UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

SHAKA SYKES

v.

CIVIL ACTION
NO. 3:03cv2268(SRU)

RETHA SHIELDS
KIETH SHIELDS
JOHN DOE D.B.A.
RETHA SHIELDS
KIETH SHIELDS
JOHN DOE

RULING AND ORDER

Shaka Sykes, currently an inmate at the Garner Correctional Institution in Newtown, Connecticut, brings this civil rights action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. Sykes alleges that in December 1999, he and Kieth Shields were driving in Kieth's car. An unidentified law enforcement official pulled the car over and found drugs and a gun in the car. The official arrested and detained Sykes and Keith. Sykes claims Retha Shields posted bond for both of them. Sykes alleges that, due to a problem with his surety bond, he was later detained. He makes claims against Kieth and Retha for fraud, treachery and treason. Sykes seeks monetary damages from the defendants. For the reasons that follow, the complaint is dismissed.

Sykes has met the requirements of 28 U.S.C. § 1915(a) and has been granted leave to proceed in forma pauperis in this action. Pursuant to 28 U.S.C. § 1915(e)(2)(B), "the court shall dismiss the case at any time if the court determines that . . . the action . . . is frivolous or malicious; . . . fails to state a claim on which relief may be granted; or . . . seeks monetary relief against a defendant

who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(i) - (iii). Thus, the dismissal of a complaint by a district court under any of the three enumerated sections in 28 U.S.C. § 1915(e)(2)(B) is mandatory rather than discretionary. See Cruz v. Gomez, 202 F.3d 593, 596 (2d Cir. 2000).

"When an in forma pauperis plaintiff raises a cognizable claim, his complaint may not be dismissed sua sponte for frivolousness under § 1915 (e)(2)(B)(i) even if the complaint fails to 'flesh out all the required details.'" Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998) (quoting Benitez, 907 F.2d at 1295).

> An action is "frivolous" when either: (1) "the 'factual contentions are clearly baseless,' such as when allegations are the product of delusion or fantasy;" or (2) "the claim is 'based on an indisputably meritless legal theory.'" Nance v. Kelly, 912 F.2d 605, 606 (2d Cir. 1990) (per curiam) (quoting Neitzke v. Williams, 490 U.S. 319, 327, 109 S. Ct. 1827, 1833, 104 L. Ed. 2d 338 (1989)). A claim is based on an "indisputably meritless legal theory" when either the claim lacks an arguable basis in law, Benitez v. Wolff, 907 F.2d 1293, 1295 (2d Cir. 1990) (per curiam), or a dispositive defense clearly exists on the face of the complaint. See Pino v. Ryan, 49 F.3d 51, 53 (2d Cir. 1995).

Livingston, 141 F.3d at 437. The court exercises caution in dismissing a case under section 1915(e) because a claim that the court perceives as likely to be unsuccessful is not necessarily frivolous. See Neitzke v. Williams, 490 U.S. 319, 329 (1989).

A district court must also dismiss a complaint if it fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii) ("court shall dismiss the case at any time if the court determines that . . . (B) the action or appeal . . . (ii) fails to state a claim upon which relief may be granted"); Cruz, 202 F.3d at 596 ("Prison Litigation Reform Act . . . which redesignated § 1915(d) as § 1915(e) [] provided that dismissal for failure to state a claim is mandatory"). In reviewing the

complaint, the court "accept[s] as true all factual allegations in the complaint" and draws inferences from these allegations in the light most favorable to the plaintiff. Id. (citing King v. Simpson, 189 F.3d 284, 287 (2d Cir. 1999)). Dismissal of the complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) is only appropriate if "'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Id. at 597 (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

In addition, "unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim," the court should permit a pro se plaintiff who is proceeding in forma pauperis to file an amended complaint that states a claim upon which relief may be granted. Gomez v. USAA Federal Savings Bank, 171 F.3d 794, 796 (2d Cir. 1999).

As a preliminary matter, Sykes fails to include any facts or even a description of "John Doe - D.B.A Retha Shields, Kieth Shields" or "John Doe" in the complaint. Compl. at 1. The only reference to the John Doe defendants is in the caption of the complaint. As such, Sykes has failed to state a claim upon which relief may granted against the John Doe defendants. Any claims against the John Doe defendants are dismissed. See 28 U.S.C. § 1915(e)(2)(B)(ii).

