D/F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

VINCENT CARTER; SHELLY CARTER,

Plaintiffs,

-against-

AMTRUST BANK FKA OHIO SAVINGS BANK; JOHN DOE #1-5,

Defendants.

X

11-CV-2639 (ARR)

NOT FOR PRINT OR ELECTRONIC PUBLICATION

OPINION & ORDER

ROSS, United States District Judge:

On May 31, 2011, plaintiffs Vincent and Shelly Carter, brought this *pro se* action alleging that defendants engaged in fraud and predatory lending in connection with a mortgage on a property located in Brooklyn, New York. By order dated June 13, 2011, the court noted that although both plaintiffs signed the complaint, only Shelly Carter completed and signed the *in forma pauperis* ("IFP") application. Moreover, the Court noted that Shelly Carter signed the complaint "POA Shelly Carter." Although unclear, it appeared that Shelley Carter was seeking to represent Vincent Carter in this action via a power of attorney.[1]

Accordingly, insofar as plaintiff Shelly Carter possessed a valid power of attorney over Vincent Carter's affairs, she lacked the legal capacity to represent his interests before this court. Shelly Carter was informed that she may represent herself and her own personal interests in this action.

[1] Federal law does not permit a layperson to appear on behalf of a *pro se* litigant. See Berrios v. New York City Housing Authority, 564 F.3d 130, 132 (2d Cir. 2009) ("an individual generally has the right to proceed *pro se* with respect to his *own* claims or claims against him personally, [but] the statute does not permit unlicensed laymen to represent anyone else other than themselves."); Iannaccone v. Law, 142 F.3d 553, 558 (2d Cir. 1998) (an unlicensed individual "may not appear on another person's behalf in the other's cause"); DeMartino v. Kruger, No. 09 CV 305, 2011 WL 1326665, at *5 (E.D.N.Y. Mar. 31, 2011) ("[w]hile Plaintiff claims to hold a power of attorney giving him the authority to initiate legal proceedings ... this authority would, at most, permit Plaintiff to retain counsel to represent his father's interests before the court, it would not turn Plaintiff into a licensed attorney.").

Moreover, Vincent Carter, was directed to complete, sign and submit to the court an application to proceed *in forma pauperis*, within fourteen (14) days of the date of this Order. The order further stated that if Vincent Carter failed to submit a completed and signed *in forma pauperis* application within the time allowed, the instant complaint shall be dismissed as to Vincent Carter, without prejudice.

On June 22, 2011, the court's June 13, 2011 order, which was sent to the address provided by plaintiffs, was returned by the United States Postal Service as undeliverable. As plaintiffs have not provided the Court with a proper mailing address, the Court has no way of contacting plaintiffs and has no choice but to dismiss plaintiffs' complaint. See Canario-Duran v. Borecky, No. 10 CV 1736, 2011 WL 176745, at *1 (E.D.N.Y. Jan. 19, 2011) (plaintiff is obligated to notify the court when he changes addresses); Concepcion v. Ross, No. CV-92-770, 1997 WL 777943, at *1 (E.D.N.Y. Oct. 27, 1997) (same); Handlin v. Garvey, No. 91 Civ. 6777, 1996 WL 673823, at *5 (S.D.N.Y. Nov. 20, 1996). Here, plaintiffs have not taken any steps to pursue this action since it was first filed on May 31, 2011. Nor have plaintiffs contacted the court to provide a current address. It appears that plaintiffs have abandoned this action. Accordingly, it is

ORDERED, ADJUDGED AND DECREED: that the complaint is hereby dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B). The court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. Coppedge v. United States, 269 U.S. 438, 444-45 (1962). The clerk of the court is directed to close this case.

SO ORDERED.

ALLYNE R. ROSS
United States District Judge

Dated: September 27, 2011
Brooklyn, New York

SERVICE LIST:

Plaintiffs:

Vincent Carter
423 Gates Avenue
Brooklyn, NY 11216

Shelly Carter
423 Gates Avenue
Brooklyn, NY 11216