

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ROLAND J. DE FRIES	:x	
	:	
	:	Civ. No. 3:20CV01882 (MPS)
	:	
	:	
v.	:	
	:	May 11, 2021
WELLS FARGO BANK, N.A.	:	
	:	
	:	
	:x	

**INITIAL REVIEW ORDER**

This matter is before the Court on an initial review of the Complaint filed by self-represented plaintiff Roland J. De Fries ("plaintiff") [Doc. #2]. The Complaint brings common law and statutory claims related to the alleged loss and destruction of plaintiff's personal property in connection with the foreclosure on his home. For the reasons set forth herein, the Court will permit the Complaint to proceed to service of process.

**I. Background**

Plaintiff filed the Complaint in the United States District Court for the Southern District of New York on December 2, 2020. See Doc. #2. On December 7, 2020, that court "conclude[d] that it is in the interest of justice to transfer this diversity action to the United States District Court for the District of Connecticut." Doc. #3 at 3. The matter was thereafter transferred to this District. See Doc. #4. On April 22, 2021,

the case was referred to the undersigned for an initial review of the Complaint. See Doc. #16.

Plaintiff brings this diversity action against Wells Fargo Bank, N.A. ("Wells Fargo" or "defendant"), for claims related to the loss of his personal property as a result of the foreclosure of his home in Litchfield County, Connecticut. See Doc. #2 at 3-5. Plaintiff alleges that Wells Fargo initiated foreclosure proceedings on his home ("the Residence") on April 18, 2013. See id. at 8. Sometime in 2016 plaintiff was involved in an accident, "which resulted in [his] temporary relocation to Manhattan due to extensive medical treatment[.]" Id. Accordingly, plaintiff stopped living at the Residence and only occasionally visited the Residence. See id. at 8-9.

Plaintiff contends that in 2017 and 2018, while he still held title to the Residence, the defendant took a series of actions that resulted in the destruction and/or removal from the Residence of all of plaintiff's possessions. See id. at 9-10, 15-18. Specifically, plaintiff alleges that the Residence "was ransacked[] ... by the hands of what is Wells Fargo's 'Home Preservation Specialists[.]'" Id. at 9 (sic). He further asserts: "Wells Fargo Bank, the Defendant, authorized [a real estate] broker to 'show' my property without my knowledge or authorization, and ... hired an individual to access the property to 'winterize.'" Id. at 10. Plaintiff claims that

individuals hired by defendant destroyed or removed all of plaintiff's belongings, or caused his belongings to be destroyed or removed, and that defendant "failed to take action to prohibit the pillaging of my property." Id. at 18. Plaintiff further contends that after the foreclosure sale, which occurred on December 4, 2018, see id. at 14, "Wells Fargo was required to allow me access to my home to retrieve my possessions[,] " but instead "actively obstructed all of attempts to find out about the status of my belongings, and when and where to retrieve them." Id. at 19 (sic).

Plaintiff asserts that defendant "has severely harmed me by damaging, stealing, removing, and otherwise interfering with my personal property: At the hand of the Defendant, ALL of my life possessions were lost." Id. at 4. The Complaint states that defendant is "guilty" of:

(1) Breach of contract, (2) Unfair practice, (3) Breach of implied covenants, (4) Negligent hiring and supervision, (5) Fraudulent misrepresentation or concealment, (6) Negligent misrepresentation or concealment, (7) Breach of CUTPA, (8) Deceptive acts, (9) Causing severe mental and physical harm, and (10) Violation of my rights under the Americans with Disabilities Act[.]

Id. (sic).

Plaintiff seeks "monetary relief for damages suffered, loss of property stolen or damaged, injuries suffered, life opportunities lost, various interference and inconveniences,

strains and damages, and time spent, now and in the future[.]” Id. at 5. Plaintiff estimates the value of his lost property is \$400,000. See id. at 24-25. He seeks an additional \$2,065,557.50 in “[o]ther charges accrued as a direct result of the Defendant’s actions[.]” and “[m]onetary relief for injuries and harm suffered[.]” Id. at 26-27.

## **II. Standard of Review Under §1915**

The determination of whether an in forma pauperis plaintiff should be permitted to proceed under 28 U.S.C. §1915 involves two separate considerations. The Court must first determine whether the plaintiff may proceed with the action without prepaying the filing fee in full. See 28 U.S.C. §1915(a). The Court has already addressed that issue. See Doc. #17. Second, section 1915 provides that “the court shall dismiss the case at any time if the court determines that” the case “is frivolous or malicious” or “fails to state a claim on which relief may be granted[.]” 28 U.S.C. §§1915(e) (2) (B) (i), (ii). In the interest of efficiency, the Court reviews complaints under these provisions shortly after filing to determine whether the plaintiff has stated a cognizable, non-frivolous claim.

To state a claim, a complaint must plead enough facts to state a claim that is “plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that

allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted). At this stage, “the court must accept the material facts alleged in the complaint as true and construe all reasonable inferences in the plaintiff’s favor.” Hernandez v. Coughlin, 18 F.3d 133, 136 (2d Cir. 1994) (citation omitted).

The Court liberally construes complaints filed by self-represented plaintiffs. See McLeod v. Jewish Guild for the Blind, 864 F.3d 154, 156-57 (2d Cir. 2017). “The policy of liberally construing pro se submissions is driven by the understanding that implicit in the right to self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training.” Abbas v. Dixon, 480 F.3d 636, 639 (2d Cir. 2007) (citation and quotation marks omitted).

### **III. Discussion**

The Complaint makes various allegations related to the foreclosure of plaintiff’s Residence. See generally Doc. #2. The Court writes to make clear that, if, by this Complaint, plaintiff seeks to contest the underlying foreclosure judgment, the Court lacks jurisdiction to hear such a claim. “[C]ourts in this Circuit consistently find that a plaintiff who lost

possession of his home in a state court foreclosure proceeding is barred by the Rooker-Feldman doctrine from attacking the state court judgment in federal district court.” Sirois v. Deutsche Bank Nat’l Tr. Co., No. 3:18CV00113(SRU) (WIG), 2018 WL 4372939, at \*2 (D. Conn. May 10, 2018), report and recommendation adopted, 2018 WL 4372725 (D. Conn. June 12, 2018). Indeed, the Second Circuit has repeatedly confirmed that federal district courts generally lack jurisdiction over foreclosure actions under various jurisdictional and abstention doctrines. See, e.g., Gonzalez v. Deutsche Bank Nat. Trust Co., 632 F. App’x 32 (2d Cir. 2016) (summary order).

Here, the Complaint states that defendant initiated foreclosure proceedings on the Residence in April, 2013, in “the Litchfield Superior Court,” Doc. #2 at 8, and that a final foreclosure sale was held on December 4, 2018. See id. at 14. It therefore appears that the foreclosure of the Residence resulted from the final judgment of a state court. Under the Rooker-Feldman doctrine, federal district courts lack jurisdiction to review final state court judgments such as a foreclosure. See Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923); see also Hoblock v. Albany Cty. Bd. of Elections, 422 F.3d 77, 85 (2d Cir. 2005).

However, the Court construes the Complaint as not challenging the foreclosure itself, but rather the alleged loss

and destruction of plaintiff's personal property in connection with the foreclosure proceedings. See Doc. #2 at 17 ("[T]he damages and injuries and losses suffered by the Defendant's hand have virtually nothing to do with the foreclosure proceedings itself."); see also id. at 18 ("Wells Fargo is guilty of willful negligence and inaction that directly lead to the damages and harm inflicted upon me and my property. I am not using the word property to mean the address of [the Residence], rather property in the sense of my belongings[.]").

Accordingly, the Court considers whether plaintiff's Complaint may proceed on the limited theory that defendant is liable for the loss and destruction of plaintiff's personal property. Plaintiff has not separately enumerated each element of each of the ten claims he asserts in the Complaint. However, he has alleged, inter alia: that he entered into a mortgage agreement with defendant in 2011, see Doc. #2 at 7; that defendant's "actions and inactions" in the course of the foreclosure process caused him damage beyond the foreclosure itself, id. at 15; that defendant hired "Home Preservation Specialists" who "did not do the work they were getting paid to do but rather gain[ed] access to the property," and "destroy[ed] and damage[ed] [plaintiff's] home and valued possessions," id. at 16; that defendant "authorized [a] broker to 'show' my property without my knowledge or authorization, and ... hired an

individual to access the property to 'winterize[,]'" id. at 10; and that defendant's conduct caused him severe emotional distress, see id. at 15, 27-28.

In sum, the Complaint alleges that Wells Fargo's deliberate actions and negligence "directly lead to the damages and harm inflicted upon" plaintiff. Id. at 18. Construing the Complaint generously, as is required, the Court finds the allegations sufficient to permit the Complaint to proceed to service of process.

The Court notes that by permitting the Complaint to proceed to service, it makes no finding that plaintiff has adequately alleged all elements of all of the claims set forth in the Complaint. See Doc. #2 at 4. Rather, the Court finds only that sua sponte dismissal is not appropriate at this time. The Court further notes that several of the claims alleged in the Complaint are subject to three-year statutes of limitations. See, e.g., Conn. Gen. Stat. §52-577 ("No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of."); Conn. Gen. Stat. §42-110g(f) (Actions under CUTPA "may not be brought more than three years after the occurrence of" the violation.); Richter v. Connecticut Jud. Branch, No. 3:12CV01638(JBA), 2014 WL 1281444, at \*10 (D. Conn. Mar. 27, 2014), aff'd, 600 F. App'x 804 (2d Cir. 2015) (applying three-year statute of limitations for tort



claims under Connecticut law to ADA claims); Einbinder & Young, P. C. v. Soiltesting, Inc., 418 A.2d 95, 96 (Conn. Super. Ct. 1980) (applying three-year statute of limitations for tort actions to fraud claims). Many of the factual allegations in the Complaint relate to events that occurred in 2016 and 2017. See Doc. #2 at 7-14. Thus, it is possible that some of plaintiff's claims may be time-barred. The Court makes no finding, at this point, regarding this issue.

#### **IV. Conclusion**

For the reasons set forth herein, the Court finds that the Complaint [Doc. #2] may proceed to service of process. The Clerk of Court shall provide the service packet to plaintiff so that plaintiff may take the appropriate steps to effect service.

It is so ordered at New Haven, Connecticut, this 11th day of May, 2021.

/s/  
HON. SARAH A. L. MERRIAM  
UNITED STATES MAGISTRATE JUDGE