IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Richard L. Arthur and Karen Gail Arthur, PLAINTIFFS, v. Citibank, N.A., Chase Manhattan Mortgage Corp., a/k/a J P Morgan Chase, Advanta Mortgage Corporation USA, The United States of America, The United States Comptroller of the Currency, and Does 1-15, inclusive, DEFENDANTS.	: : : : : : : : : : : : : : : : :	Case No. 6:03-cv-436-Orl-22KRS Incorporate the Circuit Court of the Seventh Judicial Circuit, Volusia County, Florida Civil Action No. 02-11663-CIDL, Div: 01

MEMORANDUM OF LAW IN SUPPORT
OF THE FEDERAL DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' VERIFIED PRO FORMA COMPLAINT

Plaintiffs' complaint should be dismissed because its allegations – that plaintiffs' mortgage loan is a nullity because the lender did not have on deposit in its accounts sufficient funds or specie to pay the sale price of the house at the time it issued the mortgage to plaintiffs, and thereby "created money" – are patently frivolous. Repeatedly, the courts have rejected like arguments as frivolous. Accordingly, Defendants United States of America and the Office of the Comptroller of the Currency ("OCC") (the "Federal Defendants") move the Court to dismiss this

action pursuant to Federal Rules of Civil Procedure 8(a), 12(b)(1) and 12(b)(6).[1]

BACKGROUND

It is extremely difficult to cull the facts from this rambling, incomprehensible 150-page complaint, which includes several Federal Reserve Bank publications.[2] However, by page 9 of the Verified Pro Forma Complaint, (Compl., ¶ A.) one could guess that the plaintiffs are alleging that a loan made to them by one or more of the non-federal defendants was fraudulent and unconstitutional. By page 11, one could guess that the loan was made on or about January 10, 2000. (Compl., ¶ E). It appears that at some point after plaintiffs willingly accepted the benefits of the loan, they "determined that the money from the loan alleged to have been made to Plaintiffs by Defendant Chase Manhattan Mortgage Corporation was created solely on the books of either or else the Advanta Mortgage Corporation, Citibank, N.A., and Does 1 to 15, inclusively . . . ." (Compl., ¶ 25.A). Plaintiffs, somehow, arrive at the sum of $1,684,802.96 (Compl., ¶ L) as the damage they have purportedly suffered from the defendants' alleged violations of the United States Constitution.[3]

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[1] The actual federal defendant in this case appears to be the OCC, which is a bureau of the U.S. Department of the Treasury which, in turn, is an agency of named defendant the United States of America.

[2] The Federal Defendants have been named as defendants in at least 21 other pro se complaints, filed throughout the nation, which are very similar or identical to this complaint. The concept that appears to be a basis for these complaints, that no actual loan takes place when a lender issues a check to a borrower and accepts his/her promissory note and, thus, the lender is "creating money on its own books," is the same concept forming the basis for companies that claim to specialize in cancelling mortgages for borrowers. *See, e.g.*, http://www.eliminatemortgages.com and http://www.goodbyemortgages.com.

[3] Even this is not entirely clear. Elsewhere in the complaint, plaintiffs refer to a "claimed accumulative amount of $124,800.00 . . . ." (Compl., ¶ 24).

The OCC is a bureau within the Treasury Department of the United States charged with the administration of the National Bank Act, 12 U.S.C. §§ 1-216d. The OCC has broad authority over the chartering, supervision, and regulation of virtually every aspect of national banking associations, including the authority to determine whether a national bank's activities are permissible. The OCC was established under the Currency Act of 1863 as the agency charged with regulating the issuance of a uniform national currency. *Ross M. Roberston, The Comptroller and Bank Supervision: A Historical Approach* 45-47 (1995). In modern times, however, the Comptroller of the Currency's role as to the currency is purely legalistic and ministerial; the Comptroller no longer controls the currency. *Id.* at 1.

In the proceedings before this Court, the United States is charged with "being an unwitting participant in" the alleged "creation of money" by the lenders (Compl., ¶ V)in violation of Article I, Section 8, Clause 5"of the United States Constitution. (Compl. ¶ S).[4] The specific Constitutional violation alleged seems to be that the loan to the plaintiffs was fraudulent, and so should be nullified, because the lenders, in issuing the mortgage loan check, were engaged in an act of "creation of money," a power belonging exclusively to Congress. (Compl. ¶ P). The plaintiffs' allegations are frivolous. Therefore, their lawsuit should be dismissed pursuant to Rules12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. It also should be dismissed pursuant to Rule 8(a) because it lacks a short and plain statement of their claim, and pursuant to

[4]Specifically, plaintiffs accuse the United States of "assisting in the cover up of the existence of a hidden but otherwise known or else knowable contract existing under the rights extended by the Fifth Amendment to the Constitution by which the Defendants . . . owes [sic] to Plaintiffs $1,684,802.96 in violation of Plaintiffs' constitutional rights . . . " (Compl., ¶ L). This is only one example of the baffling and incomprehensible statements that dominate the complaint.

Rule 9(b) because the plaintiffs fail to allege any fraud with particularity.

ARGUMENT

I. The Complaint Fails to Comply with the General Rules of Pleading in Rule 8(a).

Rule 8(a) of the Federal Rules of Civil Procedure requires that a complaint contain a "short and plain" statement of a claim showing that the pleader is entitled to relief. *See United States of America, ex rel. Clausen v. Laboratory Corporation of America*, 290 F.3d 1301, 1308 (11th Cir. 2002). The instant complaint, consisting of a series of incomprehensible and rambling statements, and lacking any short and plain statement of the relief that the plaintiffs seek from the OCC, does not comply with Rule 8(a). Therefore, the complaint should be dismissed.

II. This Court Lacks Subject Matter Jurisdiction.

The complaint also should be dismissed because the Court lacks subject matter jurisdiction. Rule 12(b)(1) of the Federal Rules of Civil Procedure requires that an action be dismissed if the court lacks subject matter jurisdiction. Where, as here, defendants challenge plaintiffs' allegations that this Court has subject matter jurisdiction over their claim, the burden of proving that subject matter jurisdiction exists is on plaintiffs. *Anderson v. United States of America*, 245 F.Supp. 1217, 1221 (M.D. Fla. 2002). When litigating against the Federal Defendants, plaintiffs must prove that a specific waiver of sovereign immunity exists. *See id. at* 1221-22.

Sovereign immunity shields the Federal Defendants from suit. *Federal Deposit Insurance Corporation v. Meyer*, 510 U.S. 471, 475 (1994). Sovereign immunity is jurisdictional in nature, and the United States has not waived sovereign immunity from suit with respect to claims for damages for alleged constitutional violations. *Id*. at 475-477. Because the

plaintiffs have failed to identify a waiver of sovereign immunity, their complaint must be dismissed with prejudice.[5]

III. The Complaint Fails to State a Claim Upon Which Relief Can Be Granted.

In considering a motion to dismiss a complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted, the complaint must be considered in the light most favorable to the plaintiff, and all facts as alleged by the plaintiff must be accepted as true. *Brooks v. Blue Cross & Blue Shield of Florida*, 116 F.3d 1364, 1369 (11th Cir. 1997) (per curiam). A complaint should not be dismissed for failure to state a claim unless the movant demonstrates "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

However, it should be kept in mind that, in considering a motion to dismiss, a court "will not accept, without more, conclusory allegations or legal conclusions masquerading as factual conclusions." *Robinson v. Jewish Ctr. Towers*, 993 F. Supp. 1475, 1476 (M.D. Fla. 1998). As explained below, the complaint, consisting of conclusory and entirely frivolous allegations of unconstitutionality and fraud, should be dismissed under Rule 12(b)(6).

A. Plaintiffs' Allegations that the Loan is Invalid are Frivolous.

To the extent it can be said to have one, the crux of the plaintiffs' complaint (Compl., ¶¶

[5] The plaintiffs cite three removal statutes in Title 28 of the United States Code, 28 U.S.C. §§ 1446, 1447, and 1443, as the bases for federal question jurisdiction. (Compl., ¶ 13). It is well settled, however, that sovereign immunity is not waived by general jurisdictional statutes. *Koehler v. United* States, 153 F.3d 263, 266 n. 2 (5th Cir. 1998); *Lonsdale v. United States*, 919 F.2d 1440, 1443-44 (10th Cir. 1990); *Kester v. Campbell*, 652 F.2d 13, 15 (9th Cir. 1981), *cert. denied*, 454 U.S. 1146 (1982).

10-12, 19-20, 23-25 A. - W.) is that the entire U.S. banking system is a fraud and that common transactions such as mortgages and consumer loans are nullities because lenders offer no valid consideration for a borrower's promissory note because "the money from the loan alleged to have been made to Plaintiffs" was "created solely on the books of" the lenders. (Compl., ¶ 25.A and B). A grant of credit does not "create" money within the meaning of the Constitution or the statutes of the United States.

