IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

LANCE Q. EALY,

Plaintiff, Case No.: 3:14-CV-26

vs.

OHIO DEPARTMENT OF TAXATION, *et al.*, Judge Walter H. Rice
Magistrate Judge Michael J. Newman

Defendants.

ORDER, AND REPORT & RECOMMENDATION[1] THAT: (1) PLAINTIFF'S *PRO SE* COMPLAINT BE DISIMSSED; AND (2) THIS CASE BE CLOSED

This matter is before the Court for a *sua sponte* review of *pro se* Plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2). Plaintiff filed a motion for leave to proceed *in forma pauperis* ("IFP") on January 24, 2014. For good cause shown, Plaintiff's motion for leave to proceed IFP is **GRANTED**.

The Court may dismiss Plaintiff's complaint upon finding his claims: (1) are frivolous or malicious; (2) fail to state a claim upon which relief may be granted; or (3) seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B). It is appropriate for the Court to conduct this review *sua sponte* prior to issuance of process "so as to spare prospective defendants the inconvenience and expense of answering such complaints." *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).

[1] Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

I.

Pro se Plaintiff brings this action against the Ohio Department of Taxation; the Montgomery County Auditor's Office; the Montgomery County Treasurer's Office; the Montgomery County Board of County Commissioners; and, apparently, unnamed employees of those entities. Doc. 1 at PageID 5. Plaintiff alleges violations of his Fifth and Fourteenth Amendment rights, and presumably seeks to proceed via 42 U.S.C. § 1983. *Id.* at PageID 6.

Plaintiff alleges that his home was foreclosed due to his failure to satisfy a tax lien, and was sold to a third party not named in this case. *Id.* The instant complaint involves a lien allegedly placed on the property by Defendants. *Id.* The foreclosure action is pending, and Plaintiff reports that the foreclosure sale is scheduled for November 2014. *Id.* Plaintiff alleges that Defendants utilized deception and deliberately refused him the ability to challenge the liens. *Id.* at PageID 6-7. Plaintiff seeks compensatory damages, punitive damages, declaratory relief, and a Temporary Restraining Order (presumably to stop the foreclosure sale). *Id.* at PageID 8-10.

II.

A complaint should be dismissed as frivolous if it lacks an arguable basis in law or fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Neitzke*, 490 U.S. at 325. A complaint has no arguable factual basis when its allegations are "fantastic or delusional," and no arguable legal basis when it presents "indisputably meritless" legal theories -- for example, when the defendant is immune from suit, or when the plaintiff claims a violation of a legal interest which clearly does not exist. *Neitzke*, 490 U.S. at 327-28; *Brown v. Bargery*, 207 F.3d 863, 866 (6th Cir. 2000).

Courts may also dismiss a complaint *sua sponte* for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii). While *pro se* pleadings are "to be liberally construed" and "held to less stringent standards than formal pleadings drafted by lawyers," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), *pro se* plaintiffs must still satisfy basic pleading requirements. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989). The complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556); *see also Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010) (applying the *Iqbal* and *Twombly* dismissal standards to reviews under § 1915(e)(2)(B)(ii)).

III.

After a careful review, and liberal construction, of Plaintiff's complaint, the Court believes that it must be dismissed pursuant to § 1915(e)(2)(B). The *Younger* doctrine requires a federal court to decline to exercise jurisdiction if there is an ongoing state judicial proceeding and certain other conditions are met. *Younger v. Harris*, 401 U.S. 37 (1971). Subsequent Supreme Court precedent has expanded the application of the *Younger* doctrine to non-criminal judicial proceedings that implicate important state interests. *See Middlesex Cnty. Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). The Sixth Circuit has created a three-part test for proper application of the *Younger* doctrine: "(1) there must be on-going state judicial proceedings; (2) those proceedings must implicate important state interests; and (3) there must be

an adequate opportunity in the state proceedings to raise constitutional challenges." *Sun Refining & Mktg. Co. v. Brennan*, 921 F.2d 635, 639 (6th Cir. 1990).

