

IT IS ORDERED as set forth below:



Date: June 9, 2014

A handwritten signature in black ink, appearing to read "W. Homer Drake", is written over a horizontal line.

W. Homer Drake
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
AJIBOLA T. LAOSEBIKAN,	:	BANKRUPTCY CASE
	:	NO. 14-10417-WHD
Debtor.	:	
_____	:	
	:	
AJIBOLA T. LAOSEBIKAN,	:	ADVERSARY PROCEEDING
	:	NO. 14-1024
Plaintiff,	:	
	:	
v.	:	
	:	
ROBERT RUPENTHAL,	:	IN PROCEEDINGS UNDER
L.H. BLACK, STEVE MILLER,	:	CHAPTER 13 OF THE
SHEILA STUDDARD, D. SNYDER,	:	BANKRUPTCY CODE
and J. PALCUO,	:	
	:	
Defendants.	:	

ORDER

This matter is before the Court *sua sponte* on the Court's own motion to dismiss.

Ajiboa T. Laosebikan (hereinafter the "Plaintiff"), acting *pro se*, filed his "Complaint to Request United State [sic] Marshall [sic] to Issue Warrants and Enforce Automatic Stay Order" on April 29, 2014. The Plaintiff charges Fayette County Magistrate Judge Robert Ruppenthal,¹ Fayette County Magistrate Judge Loyd Hall Black, Fayette County Constable Steve Miller, Fayette County Clerk of Court Sheila Studdard, D. Snyder of Fayette Wrecker, Inc., J. Palcuo of Arrow Waste, and unnamed Fayette County "Sheriff's officers" (hereinafter collectively the "Defendants") with "committing crimes" on February 27, 2014 against Debtor's real and personal property in violation of the automatic stay imposed by the filing of a bankruptcy petition pursuant to Section 362 of the United States Bankruptcy Code,² and requests that the Court direct that the United States Marshals issue warrants for the "apprehension and commitment" of Defendants and "enforce the automatic stay order by recovering and restoring Debtor's [p]roperty . . . that were removed, damaged, and/or destroyed. See Pl.'s Compl. 1-2. None of the Defendants responded, which upon considering the nature of the Defendants, casts doubt upon the veracity and/or accuracy of the Plaintiff's certificates of service. Nevertheless, the Court believing that this matter should be dismissed, an inquiry into the integrity of the service is unnecessary.

Because this matter involves alleged actions taken in violation to the automatic stay, this Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(1),

¹ The Plaintiff designated this defendant as "Rupenthal" with a single "p" but a quick search performed by the Court revealed that Judge Ruppenthal's name should have two "p"s.

² 11 U.S.C. § 101 *et. seq.*

as a core proceeding defined under 28 U.S.C. § 157(b)(2)(A). See also 11 U.S.C. § 1334.

Procedural History and Statement of Facts.

The Plaintiff filed for bankruptcy relief on February 27, 2014 at 3:44 P.M. The case was dismissed on April 29, 2014. In the two months before having his case dismissed, the Plaintiff filed eight pleadings, all of which claim violation of the automatic stay, against the Defendants and various other individuals and entities. See Pl.'s Rule 2018(a) Mot., ECF No.11 (claiming that Defendants Ruppenthal, Black, and Miller forcibly robbed the Debtor and other residents "at gunpoint" and prevented future access to the premises); Pl.'s Notice of Violation of the Automatic Stay, ECF No. 12 (accusing Wells Fargo Bank of fraudulently billing the Debtor and demanding "extortion money in the amount of \$123,860.90") *dismissed* by Ct.'s Order, ECF No. 20 (failing to serve properly); Pl.'s Notice of Violation of the Automatic Stay, ECF No. 21 (same as ECF No. 12) *dismissed* by Ct.'s Order, ECF No. 23 (failing to serve properly); Pl.'s Mot. for Sanctions for Violation of the Automatic Stay, ECF No. 34 (alleging that AT&T disconnected service without authorization) *dismissed* by Ct.'s Order, ECF No. 41 (failing to serve properly); Pl.'s Mot. for Sanctions for Violation of the Automatic Stay, ECF No. 36 (charging the Fayette County Magistrate Court and Fayette Wrecker Inc. with "illegally tow[ing] and impound[ing]" Plaintiff's automobile and holding the automobile "hostage and demanding extortion payment of \$800") *dismissed* by Ct.'s Order, ECF No. 42 (failing to serve properly); Pl.'s Mot. for Sanctions for Violation of the Automatic Stay, ECF No. 37 (alleging that the Fayette County Magistrate Court and Defendant Miller "submitted a false red flag information request to Fayette County E-911

Communication Center" stating that Plaintiff had been evicted and issuing a "criminal trespass" on the Plaintiff without authorization from the bankruptcy court); Pl.'s Notice of Violation of the Automatic Stay, ECF No. 47 (claiming that COMCAST disconnected service without authorization); and Pl.'s Notice of Violation of the Automatic Stay, ECF No. 52 (accusing the Fayette County Magistrate Court and Arrow Waste of "illegally removing" the Plaintiff's and other residents' personal property from real property and "holding" said "properties hostage"). Subsequently, the Plaintiff also filed a pleading in the adversary case, docketed as an affidavit, claiming that the City of Fayetteville, Fayetteville Police Officer Hartley, and an unnamed partner "tracked, trapped, handcuff [sic], and arrested with force" the Plaintiff, that he was "jail [sic], tortured . . . , and held hostage by Municipal Court Judge Michael Martin who demanded extortion amount of \$1000 for bail bond or \$500 in cash plus bond fees" for release, and that all of this was caused by Defendant Miller's "fraudulent" E911 Communication Center document. See Pl.'s Aff., Adversary³ ECF No. 21.

After the main bankruptcy case was dismissed, but before the case was closed, the Plaintiff initiated the current adversary proceeding before the Court. There are no factual allegations in the complaint; only the conclusory statement that the Defendants "committed crimes" against the Plaintiff and his property during the automatic stay on February 27, 2014.⁴

³ There being two dockets of relevance in this case, the main bankruptcy docket and the adversary docket, all citations to the adversary docket will be titled "Adversary ECF."

⁴ Even this allegation would ordinarily be suspect, considering that the Plaintiff's bankruptcy case was not filed until late afternoon on February 27, 2014.

Conclusions of Law

Rule 8 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure, requires that a complaint contain only "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2); See also FED. R. BANKR. P. 7008. The Court shall dismiss a proceeding where that short and plain statement fails "to state a claim upon which relief can be granted." See FED. R. CIV. P. 12(b)(6).

When considering dismissal for a plaintiff's failure to state a claim upon which relief can be granted, the Court must accept as true all factual allegations set forth in the complaint and, on the basis of those facts, determine whether the plaintiff is entitled to the relief requested and, in the process, draw all reasonable inferences in the light most favorable to the non-moving party. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 554-56 (2007); Daewoo Motor Americ, Inc. v. General Motors Corp., 459 F.3d 1249, 1271 (11th Cir. 2007); Hill v. White 321 F.3d 1334, 1335 (11th Cir. 2003); Grossman v. Nationsbank, N.A., 225 F.3d 1228, 1231 (11th Cir. 2000); Bryant v. Avado Brands, Inc., 187 F.3d 1271, 1273 n.1 (11th Cir. 1999). However, legal conclusions, labels, and unsupportable assertions are not entitled to an assumption of truth. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). In fact, legal conclusions "must be supported by [specific] factual allegations." Id. Accordingly, "conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal." Davila v. Delta Air Lines, Inc., 326 F.3d 1183, 1185 (11th Cir. 2003).

Moreover, in Twombly, the Supreme Court imbued the sufficiency of the complaint with a plausibility standard, holding that the Court must dismiss a case where the well pled facts do not state a claim that is plausible on its face. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (discussing Twombly, 550 U.S. at 554-56). "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" or that the plaintiff can establish the necessary elements of the cause of action. Id.; see also In re Clower, 463 B.R. 573, 576 (Bankr. N.D.Ga. 2011) (Drake, B.J.). The factual allegations in the complaint need not be fully developed, but they must include sufficient factual information to provide the grounds on which the claim rests, and they "must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." Twombly, 550 U.S. at 555. Nonetheless, the Court need not accept as true "formulaic" or "threadbare recitals of a cause of action's elements, supported by mere conclusory statements." Twombly, 550 U.S. at 545; Iqbal, 556 U.S. at 663-64.

