of the district court of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff. 28 U.S.C. § 1361. This applies to federal officers, employees or agencies, but does not apply to a state court judge or clerk. See Burnett v. Superior Court of Marin County, 573 F. Supp. 345 (N.D. Cal. 1983) (district court lacks jurisdiction to compel state court to perform its alleged duty).

Similarly, this Court lacks jurisdiction under 28 U.S.C. § 1651, to compel a state judicial officer to act. Section 1651 provides authority to the Supreme Court and all courts established by an Act of Congress to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651. Section 1651 is not available in this case because a federal district court cannot, by writ of mandamus, direct a state court or judicial officer to perform an official act. See In re Campbell, 264 F.3d 730, 731 (7th Cir. 2001) (petition for writ of mandamus filed under § 1651 denied; federal court cannot control or interfere with state court litigation by way of mandamus); See also Offutt v. Kaplan, 884 F. Supp. 1179,

1183, 1187-88 (N.D. Ill. 1995) (federal action brought under § 1651 and § 1983 against presiding judge in state custody proceedings dismissed on ground that a federal district court has no jurisdiction to review state judicial proceedings; citing, *inter alia*, District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983)).

F. Order to Show Cause or File an Amended Complaint

In light of the above, it is hereby ORDERED that, within 35 days of the date of this Memorandum and Order, Forsberg shall demonstrate good cause why this action should not be dismissed in its entirety for lack of subject matter jurisdiction and/or failure to plead plausible claims in accordance with Rule 8 of the Federal Rules of Civil Procedure. In the alternative, Forsberg may file an Amended Complaint setting forth cognizable claims in accordance with the pleading requirements of Rule 8, and setting forth a *bona fide* basis for the subject matter jurisdiction of this Court.

Failure to comply with this directive will result in the dismissal of this action.

G. Declination to Appoint *Pro Bono* Counsel

Assuming that Forsberg may request court-appointed counsel to respond to the directives contained in this Memorandum and Order, this court has considered whether appointment of counsel is warranted at this time. Under 28 U.S.C. § 1915(e)(1), the court “may request an attorney to represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1).⁸ However, a civil plaintiff lacks a constitutional right to free counsel.

⁸In this District, there is no Plan authorizing the payment for counsel appointed for civil litigants such as the Plaintiff. Any appointment of counsel would therefore be contingent upon the availability of *pro bono* counsel to accept voluntarily an appointment. *cf.* 18 U.S.C. § 3006A (providing for appointment of counsel in habeas petitions under 28 U.S.C. § 2241, § 2254 and motions under § 2255 and for payment under the Criminal Justice Act).

Desrosiers v. Moran, 949 F.2d 15, 23 (1st Cir. 1991). In order to qualify for appointment of counsel, a party must be indigent and exceptional circumstances must exist such that denial of counsel will result in fundamental unfairness impinging on the party's due process rights. Id. To determine whether exceptional circumstances sufficient to warrant the appointment of counsel are present in a case, the court must examine the total situation, focusing on the merits of the case, the complexity of the legal issues, and the litigant's ability to represent him or herself. Id. at 24.

In light of the dubious merits of Forsberg's claims, this court cannot find that appointment of *pro bono* counsel and the expenditure of scarce *pro bono* resources is justified. Accordingly, this court declines to appoint *pro bono* counsel for Forsberg.

H. The Emergency Motion for Cease and Desist Order

Finally, Forsberg seeks emergency *ex parte* relief from this court to stop the foreclosure sale on October 21, 2010. To obtain the extraordinary remedy of preliminary injunctive relief, Forsberg must show that: (1) he will suffer irreparable harm absent an injunction; (2) the injury outweighs the harm to the defendants if granted; (3) he is likely to succeed on the merits of the case, and (4) the injunction does not adversely affect the public interest. Planned Parenthood League of Mass. v. Bellotti, 641 F.2d 1006, 1009 (1st Cir. 1981); see Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bishop, 839 F. Supp. 68, 70 (D. Me. 1993) (extending four part preliminary injunction test to temporary restraining orders). To warrant the more extraordinary relief of a temporary restraining order, Forsberg must demonstrate that his injury of loss is "immediate and irreparable." Fed. R. Civ. P. 65(b). Further, the party's attorney (or the party himself, if proceeding *pro se*, as here)

must certify to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Id.

Here, Forsberg has failed to certify his efforts to give notice. More importantly, however, for the reasons set forth above, Forsberg fails to demonstrate a likelihood of success on the merits, given that this action is subject to dismissal.

In light of the above, Forsberg has not satisfied the requirements of Rule 65(b) and therefore his (*ex parte*) Emergency Motion for a Cease and Desist Order (Docket No. 3) is DENIED.

ORDER

Based on the foregoing it is hereby ORDERED that:

1. Plaintiff's Motion for Leave to Proceed *in forma pauperis* (Docket No. 2) is ALLOWED;
2. Within 35 days of the date of this Memorandum and Order, plaintiff shall demonstrate good cause why this action should not be dismissed for the reasons stated herein, or file an Amended Complaint curing the pleading deficiencies and demonstrating the subject matter jurisdiction of this court;
3. The court declines to appoint *pro bono* counsel in this action; and
4. Plaintiff's Emergency Motion for a Cease and Desist Order (Docket No. 3) is DENIED.

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE