

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

LENNOX LAURENCIN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil No. 2016-76
	)	
DENIS LAURENCIN, Individually and as	)	
Trustee of the Marie Distant Revocable	)	
Living Trust,	)	
	)	
Defendant.	)	
_____	)	

ORDER AND REPORT AND RECOMMENDATION

This case is before the Court on the application [ECF 2] of *pro se* plaintiff Lennox Laurencin to proceed *in forma pauperis* under 28 U.S.C. § 1915(a)(1) and for an initial screening of plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2).¹ The Court finds plaintiff has demonstrated his inability to pay the required court costs. However, for the reasons set forth below, the Court recommends the complaint be dismissed without prejudice.

I. FACTUAL ALLEGATIONS²

This matter arises out of the alleged deprivation of the proceeds from a trust. Plaintiff, one

¹ Section 1915(a)(1) provides "any court of the United States may authorize the commencement . . . of any suit, . . . , civil or criminal, . . . , without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such [person] possesses that the person is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1) (alteration added); *see Leatherman v. Obama*, 2012 U.S. Dist. LEXIS 158682, at *3 n.1 (W.D. Pa. Oct. 22, 2012) (holding § 1915(a) is not limited to prisoner suits) (citing *Jones v. NATO*, 1998 U.S. Dist. LEXIS 3569, at *2 (E.D. Pa. Mar. 20, 1998)).

² Plaintiff initiated this suit on December 3, 2015 in the District Court for the Eastern District of New York. On December 16, 2015, a judge of that court found that venue was improper in that district and transferred the case to this Court. [ECF 4]. Inexplicably, the case was not actually transferred until September 14, 2016. [ECF 5]. The Court derives the facts controlling its analysis from plaintiff's complaint.

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of decedent Marie Distant's four children, currently lives in New York. Defendant, another one of Distant's children, is a doctor and currently lives in Saint Lucia. Distant was born in Saint Lucia and lived there her entire life, save for four years she lived in St. Thomas. She died in St. Lucia on June 15, 2008, at age 98.

On November 24, 2004, Distant executed a revocable living trust on St. Thomas. She appointed herself and defendant as the trustees. The trust's assets were comprised of two properties located on St. Thomas and funds in a Banco Popular account. At the time of her death, Distant was under defendant's care.

One of the provisions of the trust provided that plaintiff would receive a portion of the proceeds from the sale of the St. Thomas properties if he transferred to Distant a property he owned in St. Lucia. Due to a bank lien on that property, plaintiff was unable to convey the St. Lucia property to his mother.

After Distant's death, defendant sold one of the St. Thomas properties, but did not share the proceeds with his siblings. Plaintiff alleges he paid all of his mother's funeral expenses without any contribution from defendant.

On February 25, 2010, plaintiff demanded that defendant provide him with his portion of the proceeds from the sale of one of the St. Thomas properties, an accounting of their mother's trust, and reimbursement for their mother's funeral expenses. Plaintiff also requested that defendant divide the assets of the trust equally among all four siblings.

In the instant complaint, plaintiff seeks, *inter alia*, an order declaring the trust null and void as having been procured by undue influence, an accounting of the sums due plaintiff and his two other siblings, twenty five percent of the proceeds from the sale of one of the St. Thomas

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properties, and an order directing defendant to reimburse plaintiff for monies expended on decedent's funeral.

II. STANDARD OF REVIEW

Where a plaintiff has obtained leave to proceed *in forma pauperis*, a court must screen the complaint for cognizable claims and *sua sponte* dismiss all or any part of an action that is frivolous, malicious, fails to state a claim upon 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). Furthermore, “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

A complaint is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim lacks an arguable basis in law when it is “based on an indisputably meritless legal theory.” *Id.* at 327. “A complaint is malicious when it ‘duplicates allegations of another [] federal lawsuit by the same plaintiff.’” *Daley v. United States Dist. Court*, 629 F. Supp. 2d 357, 359-60 (D. Del. 2009) (alteration in original) (quoting *Pittman v. Moore*, 980 F.2d 994, 995 (5th Cir. 1993)); *see also Lindell v. McCallum*, 352 F.3d 1107, 1109 (7th Cir. 2003) (stating “malicious” in the context of sections 1915(e) “is more usefully construed as intended to harass”).

Whether a complaint fails to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) is governed by the same standard as Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Schreane v. Seana*, 506 F. App'x 120, 122 (3d Cir. 2012) (citing *Allah v. Seiverling*, 229 F.3d 220, 223 (3d Cir. 2000)). Accordingly, a court must determine whether the complaint includes “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*

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Iqbal, 556 U.S. 662, 678 (2009) (quotation marks omitted). Finally, where applicable, a court must also consider whether the law affords certain governmental entities and officials immunity against particular types of lawsuits. 28 U.S.C. § 1915(e)(2)(B)(iii).

III. DISCUSSION

Federal subject matter jurisdiction is limited by statute. Most often, such jurisdiction exists in actions in which the plaintiff's claim raises a federal question or in which there is diversity of citizenship between the plaintiff and the defendant. 28 U.S.C. §§ 1331, 1332. To invoke federal question jurisdiction, the plaintiff must allege a violation of the "Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Jurisdiction based on diversity of citizenship requires the plaintiff to demonstrate that none of the defendants holds citizenship in the same state as the plaintiff, and that the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).

In this case, while plaintiff claims on the complaint form that the basis for this Court's jurisdiction is diversity of citizenship, on the civil cover sheet attached to the complaint, he states that jurisdiction is based on a federal question. Both will therefore be considered.

A. Diversity Jurisdiction

"To satisfy the jurisdictional requirements of 28 U.S.C. § 1332(a)(1), . . . diversity must be complete; that is, no plaintiff can be a citizen of the same state as any of the defendants." *Midlantic Nat'l Bank v. Hansen*, 48 F.3d 693, 696 (3d Cir. 1995). Here, plaintiff states as his citizenship "United States, residing in New York." [ECF 1] at 2. With respect to defendant, plaintiff alleges his citizenship as "St. Lucia, West Indies." *Id.* These allegations would support a finding of federal subject matter jurisdiction based on diversity. 28 U.S.C. § 1332(a)(2) ("The district courts

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shall have original jurisdiction of all civil actions . . . between . . . citizens of a State and citizens or subjects of a foreign state.”). However, plaintiff did not satisfy the second prong of diversity jurisdiction because he failed to allege that the amount in controversy exceeds \$75,000, as required by 28 U.S.C. § 1332(a).

B. Federal Question Jurisdiction

Additionally, federal question jurisdiction is also absent, as plaintiff has not alleged a plausible claim for relief under federal statutory or constitutional law. The most liberal reading of plaintiff’s filings suggests that defendant may have violated only local Virgin Islands law governing the administration of trusts, which requires either the application of the Virgin Islands Code,³ or Virgin Islands common law.⁴ Because plaintiff has not alleged a plausible claim for relief under federal statutory or constitutional law, he has not stated any basis for federal question jurisdiction. *See Tamarind Resort Assocs. v. V.I.*, 138 F.3d 107, 113-14 (3d Cir. 1998) (“In 1984, Congress amended the Revised Organic Act[, the de facto Virgin Islands’ constitution,] and

³ *See, e.g.*, 15 V.I.C. § 1110 (“If a trustee violates any of the provisions of this chapter, he may be removed and denied compensation in whole or in part; and any beneficiary, co-trustee, or successor trustee may treat the violation as a breach of trust.”); *see also King v. Appleton*, 61 V.I. 339, 349 n.5 (V.I. 2014) (“The Legislature adopted the 1937 Uniform Trusts Act in 1957. *See* 15 V.I.C. §§ 1091–1111. However, ‘[d]espite a title suggesting comprehensive coverage of its topic, this Act . . . addresses only a limited number of topics. These include the duty of loyalty, the registration and voting of securities, and trustee liability to persons other than beneficiaries,’ and does not address the elements required to create a valid trust. Unif. Trust Code (2010) (prefatory note). Therefore, despite the adoption of the 1937 Uniform Trusts Act, the elements of a valid trust in the Virgin Islands remain solely a question of common law.”).

⁴ *See Machado v. Yacht Haven U.S.V.I.*, 61 V.I. 373, 380 (V.I. 2014) (“As established in *Banks v. Int’l Rental & Leasing Corp.*, 55 V.I. 967, 981-84 (V.I. 2011), and subsequent cases, when confronted with an issue of Virgin Islands common law that this Court has not resolved—or that has been addressed only through erroneous reliance on former 1 V.I.C. § 4—courts must ‘engage in a three-factor analysis: first examining which common law rule Virgin Islands courts have applied in the past; next identifying the rule adopted by a majority of courts of other jurisdictions; and then finally—but most importantly—determining which common law rule is soundest for the Virgin Islands.’ *Better Bldg. Maint. of the V.I., Inc. v. Lee*, 60 V.I. 740, 757 (V.I. 2014) (citing *Gov’t of the V.I. v. Connor*, 60 V.I. 597, 603 (V.I. 2014)).”).

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effectively eliminated the District Court[’s . . .] original jurisdiction over local matters. Congress amended section 1612(b) by granting the district court only original jurisdiction over federal questions, diversity actions and any local matters ‘the jurisdiction over which is not then vested by local law in the local courts of the Virgin Islands.’ 48 U.S.C. § 1612(b) (1994).”).

IV. CONCLUSION

For the foregoing reasons, it is hereby ORDERED that plaintiff’s application to proceed *in forma pauperis* is ALLOWED. In addition, this Court RECOMMENDS that plaintiff’s complaint be DISMISSED WITHOUT PREJUDICE, and that he be permitted to amend his complaint within a time certain if he so chooses.⁵

Any objections to this Report and Recommendation must be filed in writing within 14 days of receipt of this notice. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. 28 U.S.C. § 636(b)(1); LRCi 72.3.

Dated: July 16, 2018

S_____
RUTH MILLER
United States Magistrate Judge

⁵ *Pro se* litigants are to be granted leave to file a curative amended complaint “even when a plaintiff does not seek leave to amend . . . unless such an amendment would be inequitable or futile.” *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004). A complaint that sets forth facts which affirmatively demonstrate that the *pro se* plaintiff has no right to recover is properly dismissed without leave to amend. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002).

As noted by the District Court for the Eastern District of New York, although “[a] civil action may also be brought in ‘any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action,’ 28 U.S.C. § 1391(b)(3), [] Plaintiff has made no showing that Defendant would be subject to personal jurisdiction by this Court.” [ECF 4] 1, n.1. Similarly, it is not clear that defendant, who lives in St. Lucia, would be subject to this Court’s personal jurisdiction.