

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

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Virgie P. Walker,)
)
Plaintiff,)
)
v.)
)
Honorable Judge Mikell R. Scarborough;)
Korn Law Firm, PA; Paralegal Elizabeth A.)
Koslarek; Reverse Mortgage Solutions Inc.)
for the benefit of Bank of America;)
Attorney Dean A. Hayes,)
)
Defendants.)
_____)

No. 2:13-cv-1918-RMG

ORDER

This matter comes before the Court on the Report and Recommendation of the Magistrate Judge (“R&R”) recommending the Court dismiss this action without prejudice and without issuance and service of process pursuant to 28 U.S.C. § 1915. For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Virgie P. Walker, proceeding *pro se* and *in forma pauperis*, filed this action seeking reversal of a state-court foreclosure order and monetary damages. Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) DSC, this case was assigned to a Magistrate Judge for all pretrial proceedings. Under established local procedure in this judicial district, the Magistrate Judge conducted a careful review of the complaint pursuant to the provisions of 28 U.S.C. § 1915 and in light of the following precedents: *Neitzke v. Williams*, 490 U.S. 319 (1980); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); and *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978). Following this review, the Magistrate Judge issued the

present R&R recommending this case be dismissed for failure to state a claim. (Dkt. No. 19). Plaintiff failed to file timely objections to the R&R.

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Under 28 U.S.C. § 1915(e)(2)(B), the court shall dismiss an action filed *in forma pauperis* if it determines 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.”

In reviewing these pleadings, the Court is mindful of Plaintiff’s *pro se* status. This Court is charged with liberally construing the pleadings of a *pro se* litigant. *See, e.g., De’Lonta v. Angelone*, 330 F.3d 630, 633 (4th Cir. 2003). The requirement of a liberal construction does not mean, however, that the Court can ignore a plaintiff’s clear failure to allege facts that set forth a cognizable claim, or that a court must assume the existence of a genuine issue of material fact where none exists. *See United States v. Wilson*, 699 F.3d 789, 797 (4th Cir. 2012).

Discussion

After reviewing the record and the R&R, the Court finds the Magistrate Judge applied sound legal principles to the facts of this case and therefore agrees with and adopts the R&R as the order of the Court. The Court finds no clear error with the Magistrate Judge's findings that Plaintiff fails to state claim under the doctrines of *Rooker-Feldman*, judicial immunity, and because he fails to plead facts sufficient to bring this action within the jurisdiction of this Court. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Conclusion

For the reasons set forth above, the Court agrees with and adopts the R&R (Dkt. No. 19) as the order of the Court and therefore dismisses this action without prejudice and without issuance and service of process.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

October 24, 2013
Charleston, South Carolina