

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
STEVEN LODEN DYE,	)	CASE NO. 06-71024 - MHM
	)	
Debtor.	)	
	)	
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STEVEN L. DYE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ADVERSARY PROCEEDING
	)	NO. 11-5099
LITTON LOAN SERVICING, LP,	)	
	)	
Defendant.	)	

**ORDER DENYING EMERGENCY PETITION  
FOR TEMPORARY RESTRAINING ORDER  
AND DISMISSING COMPLAINT**

Debtor commenced this adversary proceeding *pro se* with a complaint apparently seeking to unwind a sale that occurred in connection with Debtor's main bankruptcy case. By order entered in the main bankruptcy case December 7, 2010, Trustee's sale of Debtor's residence (the "Property") free and clear of all liens and interests was approved (Doc No. 423 in the main case no. 06-71024). Trustee filed a *Report of Sale* December 14, 2010, showing the sale of the Property was closed December 10, 2010

(Doc. No. 427 in the main case). Debtor filed the complaint in this adversary proceeding February 18, 2011. No certificate of service of the summons has been filed.

Shortly after the complaint was filed, Debtor filed a *Verified Emergency Petition for Temporary Restraining Order and/or Preliminary Injunction* February 23, 2011 (Doc. No. 3) (the “TRO Motion”). Debtor included as Defendants in the TRO Motion entities not included in the complaint or the summons. Although the TRO Motion is rambling and disorganized, it appears that all the relief Debtor seeks relates to the sale of the Property, his former residence. As the sale of the Property has closed and title to the property has been transferred by Trustee to the purchaser, the Property is no longer property of the estate.

Rule 7008 of the Federal Rules of Bankruptcy Procedure applies Rule 8 of the Federal Rules of Civil procedure to adversary proceedings, which provides:

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief.

A complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). A complaint is plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing


*Bell Atlantic*, 550 U.S. at 556). Plausibility does not require probability, but does require something “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (citing *Bell Atlantic*, 550 U.S. at 556). “[T]he court’s assessment of the pleadings is ‘context specific,’ requiring ‘the reviewing court to draw on its judicial experience and common sense.’” *Maldonado v. Fontanes*, 568 F.3d 263, 268 (1st Cir. 2009) (quoting *Iqbal*); accord *Brown v. JP Morgan Chase Bank*, No. 08-1890, 2009 WL 1761101, at \*1–2 (7th Cir. Jun. 23, 2009). “Plausibility . . . is a relative measure. . . . [It] depends on the full factual picture, the particular cause of action, and available alternative explanations.” *Chao v. Ballista*, No. 07cv10935-NG, 2009 WL 1910954, at \*5 (D. Mass. July 1, 2009).

To the extent that Debtor’s *pro se* pleadings state any claim for relief, Debtor fails to set forth facts sufficient to support a conclusion that Debtor would be entitled to such relief. The sale has been closed and title was transferred to a third party more than 60 days before Debtor file the Complaint. Most of the issues Debtor mentions in his pleadings have been previously raised and resolved in the extensive litigation Debtor has pursued in the main bankruptcy case. Debtor has failed to set forth a plausible claim for relief and the opposing parties should not be put to the time and expense of responding. Accordingly, it is hereby

ORDERED that the TRO Motion is *denied* and the complaint *dismissed*.

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.**

IT IS SO ORDERED, this the 9<sup>th</sup> day of March, 2011.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE