IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DELONTE EMILIANO TRAZELL	*	
Plaintiff,	*	
vs.	*	Civil Action No.:12-01369 (ABJ)
ROBERT G. WILMERS, et al.	*	
Defendants.	*	

* *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Defendants Robert G. Wilmers, Michael N. Trayder, and Manufacturers and Traders Trust Company (collectively, the "M&T Defendants") submit this memorandum of law in support of their motion to dismiss the Amended Complaint (the "Amended Complaint") filed by Plaintiff Delonte Emiliano Trazell ("Plaintiff"). As set forth more fully below, the Amended Complaint fails to meet the pleadings standards of Fed. R. Civ. P. 8(a), as construed by the Supreme Court in *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 550, 557 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009), and should be dismissed.

THE ALLEGATIONS OF THE AMENDED COMPLAINT

Plaintiff, proceeding *pro se*, filed the Amended Complaint in this case on or about August 17, 2012. Based on what can be deciphered from the "allegations," which are largely nonsensical, Plaintiff appears to contend that he is the owner of a Dodge Charger (the "Vehicle"), which was repossessed and is being stored at 6504 Yochleson Place, Clinton, Maryland. Amended Complaint, ¶ 1. Based on these

minimal facts, Plaintiff asserts six claims against the M&T Defendants: (1) violation of "D.C. Municipal Regulations Title 16 341.1"; (2) violation of "D.C. Municipal Regulations Title 16 341.3"; (3) violation of "D.C. Municipal Regulations Title 16 341.5"; (4) violation of "18 U.S.C. ch. 63 Mail Fraud"; (5) violation of "15 U.S.C. § 1681s-2(a) Duty of Furnishers of Information to Provide Accurate Information"; and (6) violation of "12 USC §8 3 Loans by Banks on Its Own Stock." *See* Counts I-VI of the Amended Complaint.

The legal claims asserted by Plaintiff are devoid of factual content. Instead, they consist entirely of selected quotations from the various statutes and regulations cited by Plaintiff. Such "labels and conclusions" and "naked assertions devoid of further factual enhancement" (*Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 550, 557 (2007)) are insufficient to state a claim upon which relief can be granted.

STANDARDS GOVERNING MOTIONS TO DISMISS

The purpose of a Rule 12(b)(6) motion is to provide a defendant with a mechanism for testing the legal sufficiency of the complaint while preserving judicial resources and avoiding unnecessary discovery. *Neitzke v. Williams*, 490 U.S. 319, 326-27 (1989). In *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), the Supreme Court reiterated that the pleading requirements of *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007), should be rigorously enforced by the lower courts when considering Rule 12(b)(6) motions to dismiss. While a complaint does not need "detailed factual allegations," Rule 8(a) "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S.

at 555). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

When considering a Rule 12(b)(6) motion, courts consider "[t]wo working principles." *Iqbal*, 129 S. Ct. at 1949. *First*, a court is not bound to accept, as true, legal conclusions couched as factual allegations. To the contrary, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* *Second*, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is ***plausible on its face***.'" *Id.* (quoting *Twombly*, 550 U.S. at 570) (emphasis added). "But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint . . . has not 'show[n]' – 'that the pleader is entitled to relief.'" *Id.* at 1950 (quoting Fed. R. Civ. P. 8(a)(2)).

To guide lower courts on the "plausibility" principle, the Court explained:

> 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. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'"

Id. at 1949 (internal citations omitted). Thus, "[d]etermining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 1950.

In short, under *Iqbal* and *Twombly*, a complaint must contain direct and plausible allegations supporting all material elements necessary to sustain recovery under a viable legal theory. A complaint should be dismissed, when, on its face, it is devoid of facts necessary for the plaintiff to prevail under

the causes of action asserted, or when the complaint itself discloses facts that necessarily defeat the causes of action pled.

Finally, and particularly pertinent to this case, the requirement that a plaintiff's factual allegations "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests'" applies to all claimants, including those, like Plaintiff, who are proceeding *pro se*. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (applying *Twombly* to complaint by *pro se* complainant). Thus, although a "*pro se* complaint 'must be held to less stringent standards than formal pleadings drafted by lawyers,'" a *pro se* plaintiff must plead "factual matter" that permits the court to infer "more than the mere possibility of misconduct. *Iqbal*, 129 S.Ct. at 1950.

Plaintiff's allegations fall far short of the standards articulated in *Iqbal* and *Twombly*. Accordingly, Plaintiff's Amended Complaint should be dismissed.

ARGUMENT

I. COUNT I FAILS TO STATE A CLAIM FOR VIOLATION OF D.C. MUNICIPAL REGULATIONS TITLE 16 341.1

In Count I of the Amended Complaint, Plaintiff alleges that he is the "registered owner of motor vehicle Dodge Charger, [plate #DU5717] . . .", that he discovered the car's "removal" on June 19, 2012, and that the car is "now unlawfully stored at 6504 Yochelson Place Clinton, M.D." Amended Complaint, ¶ 1. Plaintiff then purports to quote from D.C. Mun. Regs. 18, § 341.1 (2013), which provides that a holder of a security instrument *may* deliver to the buyer a written notice of the holder's

intention to repossess the vehicle at least ten (10) days before any motor vehicle is repossessed. Other than these "allegations," Plaintiff fails to provide any facts supporting his claim.[1]

Plaintiff does not allege who removed the car or why its storage is "unlawful." He does not allege why he was entitled to receive notice of the repossession or how any of the M&T Defendants violated the Regulation. In short, Count I fails to set forth the factual allegations necessary to give the M&T Defendants fair notice of Plaintiff's claim.

II. COUNTS II THROUGH VI OF THE AMENDED COMPLAINT FAIL TO STATE CLAIMS.

In Counts II through VI of the Amended Complaint, Plaintiff recites the provisions of the District of Columbia Municipal Regulations and various federal statutes without alleging any facts as to how those regulations and statutes apply to the repossession of Plaintiff's car, let alone how any of the M&T Defendants violated their provisions:

> 2. There is NO 'instrument of security' or 'document of title' between M&T BANKING CORP or MANUFACTORY AND TRADERS INC. and D. Trazell
>
> a. Violation D.C. Municipal Regulations Title 16 341.3
>
> i. "If default consists solely of the buyer's failure to make one installment payment due under the instrument of security . . . "
>
> 3. M&T Bank Agent Timothy Worrell left his business card on the door of the registered vehicle owner's address.

[1] Throughout the Amended Complaint, Plaintiff does not even mention Defendants Robert G. Wilmers and Michael N. Trayder, much less allege facts sufficient to demonstrate that they are somehow liable for the claims he asserts against the M&T Defendants

.

a. The removal occurred at address [5 ELMIRA STREET SE WASHINGTON, D.C.]

i. Violation D.C. Municipal Regulation Title 16 341.5

1. "For fifteen days after the notice required by § 341.4 has been delivered or mailed the holder shall retain or store the repossessed motor vehicle in the District where consumer resides or where located and repossessed."

4. (10) post items

a. Violation 18 USC CH 63 MAIL FRAUD

i. "Whoever, having devised any scheme for obtain money or property by means of fraudulent representations."

5. (11) HARD inquiries to credit report

a. Violation 15 USC §1681s-2(a) Duty of Furnishers of Information to Provide Accurate Information

i. "A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or has reasonable cause to believe that the information is inaccurate".

6. Michael N. Trayder, M&T BANK employee sent post stating, 'there's not enough collateral to secure loan'.

a. Violation 12 USC § 83 Loans by Banks on its Own Stock

1. "No national bank shall make any loan or discount on the security of the shares of its own capital stock".

Amended Complaint, ¶¶ 2-6.

A review of these "allegations" demonstrates that Plaintiff has failed to provide ***any*** "factual content" that would allow the Court "to draw the reasonable inference that the defendant is liable for the

misconduct alleged." *Iqbal*, 129 S. Ct. at 1949. To hold that Plaintiff's "naked assertions" satisfy the pleading requirements of the Federal Rules of Civil Procedure and survive the M&T Defendants' Rule 12(b)(6) motion to dismiss would render Rule 8(a)(2), *Iqbal*, and *Twombly* meaningless. The federal pleading requirements, at their core and as interpreted in *Iqbal* and *Twombly*, are intended (at the very least) to ensure fairness to the defendants, where, as here, the plaintiff has initiated litigation with nothing "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555). Put differently, Plaintiff has the burden to plead with clarity and reasonable factual specificity and he has failed to do so. To permit Plaintiff to proceed on the basis of the anemic factual allegations in his Amended Complaint would contravene *Twombly*'s warning that "before proceeding to discovery, a complaint must allege *facts* suggestive of illegal conduct." 550 U.S. at 563 n.8 (emphasis added). Accordingly, Counts II through VI fail to state claims against the M&T Defendants.

CONCLUSION

For the foregoing reasons, the M&T Defendants respectfully ask the Court to dismiss Plaintiff's Amended Complaint, with prejudice.

[SIGNATURE APPEARS ON THE NEXT PAGE]

Respectfully submitted,

/s/

Catherine A. Bledsoe, D.C. Bar No.445172

Gordon Feinblatt LLC
The Garrett Building
233 East Redwood Street
Baltimore, Maryland 21202
410/576-4198
FAX: 410/576-4246

Attorney for Defendants Manufacturers and Traders Trust Company, Robert G. Wilmers and Michael N. Trayder