

of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11.” *Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

The standard used to evaluate a motion to dismiss is a liberal one, particularly when the action has been filed pro se. *Estelle v. Gamble*, 429 U.S. 97, 97 (1976). However, a “plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 554 (2007).

A complaint “is frivolous where it lacks an arguable basis either in law or in fact. [The] term ‘frivolous’ when applied to the complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.” *Neitzke*, 490 U.S. at 325. When determining whether a complaint is frivolous, the Court need not accept the factual allegations as true, but must “pierce the veil of the complaint,” to determine if the allegations are “fanciful,” “fantastic,” or “delusional.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (*quoting Neitzke*, 490 U.S. at 327-329).

A review of the Complaint in this case reveals that this Court does not have subject matter jurisdiction over the state law personal injury claims made by Plaintiff. The claims asserted against the Defendants are clearly grounded in state negligence law. Plaintiff contends that the Defendants “had a duty to provide a safe working environment for all employees and that they breached that duty” and that his injuries “were solely caused by the negligence of the Defendant’s (sic) and that ‘each’ are ‘Jointly and Severally Liable’” in this matter.” *Id.* at ¶¶ 25, 29.

In order for this federal Court to have jurisdiction over a state law negligence claim, the parties must be of diverse citizenship, meaning they must be citizens of different states. However, Plaintiff states that all parties reside “in the County of Allegheny, State of Pennsylvania.” Thus, there is no diversity of citizenship among the parties and this Court has no diversity jurisdiction to entertain any state law negligence claim(s) in this matter. This action, if viable at all, should have been brought in the Court of Common Pleas of Allegheny County, Pennsylvania.

The Court finds that there is no logical construction of the Complaint from which to derive a viable negligence claim against these defendants in federal court. It is clear that the deficiencies of the complaint could not be cured by amendment. Therefore, the Court will dismiss the negligence claims without prejudice for lack of subject matter jurisdiction.

Furthermore, although Plaintiff states that he “brings this action against Defendant’s in this matter,” for violations of, *inter alia*, Title VII of the Civil Rights Act of 1964 and the Americans With Disability Act (“ADA”), the Complaint is completely devoid of any allegations which could raise a colorable claim under either of these federal statutes. There is no allegation that Plaintiff has been unlawfully discriminated against based on his race, color, national origin, religion, and/or creed. Likewise, there is no allegation that Plaintiff has a disability within the meaning of the ADA, or that his employer perceived him as having an actual disability under the ADA, and that he was subjected to unlawful discrimination because of such disability. Accordingly, based on the allegations of the Complaint, this Court does not have federal question jurisdiction.

As to the claims brought under Title VII and the ADA, Plaintiff may file an amended complaint to correct the noted deficiencies in his original complaint on or before **October 22, 2009**. If an amended complaint is not timely filed, this lawsuit will be dismissed for lack of prosecution.

So **ORDERED** this 22nd day of September, 2009.

BY THE COURT:

s/Terrence F. McVerry
United States District Court Judge

cc: Christopher L. Haigh
1731 Evans Ave.
McKeesport, PA 15132

(via U.S. Mail and Certified Mail,
Return Receipt Requested)