In this case, the Plaintiff has failed to make any assertions of fact. From the first, the Plaintiff concludes that the Defendants are guilty of "committing crimes" during the period protected by the automatic stay and requests relief for these unsubstantiated violations. The complaint is markedly and simply deficient. Though the Court is instructed to treat *pro se* litigators with leniency and to construe liberally any pleadings—however inartful they may be—such leniency does nothing to negate the "threshold requirements of the Federal Rules of Civil Procedure[,]" nor does it license the Court "to act as *de facto* counsel for a party, or

to rewrite an otherwise deficient pleading in order to sustain an action." McWeay v. Citibank, N.A., 521 Fed.Appx. 784, 788 n.3 (11th Cir. 2013); Williams v. Lee, 2012 WL 1080578, at *2 (N.D.Ga. 2012); Sun Life Assur. Co. of Canada (U.S.) v. Williams, 2008 WL 762204, at *3 (M.D.Ga. 2008). Thus, a *pro se* complaint still must state a claim upon which relief can be granted. Williams v. Lee, 2012 WL 1080578, at *2 (N.D.Ga. 2012); Sun Life Assur. Co. of Canada (U.S.) v. Williams, 2008 WL 762204, at *3 (M.D.Ga. 2008).

Additionally, the primary relief requested is criminal in nature, which this Court, as a civil court and a court in equity, has no authority to impose. See In re Szabo Contracting, Inc., 283 B.R. 242, 255 (Bankr. N.D.Ill. 2002) ("All federal criminal jurisdiction is vested solely in the district court and not in the bankruptcy court."). It is not only difficult, but impossible, to state a claim for relief sufficiently, where the Court has no power to act in the manner prescribed. For these reasons, the Court dismisses the complaint as to all Defendants.

While a court maintains the authority to dismiss a lawsuit *sua sponte*, generally, it may only do so where due process of law has been observed and the procedures employed have been fair. See Schmitt v. Reimer, 2012 WL 2153800, at *9 (S.D.Ga. 2012). Typically, in such an instance, the Court must notify the Plaintiff of its intent to dismiss the case and its reasons thereof, and afford him with an opportunity to respond, or otherwise, provide him an opportunity to amend his complaint to correct any deficiencies. See Lindley v. Birmingham, 452 Fed.Appx. 878, 880-81 (11th Cir. 2011); Am. United Life Ins. Co. v. Martinez, 480 F.3d 1043, 1057 (11th Cir. 2007); Schmitt v. Reimer, 2012 WL 2153800, at

*9 (S.D.Ga. 2012).

However, there is an exception to this general rule. A court may dismiss a proceeding *sua sponte* where the complaint is "patently frivolous." Lindley v. Birmingham, 452 Fed.Appx. at 881 n.4 (quoting Tazoe v. Airbus S.A.S., 631 F.3d 1321, 1336 (11th Cir. 2011)); See also Courboin v. Scott, 2014 WL 793346, at *5 (M.D.Fla. 2014); Garner v. United States, 2013 WL 5924373, at *1 (S.D.Ga. 2013). Although "frivolous" is ordinarily defined as "lack[ing] an arguable basis either in law or fact," Miller v. Donald, 541 F.3d 1091, 1100 (11th Cir. 2008), courts have recognized frivolity in other circumstances. For instance, a court is justified to dismiss a case on its own motion where the allegations are "fantastic[al] or fanciful and . . . thus factually frivolous," Garner v. United States, et. al., 2013 WL 5924373, *1 (S.D.Ga. 2013), or where a plaintiff shows a proclivity toward unsubstantiated litigious activity against numerous and often unrelated parties. See Courboin v. Scott, 2014 WL 793346 (M.D.Fla. 2014) (finding *sua sponte* dismissal warranted as "patently frivolous, baseless, vexatious, and harassing," where the plaintiff's latest lawsuit charged professionals employed on both sides in his divorce with racketeering and anti-trust violations after other courts dismissed "several lawsuits [filed] against numerous parties [both] involved" and not involved in the proceedings, including the state's bar association, its members, the presiding judge, and the governor).

Conclusion.

For the aforementioned reasons, the Court likewise finds that the Plaintiff's complaint fails to state a claim upon which relief can be granted and is patently frivolous.

Accordingly, it is hereby

ORDERED that Plaintiff's complaint, Adv. Proc. No. 14-1024-WHD, is
DISMISSED.

The Clerk is **DIRECTED** to serve a copy of this ORDER upon the Plaintiff, all
Defendants, the Chapter 13 Trustee, and the United States Trustee.

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