

Finnegan v. Chase Bank

United States District Court for the Southern District of New York

July 26, 2021, Decided; July 26, 2021, Filed

21-CV-6103 (LTS)

Reporter

2021 U.S. Dist. LEXIS 142042 *

SEAN MATTHEW FINNEGAN, Plaintiff, -
against- CHASE BANK, Defendant.

Subsequent History: Related proceeding at
Finnegan v. N.Y. City Police Dep't, 2021 U.S. Dist.
LEXIS 140958, 2021 WL 3193040 (S.D.N.Y., July
26, 2021)

Related proceeding at Finnegan v. Wework, Inc.,
2021 U.S. Dist. LEXIS 142027 (S.D.N.Y., July 26,
2021)

Related proceeding at Finnegan v. Wiley, 2021
U.S. Dist. LEXIS 144072, 2021 WL 3292518
(S.D.N.Y., Aug. 2, 2021)

Dismissed by, Judgment entered by Finnegan v.
Chase Bank, 2021 U.S. Dist. LEXIS 165116
(S.D.N.Y., Aug. 27, 2021)

Counsel: [*1] Sean Matthew Finnegan, Plaintiff,
Pro se, Washington, DC.

For Sean Matthew Finnegan, Plaintiff: Michelle
Elaine Tarson, Thomas Edward Stagg, LEAD
ATTORNEYS, Stagg Wabnik Law Group LLP,
Garden City, NY.

Judges: LAURA TAYLOR SWAIN, Chief United
States District Judge.

Opinion by: LAURA TAYLOR SWAIN

Opinion

ORDER

LAURA TAYLOR SWAIN, Chief United States
District Judge:

Plaintiff, who is appearing *pro se*, brings this action invoking the Court's federal question jurisdiction, alleging that Defendant has violated his rights. By order dated July 19, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* ("IFP"). The Court dismisses the complaint for the reasons set forth below.

STANDARD OF REVIEW

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see* *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise [*2] the "strongest [claims] that they suggest," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the "special solicitude" in *pro se* cases, *id.* at 475 (citation omitted), has its limits - to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

The Supreme Court has held that, under Rule 8, a complaint must include enough facts to state a claim for relief "that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). But it does not have to accept as true "[t]hreadbare recitals of the elements of a cause of action," which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible - not merely possible - that the pleader is entitled to relief. *Id.*

BACKGROUND

Plaintiff Sean Finnegan brings this action against [*3] Chase Bank. Plaintiff invokes "15 US Code § 1692d," which is a provision of the Fair Debt Collection Practices Act (FDCPA).

He alleges the following facts:

The defendant forced entry to the plaintiff's safety deposit box, without the plaintiff's knowledge or consent and removed all the conten[ts]. The defendant then lured the plaintiff into a branch, made demands and held the plaintiff hostage.

(ECF 2 at 4.) Plaintiff further alleges that "[t]he defendant is harassing and abusing the plaintiff. The defendant is making up stories and lies to cover their tracks after committing a crime." (*Id.*)

Plaintiff's address of record is in Washington, D.C., and he provides an address for Chase Bank in New York, New York. Plaintiff seeks \$1 billion in

damages.¹

DISCUSSION

A. Fair Debt Collection Practice Act

Plaintiff contends that his claims arise under 15 U.S.C. § 1692d, which is a provision of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692. The FDCPA applies to consumer debt "arising out of . . . transaction[s]" that "are primarily for personal, family, or household purposes." 15 U.S.C. § 1692a(5); *Polanco v. NCO Portfolio Mgmt., Inc.*, 930 F. Supp. 2d 547, 551 (S.D.N.Y. 2013) ("[T]he FDCPA is triggered when the obligation is a debt arising out of a consumer transaction").