Plaintiffs have devised several arguments like this over the years concerning the monetary system in attempts to defeat legitimate claims and obligations. For example, at various times plaintiffs have alleged that paper money is not "real" money because it is not backed by gold coin or other specie. Such arguments uniformly have been rejected by the courts to which they were presented. See, e.g., United States v. Whitesel, 543 F.2d 1176, 1180 (6th Cir. 1976) (taxpayer's claim that only money either coined from gold or silver or immediately backed by gold or silver constitutes "legal dollars" was "clearly frivolous"); Jones v. CIR, 688 F.2d 17 (6th Cir. 1982) (taxpayer's argument that wages paid in bank notes not backed by gold or silver specie were not taxable was "clearly without merit"); Foret v. Wilson, 725 F.2d 254, 254-55 (5th Cir. 1984) (bidder's argument that only gold and silver coin constitute U.S. legal tender is "hopeless and frivolous," having been rejected by the Supreme Court 100 years ago); Accord Birkenstock v. CIR, 646 F.2d 1185, 1186 (7th Cir. 1981) (taxpayer's argument that wages not backed by gold were not taxable was clearly without merit); United States v. Rickman, 638 F.2d 182, 184 (10th Cir. 1980) (taxpayer's argument that earnings must be valued in terms of gold dollars was "the height of absurdity"); United States v. Benson, 592 F.2d 257 (5th Cir. 1979) (characterizing as "frivolous" a taxpayer's argument that federal reserve notes do not constitute income); United States v. Ware, 608 F.2d 400, 402-04 (10th Cir. 1979) (plaintiff's contention that

the gold standard is appropriate legal tender is contrary to all federal law on the subject); United States v. Rifen, 577 F.2d 1111, 1112-13 (8th Cir. 1978) (court upheld verdict based on jury's disbelief that criminal defendant's misconception about federal reserve notes as legal tender was based on a good faith misinterpretation of the law); United States v. Anderson, 584 F.2d 369, 374 (10th Cir. 1978) (concluding that there can be no challenge to the legality of federal reserve notes) United States v. Schmitz, 542 F.2d 782 (9th Cir. 1976) (taxpayer's argument that federal reserve notes are not taxable dollars was "unfounded" and "without merit"); United States v. Wangrud, 533 F.2d 495 (9th Cir. 1976) (court decided to publish opinion solely to make it clear that same argument had "absolutely no merit"); United States v. Daly, 481 F.2d 28 (8th Cir. 1973) (argument that gold or silver is the only legal tender held "clearly frivolous").

Plaintiffs' assertions to the contrary, there is no requirement that a loan be made with legal tender before a court will deem it valid. Rene v. Citibank, 32 F. Supp.2d 539, 544 (E.D.N.Y. 1999); Nixon v. Individual Head of the St. Joseph Mortgage Co., 615 F.Supp. 898, 900 (W.D. Ind. 1985). In this case, the lender properly issued a check to plaintiffs as a loan secured by a mortgage. Plaintiffs accepted the benefits of this transaction and agreed to the lender's use of a negotiable instrument instead of legal tender. Their utterly frivolous allegations should be dismissed with prejudice.

B. Plaintiffs Fail to Plead Fraud with Particularity.

The Complaint charges the OCC with "being an unwitting and culpable co-Defendant" in the allegedly unlawful and fraudulent actions committed or perpetrated by the other defendants. (Compl., ¶11). This fraud claim does not meet the requirements of Rule 9(b) of the Federal Rules of Civil Procedure, which, in light of the severity of an allegation of fraud, states that in all complaints alleging fraud, "the circumstances constituting fraud . . . shall be stated with

particularity." See *Securities and Exchange Commission v. Dunlap*, 2002 WL 1007626 (S.D. Fla. 2002). Rule 9(b) is meant to enable defendants to respond specifically to spurious charges of fraudulent behavior by alerting them to the precise conduct with which they are charged. *Brooks v. Blue Cross and Blue Shield of Florida*, 116 F.3d at1370. The Rule may be satisfied if the complaint sets forth:

> (1) precisely what statements were made in what documents or oral representations or what omissions were made, and
> (2) the time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) same, and
> (3) the content of such statements and the manner in which they misled the plaintiff, and
> (4) what the defendants obtained as a consequence of the fraud.

Id. at 1371, *quoting Fitch v. Radnor Industries, Ltd.,* No. 90-2084, 1990 WL 150110, at *2 (E.D. Pa. Sept. 27, 1990) (*quoting O'Brien v. National Property Analysts Partners,* 719 F. Supp. 222, 225 (S.D.N.Y. 1989), *aff'd*, 936 F.2d 674 (2d Cir. 1991)). In the alternative, a complaint could satisfy Rule 9(b) with a list of allegations of fraud that describes the nature and subject of statements. *Brooks*, 116 F.3d at 1371.

The Complaint contains conclusory allegations that the lenders committed fraud and that the OCC allowed them to commit the fraud, but does not identify the individuals who committed the fraud, when the fraud occurred, where the fraud occurred, the nature, content or subject of the fraudulent activities, or what defendants gained as a consequence of the fraud. The Complaint is devoid of any of the factors required under Rule 9(b) to plead fraud.

CONCLUSION

Based on the foregoing, the Complaint should be dismissed with prejudice.

Respectfully submitted,

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