7-19-2023

Anthony Johnson v. State of Pennsylvania

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 21-3359

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ANTHONY JOHNSON,
Appellant

v.

STATE of PENNSYLVANIA; UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; MARK COPOULOS, doing business as Brucha Holdings Realty; PHILADELPHIA COUNTY, Solicitor; BANK OF NEW YORK; JASON YATES; JAY ROSENBERG, doing business as Avenue 365 Lender Services; JAMES LEONARD, Commissioner of Deeds; DAN EGAN, doing business as New Penn Financial; JOEL FURLOS, Interloper doing business as Brucha Holdings Realty, LLC; JOSH SHAPIRO, doing business as Attorney General State of Pennsylvania; MARCIA FUDGE, Secretary United States Department of Housing and Urban Development; DIANE CORTES, Solicitor Philadelphia County; CHARLES P. RETTIG, Commissioner Internal Revenue Service; NEW REZ LLC, d/b/a Shellpoint Mortgage Servicing

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On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-21-cv-04597)
District Judge: Honorable Michael M. Baylson

_____

Submitted Pursuant to Third Circuit LAR 34.1(a)
July 14, 2022
Before: MCKEE[+], SHWARTZ and MATEY, Circuit Judges

(Opinion filed: July 19, 2023)

[+] Judge McKee assumed senior status on October 21, 2022.

OPINION*

PER CURIAM

Anthony Johnson appeals from an order dismissing his complaint. We will affirm.

I.

Johnson filed pro se a complaint[1] against numerous defendants raising claims regarding the ownership of a home in Philadelphia, Pennsylvania. His complaint is barely comprehensible and alleges very few facts, but it appears that he sought to challenge as "fraudulent" a mortgage foreclosure on the home and his ejectment from the property. It further appears that those matters already have been litigated to some extent in state court.[2]

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

[1] Johnson filed his complaint in the name of "Estate of Johnson" and identified himself as a "beneficiary claimant." We construe his complaint to raise only personal claims.

[2] Johnson sought to stay an apparently related state-court action that he identified as case number 190801900 in the Pennsylvania Court of Common Pleas for Philadelphia County. The District Court denied his request. Johnson also filed his federal complaint in the state-court action. Johnson's complaint is titled "complaint notice of removal" with the words "notice of removal" crossed out. We do not regard the state-court action as having been removed to federal court.

One defendant—an apparently former mortgage holder of the property that Johnson identified as "Bank of New York"[3]—filed a motion to dismiss Johnson's complaint under Fed. R. Civ. P. 8 and 12(b)(6). In response, Johnson filed a "brief in support of motion for leave to amend." He requested leave to "expand upon the factual bases" for his claims, but he did not say how or include a proposed amended complaint. The District Court granted the Bank's motion and dismissed Johnson's complaint with prejudice. Johnson appeals.

II.

We have jurisdiction under 28 U.S.C. § 1291. The District Court did not explain in detail its reasons for dismissing Johnson's complaint, but we will affirm that ruling under Rule 12(b)(6) on the ground that Johnson failed to state a claim.

To survive dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Talley v. Wetzel, 15 F.4th 275, 286 n.7 (3d Cir. 2021) (quotation marks omitted). This standard applies even to pro se complaints. See Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 245 (3d Cir. 2013). Johnson's complaint, even liberally construed, fails to satisfy this standard. As the Bank argues, Johnson did not allege any facts plausibly suggesting any valid claim or even specifying what role Johnson believes that the Bank played in these events. Instead, his barely comprehensible complaint consists largely, and at best, of conclusory allegations

[3] The Bank asserts that its correct designation is "The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-4." We refer to this defendant simply as the Bank.

of "fraud" and other wrongdoing. Such conclusory allegations do not suffice. See Garrett v. Wexford Health, 938 F.3d 69, 92-93 (3d Cir. 2019).

Nor was leave to amend warranted. Johnson already sought an opportunity to amend and "expand upon the factual bases" for his claims in the District Court, but he did not say how and did not cure any of the deficiencies in his complaint. He also does not argue on appeal that the District Court erred in denying leave to amend, and he has not otherwise raised anything suggesting that he could plead any plausible claim if given another chance. Thus, we see no indication that amendment would be anything other than futile. See Talley, 15 F.4th at 285 n.6.

Johnson does raise some other arguments on appeal,[4] but they lack merit. Johnson argues that his payment of the filing fee for his complaint "creates an implied contract . . . to help remedy, provide relief or order restitution for [his] injuries." (Appellant's Br. at 2.) It does not. Fees are assessed for the privilege of initiating a case and do not entitle litigants to any particular disposition. Cf. Porter v. Dep't of Treasury, 564 F.3d 176, 179 (3d Cir. 2009). Johnson also argues that the District Court should not have dismissed his complaint as to the non-moving defendants. But Johnson's complaint was deficient as to those defendants largely for the same reasons that it was deficient against the Bank, and the Bank's motion effectively put Johnson on notice of those deficiencies. Cf. Couden v. Duffy, 446 F.3d 483, 500 (3d Cir. 2006) (affirming sua sponte grant of summary

[4] We decline the Bank's invitation to dismiss this appeal or deem all of Johnson's arguments waived for inadequate briefing. Instead, we liberally construe his brief and deem it sufficient to raise the issues addressed herein.

judgment where the "grounds for dismissal" as to the moving and non-moving defendants "were identical"). And although Johnson makes some factual assertions regarding some non-moving defendants for the first time on appeal, those assertions too remain insufficient to state a claim and do not suggest that Johnson could state any plausible claim. Thus, we discern no reversible error in this regard, or in any other.

III.

For these reasons, we will affirm the dismissal of Johnson's complaint.[5] To the extent that Johnson's filings on appeal can be construed to request any other relief, such relief is denied.[6]

[5] We affirm the dismissal with prejudice as to the Bank. As to the other defendants, our ruling is without prejudice to Johnson's ability to assert his claims in a new complaint if it is otherwise proper for him to do so. We express no opinion on that issue.

[6] Johnson's notice of appeal seeks injunctive relief pending appeal. He has not shown that any such relief is warranted. Johnson's notice of appeal also cites the rules governing hearing and rehearing en banc. We do not construe it as a petition for hearing en banc because, inter alia, it does not comply with Fed. R. App. P. 35(b)(1).