Plaintiff's complaint indicates that the foreclosure proceeding is pending. Doc. 1 at PageID 6. The *Younger* doctrine is therefore implicated and the Court must abstain from exercising jurisdiction of this matter. *See Doscher v. Menifee Circuit Court*, 75 F. App'x 996, 997 (6th Cir. 2003) ("When [plaintiff] filed his complaint, all three requirements were met: the foreclosure action was pending in Menifee Circuit Court, the proceeding involved a matter of state interest, and [plaintiff] had an adequate opportunity to raise his challenges to the proceedings. Accordingly, the district court properly abstained from ruling on [plaintiff's] complaint"); *Willis v. Chase Home Fin., LLC*, No. 5:10-cv-1494, 2010 WL 3430712, at * 1 (N.D. Ohio Aug. 30, 2010) ("If the foreclosure action against plaintiff's property is still pending, all three factors supporting abstention are present"). The Court notes that the state interest in this case is heightened because the foreclosure proceeding is presumably premised on a tax lien. *See* doc. 1 at PageID 6. The state court proceeding provides an adequate venue for Plaintiff to raise the constitutional claims raised in his complaint.

The Court is also unable to grant Plaintiff injunctive and declaratory relief because of the Anti-Injunction Act. 28 U.S.C. § 2283 ("A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments"); *Sun Refining*, 921 F.2d at 639 ("[W]hen a case is properly within the *Younger* category of cases, there is no discretion on the part of the federal court to grant injunctive relief"); *see also Martingale LLC v. City of Louisville*, 361 F.3d 297, 303 (6th Cir. 2004) ("[W]here . . .

declaratory relief would have the same practical effect as an injunction, the Anti-Injunction Act precludes the [C]ourt from granting a declaratory judgment").

Even if the Court could hear the case, Plaintiff has failed to state a claim upon which relief can be granted. First, Plaintiff seeks monetary relief from a Defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B)(iii). Plaintiff names the Ohio Department of Taxation as a Defendant. It is well established that the Eleventh Amendment categorically bars suits in federal court against an unconsenting State and its agencies. *See, e.g.*, *Quern v. Jordan*, 440 U.S. 332, 340-41 (1979); *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974). The State of Ohio has not consented to suit in federal court; therefore, Plaintiff may not bring suit against one of its agencies. *Allinder v. State of Ohio*, 808 F.2d 1180, 1184 (6th Cir. 1987).

Second, Plaintiff fails to state sufficient factual matter necessary to plead a § 1983 claim. To state a claim for relief under § 1983, the complaint must allege "(1) that there was the deprivation of a right secured by the Constitution and (2) that the deprivation was caused by a person acting under color of state law." *Wittstock v. Mark A. Van Sile, Inc.*, 330 F.3d 899, 902 (6th Cir. 2003). If the Defendant is a municipality, the constitutional violation must be the result of a policy, custom, or practice promulgated by an official vested with final policymaking authority for the municipality. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978); *Miller v. Calhoun County*, 408 F.3d 803, 813 (6th Cir. 2005). Plaintiff's complaint is devoid of any factual assertions that could give rise to the inference that the municipal Defendants are liable under § 1983.[2] *See Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 570.

[2] In light of the discussion in this opinion, clarifying that Plaintiff's § 1983 claims cannot withstand §1915(e)(2) review, *see supra*, the Court need not discuss whether the unnamed individual Defendants are entitled to qualified immunity from liability. *See generally Harlow v. Fitzgerald*, 457 U.S. 800, 817-19 (1982); *Burgess v. Fischer*, 735 F.3d 462, 471-72 (6th Cir. 2013).

To the extent that Plaintiff seeks to bring state law claims not otherwise discussed herein, Plaintiff fails to show that he satisfies the requirements of diversity jurisdiction, and the Court thus lacks subject matter jurisdiction to entertain such claims. *See* 28 U.S.C. § 1332.

IV.

For the reasons stated herein, the Court **RECOMMENDS** that:

1. Plaintiff's complaint be **DISMISSED**; and

2. This case be **CLOSED**.

January 28, 2014

s/ **Michael J. Newman**
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendation. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to **SEVENTEEN** days because this Report and Recommendation is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F), and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report and Recommendation objected to, and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof. As is made clear above, this period is likewise extended to **SEVENTEEN** days if service of the objections is made pursuant to Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140, 153-55 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).