

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHNNY WOODARD, JR. : CIVIL ACTION  
 :  
 v. :  
 : No. 03-4382  
 UPLAND MORTGAGE, et al. :

**ORDER-MEMORANDUM**

AND NOW, this 24<sup>th</sup> day of October, 2003, plaintiff's pro se "Motion to Proceed in Forma Pauperis" is denied, 28 U.S.C. § 1915(a), and the complaint is dismissed without prejudice, 28 U.S.C. § 1915(e)(2).<sup>1</sup>

Plaintiff Johnny Woodard, Jr.'s affidavit in support of request to proceed in forma pauperis does not demonstrate that he is unable to pay the statutory filing fee.<sup>2</sup> It discloses \$2,287 per month retirement income from the Veterans' Administration, or in excess of \$27,000 per year, ownership of a home having at least \$10,000 in equity, and a car that is subject to a loan. Though he is supporting himself, his wife and two children, he does have regular income and some amount of home equity. The affidavit does not state that he is unable to afford the necessities of life for himself or his family. See Statement in Support of Request to Proceed in Forma Pauperis. Accordingly, he will be required to pay the

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<sup>1</sup> "In order to authorize a litigant to proceed in forma pauperis, the court must make two determinations: first, whether the litigant is unable to pay the costs of commencing the action; and second, whether the action is frivolous or malicious." Rewolinski v. Morgan, 896 F. Supp. 879, 880 (E.D. Wis. 1995), citing 28 U.S.C. § 1915(a) and (d). Dismissal of a complaint filed in forma pauperis on grounds of frivolousness has been recodified at § 1915(e)(2)(B).

<sup>2</sup> "One need not be completely destitute in order to proceed in forma pauperis under § 1915. An affidavit demonstrating that the petitioner cannot, because of poverty, provide himself and any dependents with the necessities of life is sufficient." Rewolinski, 896 F. Supp. at 880, citing Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339-40 (1948).

standard filing fee in order to proceed with this action.<sup>3</sup>

Moreover, with respect to the merits of plaintiff's claim,<sup>4</sup> his complaint, read liberally,<sup>5</sup> is that because of financial need, he has been unable to pay his home mortgage and requires a moratorium of mortgage payments for the next six to twelve months. It is alleged that payment of a family member's oral surgery bill has made it impossible to pay for his family's basic needs. Further, Upland Mortgage, plaintiff's lender, refused to defer the mortgage payments, and has sent several "dunning" letters in an effort to collect unpaid installments. As a result, the complaint maintains, plaintiff has experienced "pain and suffering, mental anguish, mere annoyance, chronic aggravated assault (Chronic LAUGHTER to brains, etc.) (See 4 Am Jur 142), aggravations of the original wrong of exemplary damages, general damages, punitive, etc. of \$800,000,000,000,000++++." Complaint, ¶ 3 (emphasis in original).

There is no allegation that Upland is contractually obligated to grant plaintiff the deferral he requests. Nothing suggests that Upland has tried to collect the overdue payments other than by correspondence, or that there has been any violation of the Fair

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<sup>3</sup> See *infra*, note 7.

<sup>4</sup> "Under § 1915(e)(2)(B), a court may dismiss a case 'at any time' if it determines an action or appeal (1) is frivolous or malicious, (ii) fails to state a claim upon which relief may be granted, or (iii) seeks monetary damages from a defendant with immunity. An action or appeal can be frivolous for either legal or factual reasons. *Tittler v. Klem*, 2002 WL 31993975 (3d Cir., Dec. 9, 2002), citing *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). "The frivolous standard . . . requires that a court also assess an *in forma pauperis* complaint from an objective standpoint in order to determine whether the claim is based on an indisputably meritless legal theory or clearly baseless factual contention." *Deutsch v. United States*, 67 F.3d 1080, 1086 (3d Cir. 1995)

<sup>5</sup> Plaintiff's pro se complaint should be construed liberally. *Rewolinski*, 896 F. Supp. at 880, citing *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

Debt Collection Act, 15 U.S.C. § 1601, or of any other statute designed to protect debtors. Instead, Upland appears to have cooperated with plaintiff by having cancelled his participation in the “Direct Payment Program” at his request. See complaint, attaching July 9, 2003 correspondence from Upland to plaintiff. In short, even assuming the truth of all of the pleaded facts, there is no legal basis alleged on which a recovery of “\$800 trillion” by plaintiff, or any recovery, can be predicated. The complaint is frivolous,<sup>6</sup> and therefore must be dismissed without prejudice.<sup>7</sup> Plaintiff is granted until Friday, November 14, 2003 within which to file an amended complaint upon payment of the filing fee, if he can do so within the strictures of Rule 11 of the Federal Rules of Civil Procedure. Otherwise, if an amended complaint is not filed by that date, this action, without more, shall be dismissed on the merits.

BY THE COURT:

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Edmund V. Ludwig, J.

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<sup>6</sup> “A claim is frivolous if it lacks an arguable basis in fact or in law. . . . If a claim is fanciful or describes ‘fantastic or delusional scenarios,’ then it is factually baseless. . . . Further, if it states an inarguable legal conclusion, it lacks a basis in law.” Perkins v. New Jersey Dep’t. of Labor, 154 F.R.D. 132, 133-34 (E.D. Pa. 1994) (citations omitted).

Since filing his “Motion to Proceed in Forma Pauperis,” plaintiff has filed a document styled “Automatic Stay Under F.R.C.P. 62(f)” and a letter directed to Upland denying its right to proceed to foreclosure during the pendency of this action and proposing a payment plan. The former document appears to request relief in the form of an automatic stay of foreclosure proceedings. In view of the dismissal of plaintiff’s complaint, that request is denied. The letter to Upland does not request court action.

<sup>7</sup> Plaintiff can refile his complaint if he pays the filing fee, because “a dismissal under § 1915(e) ‘does not prejudice the filing of a paid complaint making the same allegations,’ [though] it ‘could, however, have a *res judicata* effect on frivolousness determinations for *in forma pauperis* petitions.” Cieszkowska v. Gray Line New York, 295 F.3d 204, 206 (2d Cir. 2002), quoting Denton v. Hernandez, 504 U.S. 25, 34 (1992).