

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORKFOR ONLINE PUBLICATION ONLY

MARIE L. BANKS,

Plaintiff,

- versus -

BEDFORD STUYVESANT ARMY, S.S.,
and POSTAL SUPERVISOR & STAFF,

Defendants.

MEMORANDUM
AND ORDER

15-CV-4135 (JG)(VMS)

JOHN GLEESON, United States District Judge:

On July 13, 2015, plaintiff Marie L. Banks filed this *in forma pauperis* action *pro se* seeking damages. I grant Banks's request to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 solely for the purpose of this Order. For the reasons set forth below, the complaint is dismissed.

BACKGROUND

Although Banks's complaint is hard to understand, the following facts can be discerned. Banks deeply distrusts the superintendent of her building and believes that he is responsible for the loss of various pieces of her property and for the fact that she is harassed by the "Bedford Stuyvesant army" that is, according to her previous actions, her local police precinct in Brooklyn. The instant lawsuit concerns the recent disappearance of some of her mail. She believes that this is part of her community's harassment of her and that either the superintendent has taken her mail, which included important documents or, possibly, the United States Postal Service "stole" her certified letter and other mail. She states, "Postal supervisor stole several U.S. Government mail, send to me by certified mail, stole motor vehicle [sic]

identification, credit card, SSI letter and have community to harass me telling: she is a drug dealer on [sic] I.D. thief.” Compl. at 1, ECF No. 1. Banks complained to a postal supervisor in Brooklyn on July 2, 2015, but she has not recovered the lost mail. *Id.* at 5-6. She seeks damages.

DISCUSSION

Under 28 U.S.C. § 1915(e)(2)(B), a district court shall dismiss an *in forma pauperis* action where it is satisfied that the action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” To avoid dismissal, a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim will be considered plausible on its face “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A court must construe a *pro se* litigant’s pleadings liberally, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), and a *pro se* complaint should not be dismissed without granting the plaintiff leave to amend “at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated,” *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795 (2d Cir. 1999) (internal quotation marks omitted). Nevertheless, “a *pro se* plaintiff must still comply with the relevant rules of procedural and substantive law, including establishing that the court has subject matter jurisdiction over the action.” *Wilber v. U.S. Postal Serv.*, No. 10-CV-3346 (ARR), 2010 WL 3036754, at *1 (E.D.N.Y. Aug. 2, 2010) (internal quotation marks and citations omitted); *Ally v. Sukkar*, 128 F. App’x 194, 195 (2d Cir. 2005) (“Although we construe a *pro se* plaintiff’s complaint liberally, a plaintiff attempting to bring a case in federal court must

still comply with the relevant rules of procedural and substantive law, including establishing that the court has subject matter jurisdiction over the action.” (citations omitted)).

An action is deemed frivolous as a matter of law when, *inter alia*, it “lacks an arguable basis in law, or a dispositive defense clearly exists on the face of the complaint.”

Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998) (citations omitted). In

Denton v. Hernandez, the Supreme Court noted that:

the *in forma pauperis* statute, unlike Rule 12(b)(6) [of the Federal Rules of Civil Procedure] “accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint’s factual allegations and dismiss those claims whose factual contentions are clearly baseless.”

504 U.S. 25, 32 (1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)). “[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.” *Id.* at 33. I find that Banks’s complaint lacks an arguable basis in law and is thus frivolous. Moreover, her barely comprehensible allegations fail to state a claim on which relief may be granted.

CONCLUSION

Accordingly, the *pro se* complaint is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) & (ii). I certify 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 the purpose of any appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

So Ordered.

John Gleeson, U.S.D.J.

Dated: September 26, 2015
Brooklyn, New York