

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DORATHEA VANCE,	:	CV. No. 3:09-CV-2281
	:	
Plaintiff,	:	
	:	(Judge Conaboy)
v.	:	
	:	(Magistrate Judge Carlson)
NEIL MULLIN,	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

This is a *pro se* civil rights complaint brought pursuant to 42 U.S.C. § 1983, by Dorathea Vance. Ms. Vance’s 35 page *pro se* complaint is a largely incomprehensible collection of notes, letters, and photos which apparently relate to some sort of landlord-tenant, eviction case. The complaint contains no understandable prayer for relief, and does not articulate any violation of any rights guaranteed by the laws or constitution of the United States, beyond a one-word complaint of “dicirimiatio”. (Doc. 1)

Along with this complaint, Vance has filed a motion for leave to proceed *in forma pauperis*. (Doc. 2.) The Court will **GRANT** the Plaintiff leave to proceed *in forma pauperis*, but will place the Plaintiff on notice that her complaint is subject to dismissal and will direct that an amended complaint be filed in this case.

This Court has a statutory obligation to conduct a preliminary review of *pro se* complaints brought by plaintiffs given leave to proceed *in forma pauperis*. See 28 U.S.C. § 1915(e)(2)(B)(ii). Specifically, the Court must assess whether a *pro se* complaint fails to state a claim upon which relief may be granted, since Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that a complaint should be dismissed for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In addition, when reviewing *in forma pauperis* complaints, 28 U.S.C. § 1915(e)(2)(B)(ii) specifically enjoins us to “dismiss the complaint at any time if the court determines that . . . the action . . . fails to state a claim upon which relief may be granted.”

With respect to this benchmark standard for legal sufficiency of a complaint, the United States Court of Appeals for the Third Circuit has recently aptly noted the evolving standards governing pleading practice in federal court, stating that:

Standards of pleading have been in the forefront of jurisprudence in recent years. Beginning with the Supreme Court's opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (12007) continuing with our opinion in Phillips [v. County of Allegheny], 515 F.3d 224, 230 (3d Cir. 2008)]and culminating recently with the Supreme Court's decision in Ashcroft v. Iqbal –U.S.–, 129 S.Ct. 1937 (2009) pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss.

Fowler v. UPMC Shadyside, 578 F.3d 203, 209-10 (3d Cir. 2009).

In considering whether a complaint fails to state a claim upon which relief may be granted, the Court must accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. Jordan v. Fox Rothschild, O'Brien & Frankel, Inc., 20 F.3d 1250, 1261 (3d Cir. 1994). However, a court “need not credit a complaint’s bald assertions or legal conclusions when deciding a motion to dismiss.” Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Additionally a court need not “assume that a ... plaintiff can prove facts that the ... plaintiff has not alleged.” Associated Gen. Contractors of Cal. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983). As the Supreme Court held in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), in order to state a valid cause of action a plaintiff must provide some factual grounds for relief which “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of actions will not do.” Id. at 555. “Factual allegations must be enough to raise a right to relief above the speculative level.” Id. In keeping with the principles of Twombly, the Supreme Court recently underscored that a trial court must assess whether a complaint states facts upon which relief can be granted when ruling on a motion to dismiss. In Ashcroft v. Iqbal, ___ U.S. ___, 129 S.Ct. at 1937 (2009), the Supreme Court held that, when considering a motion to dismiss, a court should “begin by

identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” Id. at 1950. According to the Supreme Court, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Id. at 1949. Rather, in conducting a review of the adequacy of complaint, the Supreme Court has advised trial courts that they must:

[B]egin by identifying pleadings that because they are no more than conclusions are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Id. at 1950.

Thus, following Twombly and Iqbal a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a complaint must recite factual allegations sufficient to raise the plaintiff’s claimed right to relief beyond the level of mere speculation. As the United States Court of Appeals for the Third Circuit has stated:

[A]fter Iqbal, when presented with a motion to dismiss for failure to state a claim, district courts should conduct a two-part analysis. First, the factual and legal elements of a claim should be separated. The District Court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. Second, a District Court must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a “plausible claim for relief.” In other

words, a complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to "show" such an entitlement with its facts.

Fowler, 578 F.3d at 210-11.

In our view, these heightened pleading standards apply to all aspects of the Court's threshold analysis of a complaint's legal sufficiency. Thus, we will apply this analysis both when assessing the adequacy of the factual assertions set forth in the complaint, and when examining whether a complaint states a viable cause of action.