In cases where the FDCPA applies, it prohibits deceptive and misleading [*4] practices by "debt collectors." 15 U.S.C. § 1692e. A debt collector is defined in § 1692a(6) as: (1) a person whose principal purpose is to collect debts; (2) a person who regularly collects debts owed to another; or (3) a person who collects its own debts, using a name other than its own as if it were a debt collector. The provision that Plaintiff cites, section 1692d, provides that "[a] debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." Conduct in violation of the statute includes, among other examples and without limitation, using violence or the threat of violence or other criminal means; using obscene or profane language "the natural consequence of which is to abuse the hearer or reader"; publishing a

¹ Plaintiff has filed additional actions in this Court. See *Finnegan v. New York City Police Dep't*, ECF 1:21-CV-5798, 2 (LTS) (S.D.N.Y.) (alleging that the New York City Police Department (NYPD) failed to investigate matters that he brought to its attention); *Finnegan v. Lemonade*, ECF 1:21-CV-05719, 2 (LTS) (S.D.N.Y.) (alleging that defendant breached its contract and is "harassing" and "abusing" him, causing him to become homeless); *Finnegan v. WeWork*, ECF 1:21-CV-5593, 2 (LTS) (S.D.N.Y.) (alleging that defendant is harassing him).

list of consumers who refuse to pay debts; or "[c]ausing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with the intent to annoy, abuse, or harass" the person called. 15 U.S.C. § 1692d.

Here, Plaintiff alleges no facts suggesting that he owed a debt to Chase Bank or that Defendant Chase Bank qualifies as a debt collector under the statute in connection with Plaintiff's claims. [*5] Plaintiff's allegations thus fail to state a claim under section 1692d. Plaintiff's complaint, brought under 15 U.S.C. § 1692d, is dismissed for failure to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

B. Leave to Amend

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because it is unclear whether granting Plaintiff leave to amend would be futile, the Court grants Plaintiff leave to amend his complaint.

Plaintiff should include all of the information in the amended complaint that Plaintiff wants the Court to consider in deciding whether the amended complaint states a claim for relief. That information should include:

- a) the names and titles of all relevant people;
- b) a description of all relevant events, including what each defendant did or failed to do, the approximate date and time of each event, and the general location where each event occurred;
- c) a description of the injuries Plaintiff suffered; and
- d) the relief Plaintiff seeks, such as money damages, injunctive relief, or declaratory relief.

Essentially, Plaintiff's amended complaint should tell the Court: who violated his federally [*6] protected rights and how; when and where such

violations occurred; and why Plaintiff is entitled to relief.

Because Plaintiff's amended complaint will completely replace, not supplement, the original complaint, any facts or claims that Plaintiff wants to include from the original complaint must be repeated in the amended complaint.

CONCLUSION

Plaintiff's complaint, filed IFP under 28 U.S.C. § 1915(a)(1), is dismissed for failure to state a claim on which relief may be granted under 28 U.S.C. § 1915(e)(2)(B)(ii).

The Court grants Plaintiff 30 days' leave to file an amended complaint. The Clerk of Court is directed not to enter judgment and to hold this matter open on the docket for 30 days in order to provide Plaintiff an opportunity to file an amended complaint. Plaintiff must submit the amended complaint to this Court's Pro Se Intake Unit within 30 days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 21-CV-6103 (LTS). An Amended Complaint form is attached to this order. No summons will issue at this time. If Plaintiff fails to comply within the time allowed, and he cannot show good cause to excuse such failure, the complaint will be dismissed for failure to state a claim [*7] upon which relief may be granted.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

SO ORDERED.

Dated: July 26, 2021

/s/ Laura Taylor Swain

New York, New York

LAURA TAYLOR SWAIN

Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff. CV _____
(Include case number if one has been assigned)

-against-

AMENDED

COMPLAINT

Do you want a jury trial?
 Yes No

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

Rev. 2/10/17

I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- Federal Question
- Diversity of Citizenship

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

B. If you checked Diversity of Citizenship

I. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, _____, is a citizen of the State of _____
(Plaintiff's name)

(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of _____

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

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If the defendant is an individual:

The defendant, _____, is a citizen of the State of _____
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of _____

If the defendant is a corporation:

The defendant, _____, is incorporated under the laws of the State of _____ and has its principal place of business in the State of _____ or is incorporated under the laws of (foreign state) _____ and has its principal place of business in _____.

If more than one defendant is named in the complaint, attach additional pages providing information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

First Name Middle Initial Last Name

Street Address

County, City State Zip Code

Telephone Number Email Address (if available)

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