Sykes asserts jurisdiction pursuant to Articles 3-149 and 9 of the Uniform Commercial Code, "HJR 192 of June 5, 1933 [and] 28 U.S.C. Rule 13(A)." Compl. at 2. Articles 3 and 9 of the Uniform Commercial Code are not an independent basis of federal jurisdiction, but have been adopted and incorporated by the Connecticut legislature into state law. Research has revealed that House Joint Resolution 192 of 1933 was adopted by Congress to prohibit contracts that demand payment in gold. (See H.J.R. 192, 73d Cong. (1933)). There are no facts in the complaint to suggest that any contract

required payment in gold. Accordingly, the defendants' actions did not violate House Joint Resolution 192 and the claim is dismissed. See Neitzke, 490 U.S. at 325; 28 U.S.C. § 1915(e)(2)(B)(i). Research has failed to uncover the existence of a "Rule 13(A)" of Title 28 of the United States Code. Accordingly, any claim pursuant to 28 U.S.C. Rule 13(A) is dismissed as lacking an arguable legal basis. See Neitzke, 490 U.S. at 325; 28 U.S.C. § 1915(e)(2)(B)(i).

Sykes also claims to assert federal jurisdiction pursuant to 12 U.S.C. § 95, entitled "Emergency limitations and restrictions on business of members of Federal reserve system; designation of legal holiday for national banking associations; exceptions; 'State' defined." Sykes has not alleged any facts concerning business members of the Federal Reserve System. Thus, his claim lacks an arguable legal and factual basis and is dismissed. See Neitzke, 490 U.S. at 325; 28 U.S.C. § 1915(e)(2)(B)(i).

Lastly, Sykes asserts jurisdiction pursuant to 42 U.S.C. § 1983. In order to state a claim for relief under section 1983 of the Civil Rights Act, the plaintiff must satisfy a two-part test. First, the plaintiff must allege facts demonstrating that the defendant acted under color of state law. Second, he must allege facts demonstrating that he has been deprived of a constitutionally or federally protected right. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 930 (1982); Washington v. James, 782 F.2d 1134, 1138 (2d Cir. 1986).

Private parties are not generally liable under section 1983. In Lugar, the Supreme Court set forth a two-part test to determine when the actions of a private party may be attributed to the state so as to make the private party subject to liability under section 1983. First, "the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible." Lugar, 457 U.S. at 937. "Second, the

party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State." Id.; see also Dahlberg v. Becker, 748 F.2d 85, 89 (2d Cir. 1984) ("to establish deprivation of a federally protected right there must be both 'state action' and a 'state actor'"), cert. denied, 470 U.S. 1084 (1985).

In this case, the defendants Retha and Kieth Shields are clearly private parties. Sykes indicates that neither defendant was acting under color of state law. (See Compl. at 2.) Sykes does not assert that the actions of Retha or Kieth Shields occurred as a result of a state-created right or rule of conduct and fails to allege any facts that would suggest that the alleged wrongful activities were even remotely attributable to the state or any state actor. See Dahlberg, 748 F.2d at 92 (explaining that private person may be considered state actor "[w]hen the complained of conduct results from a state agent's encouragement or command, the state and private actor jointly participate in depriving plaintiff of his rights, the granting of benefits to a private actor by the state inseparably links them together, or the private actor undertakes to perform activities ordinarily exclusively engaged in by government"). Thus, the complaint lacks allegations suggesting that defendants Kieth and Retha are state actors and fails to satisfy the first part of the test to state a section 1983 claim. Thus, any claim against Kieth and Retha Shields pursuant to 42 U.S.C. § 1983 lacks an arguable basis in law and is dismissed. See Neitzke, 490 U.S. at 325; 28 U.S.C. § 1915(e)(2)(B)(i).

In addition, the complaint does not allege facts sufficient to invoke this court's diversity jurisdiction. "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs, and is between

(1) citizens of different states . . . ." 28 U.S.C. § 1332(a). A person's citizenship for purposes of diversity jurisdiction is his domicile, which is defined as the state in which a person is both present and intends to remain for the indefinite future. See Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 48 (1989). In determining the domicile of a prisoner, courts have held that the domicile of a prisoner before he was imprisoned is presumed to remain his domicile while he is in prison. See Sullivan v. Freeman, 944 F.2d 334, 337 (7th Cir. 1991) (citations omitted), cert. denied, 513 U.S. 1060 (1994). See also Tiuman v. Canant, No. 92 Civ. 5813 (JFK), 1994 WL 471517 (S.D.N.Y. Sept. 1, 1994) (an inmate's domicile prior to incarceration remains his domicile for diversity purposes). The presumption that a prisoner retains his pre-incarceration domicile for purposes of diversity, however, is rebuttable. Sykes asserts that he is a citizen of Connecticut. He provides the address of Meriden, Connecticut, for both Kieth and Retha Shields. Because Sykes and defendants Kieth and Retha Shields are all domiciled in Connecticut, the complaint fails to meet the requirements to invoke this court's diversity jurisdiction.

Conclusion

The complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). The court declines to exercise supplemental jurisdiction over the plaintiff's state law claims. The Clerk is directed to enter judgment in favor of the defendants and close this case.

SO ORDERED this13th day of July 2004, at Bridgeport, Connecticut.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge