UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DONNELL BAINES,

Plaintiff,

-v-

THE CITY OF NEW YORK, et al.,

Defendants.

10-CV-9545 (JMF)

MEMORANDUM OPINION AND ORDER

JESSE M. FURMAN, United States District Judge:

On August 9, 2017, the Court entered a Memorandum Opinion and Order granting in part and denying in part Defendants' motion for summary judgment. (Docket No. 211 ("Opinion")). In closing, the Court "certifie[d] that any appeal" from the Opinion and Order "would not be taken in good faith," and thus denied *Pro Se* Plaintiff Donnell Baines *in forma pauperis* status. (*Id.* at 8). In a letter docketed on September 19, 2017, Baines takes issue with that certification, requesting either reconsideration of the Court's decision or an explanation of the Court's reasons and noting that he has filed a notice of appeal from the Opinion. (Docket No. 213). The same day, Baines's notice of appeal was itself docketed. (Docket No. 214).

To the extent that Baines seeks reconsideration of the Court's certification, the request is denied. Among other things, because some of Baines's claims are still pending, "and because the Court has neither directed the entry of a final judgment pursuant to Rule 54(b) [of the Federal Rules of Civil Procedure] nor certified its Order for interlocutory appeal pursuant [28 U.S.C.] § 1292(b)," the Court's August 9, 2017 Opinion and Order "is not a 'final judgment' for purposes of establishing appellate jurisdiction." *Evans v. Boyd Rest. Grp., LLC*, No. 1:04-CV-

1144-RWS, 2008 WL 11333610, at *2 (N.D. Ga. Aug. 25, 2008). "Any appeal from that Order would therefore be frivolous." *Id.*; *accord Earle v. United States*, No. CIV. 07-30-GFVT, 2008 WL 2937228, at *2 (E.D. Ky. July 29, 2008) (Report and Recommendation) ("Because there is no legal basis for appellate jurisdiction pending final judgment, the Plaintiff's motion to proceed *in forma pauperis* should be denied . . . .").

Relatedly, the Court notes that it retains jurisdiction notwithstanding Baines's filing of a notice of appeal. Under normal circumstances, "[w]here a notice of appeal has been filed . . . the district court is divested of 'control over those aspects of the case involved in the appeal.'" *Hoffenberg v. United States*, No. 00-CV-1686 (RWS), 2004 WL 2338144, at *2-3 (S.D.N.Y. Oct. 18, 2004) (quoting *Marrese v. Am. Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985)). "Where, however, a notice of appeal has been filed from an order that is non-appealable, jurisdiction does not rest with the Court of Appeals but remains with the district court." *Id.* (citing cases). Accordingly, the Court retains jurisdiction over this case in all respects, and all existing dates and deadlines (including the **September 29, 2017 deadline to contact the Chambers of Magistrate Judge Cott** to schedule a settlement conference as soon as possible (Opinion at 8) remain in effect.

The Court certifies, pursuant to Title 28, United States Code, Section 1915(a)(3), that any appeal from *this* Order would not be taken in good faith (for the same reasons), and *in forma pauperis* status is thus denied. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to mail a copy of this Order to Plaintiff.

SO ORDERED.

Dated: September 26, 2017
New York, New York

JESSE M. FURMAN
United States District Judge