IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ANTHONY J. BRODZKI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 11-1147-SLR
	)	
FOX BROADCASTING,	)	
	)	
Defendant.	)	

MEMORANDUM ORDER

At Wilmington this 13th day of January, 2012;

IT IS ORDERED that the complaint is dismissed as frivolous pursuant to 28 U.S.C. § 1915, for the reasons that follow:

1. **Background**. Plaintiff Anthony J. Brodzki ("plaintiff") filed this action on November 18, 2011, alleging defamation, slander, invasion of privacy, and violations of civil rights. He appears pro se and has been granted leave to proceed in forma pauperis. Plaintiff claims diversity jurisdiction pursuant to 28 U.S.C. § 1332. Apparently, he filed the complaint in this district because defendant is incorporated in Delaware. (*See Brodzki v. Fox News*, Civ. No. 10-796-SLR at D.I. 5, ¶ 7) Plaintiff filed a similar complaint on September 19, 2011. (*See Brodzki v. Fox Broadcasting*, Civ. No. 11-870-SLR)

2. **Standard of Review**. This court must dismiss, at the earliest practicable time, certain in forma pauperis actions that are frivolous, malicious, fail to state a claim, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2). The court must accept all factual allegations in a complaint as true and take

them in the light most favorable to a pro se plaintiff. *Phillips v. County of Allegheny*, 515 F.3d 224, 229 (3d Cir. 2008); *Erickson v. Pardus*, 551 U.S. 89, 93 (2007). Because plaintiff proceeds pro se, his pleading is liberally construed and his complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. at 94 (citations omitted).

3. An action is frivolous if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Under 28 U.S.C. § 1915(e)(2)(B)(i), a court may dismiss a complaint as frivolous if it is "based on an indisputably meritless legal theory" or a "clearly baseless" or "fantastic or delusional" factual scenario. *Neitzke*, 490 at 327-28; *Wilson v. Rackmill*, 878 F.2d 772, 774 (3d Cir. 1989); *see, e.g., Deutsch v. United States*, 67 F.3d 1080, 1091-92 (3d Cir. 1995) (holding frivolous a suit alleging that prison officials took an inmate's pen and refused to give it back).

4. The legal standard for dismissing a complaint for failure to state a claim pursuant to § 1915(e)(2)(B)(ii) is identical to the legal standard used when ruling on Rule 12(b)(6) motions. *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999) (applying Fed. R. Civ. P. 12(b)(6) standard to dismissal for failure to state a claim under § 1915(e)(2)(B)). However, before dismissing a complaint or claims for failure to state a claim upon which relief may be granted pursuant to the screening provisions of 28 U.S.C. § 1915, the court must grant plaintiff leave to amend his complaint unless amendment would be inequitable or futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

5. A well-pleaded complaint must contain more than mere labels and conclusions. *See Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). The assumption of truth is inapplicable to legal conclusions or to "[t]hreadbare recitals of the elements of a cause of action supported by mere conclusory statements." *Id.* at 1949. When determining whether dismissal is appropriate, the court conducts a two-part analysis. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). First, the factual and legal elements of a claim are separated. *Id.* The court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. *Id.* at 210-11. Second, the court must determine whether the facts alleged in the complaint are sufficient to show that plaintiff has a "plausible claim for relief."[1] *Id.* at 211. In other words, the complaint must do more than allege plaintiff's entitlement to relief; rather it must "show" such an entitlement with its facts. *Id.* "[W]here the well-pleaded facts do not permit the court to infer more than a mere possibility of misconduct, the complaint has alleged - but it has not shown - that the pleader is entitled to relief." *Iqbal*, 129 S.Ct. at 1949 (quoting Fed. R. Civ. P. 8(a)(2)).

6. **Discussion**. Plaintiff resides in North Richland Hills, Texas. He alleges that, for the past two years, during defendant's morning Dallas show, its employees have

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[1]A claim is facially plausible when its factual content allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570). The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* "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.*

slandered and defamed him and violated his civil rights, his right to privacy, and his "seclusion invade my mental well being." In addition, he alleges that defendant's employees "have said that they have the ability to hear [his] thinking." (D.I. 2)

7. To the extent that plaintiff attempts to raise a civil rights action, the claim fails. When bringing a § 1983 claim, a plaintiff must allege that some person has deprived him of a federal right, and that the person who caused the deprivation acted under color of state law. *West v. Atkins,* 487 U.S. 42, 48 (1988). Defendant is not a state actor and, therefore, the civil rights claim fails.

8. To the extent plaintiff attempts to allege slander, defamation, or invasion of privacy, the claims also fail. The conclusory and scant allegations fall short of the pleading requirements of *Iqbal* and *Twombly*. In addition, plaintiff's claim that defendant's employees are reading his mind is nonsensical. Nor is it clear what is meant when plaintiff alleges defendant violated his "seclusion invade my mental well being." In viewing the complaint, the court concludes that the allegations are fantastical, delusional, irrational, and frivolous.

9. Finally, plaintiff has a history of filing frivolous lawsuits. According to the National Case Party Index database, beginning in 2009, and to date, plaintiff has filed more than 152 civil actions and 20 appeals. The United States District Court for the Northern District of Illinois issued a vexatious litigant order against plaintiff, *In Re: Anthony J. Brodzki*, Civ. No. 10-04591, on July 23, 2010. In addition, plaintiff was sanctioned by the United States District Court for the Northern District of Texas based upon his history of submitting multiple frivolous lawsuits. *Brodzki v. North Richland Hills*

Police Dep't, 2010 WL 1685798 (N.D. Tex. Apr. 19, 2010), *aff'd*, 413 F. App'x 697 (5th Cir. 2011). The court notes that many of plaintiff's prior lawsuits were found to be frivolous and have been described as "wholly within the realm of fantasy." *See Brodzki v. Regional Justice Ctr.*, Civ. No. 10-01091-LDG-LRL, July 22, 2010 order. Plaintiff continues to file fantastical, delusional, irrational, and frivolous lawsuits. Indeed, plaintiff has repeatedly filed lawsuits in this court against various media outlets making the same or similar frivolous allegations of slander and defamation. Notably, he filed an almost identical case against Fox Broadcasting in Civ. No. 11-870-SLR. Based upon the allegations and the absence of a viable claim that could be alleged in an amended complaint, the complaint will be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).

10. Plaintiff's numerous repetitive and frivolous filings waste the court's time and resources. Plaintiff is placed on notice that future repetitive and frivolous filings against media outlets could result in an order enjoining plaintiff from filing lawsuits in this court.

11. **Conclusion**. For the above reasons, the complaint is dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). Amendment of the complaint would be futile. *See Alston v. Parker*, 363 F.3d 229 (3d Cir. 2004); *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 111 (3d Cir. 2002); *Borelli v. City of Reading*, 532 F.2d 950, 951-52 (3d Cir. 1976).

UNITED STATES DISTRICT JUDGE