Applying this standard, the Court places the Plaintiff on notice that the allegations in the *pro se* complaint may be subject to dismissal for failure to state a claim upon which relief can be granted. The initial review of the Plaintiff's complaint has identified the following deficiencies in this pleading:

At the outset, this complaint may fail because this court lacks subject matter jurisdiction over the issues raised by the Plaintiff, which may necessarily call upon this federal court in a civil rights case to review, re-examine and reject state court rulings in pending landlord-tenant case. This we cannot do. Indeed, the United States Supreme Court has spoken to this issue and has announced a rule, the Rooker-Feldman doctrine, which compels federal district courts to decline invitations to conduct what amounts to appellate review of state trial court decisions. As described by the Third Circuit:

That doctrine takes its name from the two Supreme Court cases that gave rise to the doctrine. Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). The doctrine is derived from 28 U.S.C. § 1257 which states that “[f]inal judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court....”. See also Desi's Pizza, Inc. v. City of Wilkes Barre, 321 F.3d 411, 419 (3d Cir.2003). “Since Congress has never conferred a similar power of review on the United States District Courts, the Supreme Court has inferred that Congress did not intend to empower District Courts to review state court decisions.” Desi's Pizza, 321 F.3d at 419.

Gary v. Braddock Cemetery, 517 F.3d 195, 200 (3d. Cir 2008).

Because federal district courts are not empowered by law to sit as reviewing courts, reexamining state court decisions, “[t]he Rooker-Feldman doctrine deprives a federal district court of jurisdiction in some circumstances to review a state court adjudication.” Turner v. Crawford Square Apartments III, LLP., 449 F.3d 542, 547 (3d Cir. 2006). Cases construing this jurisdictional limit on the power of federal courts have quite appropriately:

[E]mphasized the narrow scope of the Rooker-Feldman doctrine, holding that it “is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.”[Exxon Mobil Corp. v. Saudi Basic Industries Corp.], 544 U.S. at 284, 125 S.Ct. at 1521-22; see also Lance v. Dennis, 546 U.S. 459, ----, 126 S.Ct. 1198, 1201, 163 L.Ed.2d 1059 (2006)

Turner, 449 F.3d at 547.

However, even within these narrowly drawn confines, it has been consistently recognized that the Rooker-Feldman doctrine prevents federal judges from considering civil rights lawsuits which seek to re-examine state court rulings that are presented “by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced.” Kwasnik v. Leblon, 228 F. App’x 238, 242 (3d Cir. 2007).

In addition, to the extent that the complaint seeks to hold private parties liable for civil rights violations, it fails to state a valid cause of action since such cases typically require some state action under color of law. Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999).

Furthermore, the complaint fails to meet the heightened pleading standards now required by the United States Supreme Court since the facts alleged in the complaint are not sufficient to show that the Plaintiff has a “plausible claim for relief.” Fowler, 578 F.3d at 210-11.

Finally, the complaint does not identify any violation of the laws or constitution of the United States beyond its general assertion of “discrimination”. (Doc.

1.) These issues are substantial obstacles to the Plaintiff maintaining this lawsuit. At present, without the inclusion of some further well-pleaded factual allegations, the complaint contains little more than “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, [which as a legal matter] do not suffice.” Ashcroft v. Iqbal, supra 127 S.Ct. at 1979. We recognize, however, that in civil rights cases *pro se* plaintiffs often should be afforded an opportunity to amend a complaint before the complaint is dismissed in its entirety, See Fletcher-Hardee Corp. V. Pote Concrete Contractors, 482 F.3d 247, 253 (3d Cir. 2007), unless granting further leave to amend would be futile or result in undue delay. Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). Since this *pro se* complaint may not contain sufficient factual recitals to state a claim upon which relief may be granted, the Plaintiff is placed on notice that these allegations may be subject to dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The Court will, however, provide the Plaintiff with an opportunity to correct this potential deficiency in the *pro se* complaint, and avoid the possible sanction of dismissal of claims. Accordingly, **IT IS ORDERED** that:

1. The Plaintiff is **GRANTED** leave to proceed *in forma pauperis*, but the Plaintiff is advised to file an amended complaint on or before **December 22, 2009**. Any amended complaint shall be complete in all respects, and should address the

issues raised by this Order. It shall be a new pleading which stands by itself as an adequate complaint without reference to the complaint already filed. Any amended complaint shall be titled as an amended complaint and shall contain the docket number of this case.

2. If the Plaintiff fails to file an amended complaint by **December 22, 2009**, the Court will assume that the Plaintiff cannot provide further well-pleaded facts in support of this complaint, and will make appropriate recommendations regarding whether the complaint should be dismissed, in part, for failure to state a claim upon which relief may be granted.

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

S/Martin C. Carlson

Martin C. Carlson

United States Magistrate Judge

Dated: December 1, 2009