

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED September 28, 2015

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
PARMINDER SINGH WALIA, :
:
Plaintiff, :
:
v. :
:
THE VERITAS HEALTHCARE SOLUTIONS :
LLC, *et al.*, :
:
Defendants. :
:
-----X

13 Civ. 6935 (KPF)
ORDER

KATHERINE POLK FAILLA, District Judge:

The Court is in receipt of Plaintiff’s letter and incorporated motions, dated September 20, 2015 (the “September 20 Letter”). (Dkt. #49). For the reasons detailed below, Plaintiff’s motion for an order amending the Court’s prior opinion is denied; his motion to stay this litigation is granted, at least in the short term; and his motion for monetary relief is denied. Furthermore, because Plaintiff has chosen not to amend his complaint, the Court dismisses with prejudice Plaintiff’s claims for fraud and intentional infliction of emotional distress.

A. Plaintiff’s September 20 Letter

Plaintiff’s September 20 Letter sets forth a number of statements reciting, without any attendant request for relief, Plaintiff’s displeasure with previous statements made by the Court. To the extent those statements concern the options available to Plaintiff in moving forward with his case and the Court’s inherent authority *vel non* to institute criminal proceedings against

Defendants, the Court has repeatedly provided explicit explanation and declines to rehash those matters here. (*See* Dkt. #45, 47).

Plaintiff, in his September 20 Letter, additionally states that “I made it clear [in my] letter dated Aug 13 2015 [Dkt. #43] to you, Your Honor, that I do not intend to amend any part of the complaint.” (Dkt. #49 at 2). In the Court’s Opinion and Order, issued on August 11, 2015 (the “August 11 Opinion”) (Dkt. #42), the Court dismissed Plaintiff’s claims for fraud and intentional infliction of emotional distress without prejudice to the filing of an amended complaint. In a subsequent Order, dated August 25, 2015 (Dkt. #45), the Court directed Plaintiff to submit any amended pleading by September 25, 2015.

Plaintiff’s September 20 Letter emphatically communicates his refusal to replead and his choice to stand instead on his originally-filed complaint; this is, of course, his right. (*See* Dkt. #49 at 2). Because, as discussed in the August 11, 2015 Opinion, Plaintiff has failed to state a claim for fraud or intentional infliction of emotional distress, and because he has now opted not to replead these causes of action, the Court dismisses with prejudice Plaintiff’s claims for fraud and intentional infliction of emotional distress. *See* Fed. R. Civ. P. 8 (“a short and plain statement of the claim *showing that the pleader is entitled to relief*” (emphasis added)); Fed. R. Civ. P. 9(b) (“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.”); Fed. R. Civ. P. 12(b)(6) (authorizing courts to dismiss allegations that fail to state a claim on which relief can be granted); Fed. R. Civ. P. 41(b) (authorizing courts to dismiss a claim for failure to comply with a court order).

B. The Court Denies Plaintiff's Request for an Order Amending the Court's August 11 Opinion

The Court construes Plaintiff's "Motion A," submitted as part of his September 20 Letter, as in part a request pursuant to 28 U.S.C. § 1292(b) and Federal Rule of Appellate Procedure 5(a)(3) for an order amending the Court's August 11 Opinion in order to permit Plaintiff to petition the United States Court of Appeals for the Second Circuit for an immediate interlocutory appeal. While Plaintiff's September 20 Letter does not make clear what aspect of the August 11 Opinion he wishes to appeal, he presumably intends to appeal the dismissal of certain of his claims.¹ For the reasons set forth below, Plaintiff's motion is denied.

1. Applicable Law

Under Section 1292(b), a district court may certify an order for interlocutory appeal when the court is "of the opinion that such order [i] involves a controlling question of law [ii] as to which there is substantial ground for difference of opinion and [iii] that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b); *see also Casey v. Long Island R.R. Co.*, 406 F.3d 142, 145-46 (2d Cir. 2005).² In general, "federal practice strongly disfavors discretionary

¹ In the August 11 Opinion, the Court dismissed with prejudice Plaintiff's claims for extortion, blackmail, harassment, and breach of contract, and dismissed without prejudice his claims for fraud and intentional infliction of emotional distress. (Dkt. #42 at 24).

² Federal Rule of Appellate Procedure 5(a)(3) provides the avenue by which a district court may amend its order to grant a party permission to petition for an interlocutory appeal:

If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the

interlocutory appeals [as they] prolong judicial proceedings, add delay and expense to litigants, burden appellate courts, and present issues for decisions on uncertain and incomplete records, tending to weaken the precedential value of judicial opinions.” *S.E.C. v. Straub*, No. 11 Civ. 9645 (RJS), 2013 WL 4399042, at *2 (S.D.N.Y. Aug. 5, 2013) (quoting *In re World Trade Ctr. Disaster Site Litig.*, 469 F. Supp. 2d 134, 144 (S.D.N.Y. 2007)); see also *Glatt v. Fox Searchlight Pictures, Inc.*, No. 11 Civ. 6784 (WHP), 2013 WL 5405696, at *1 (S.D.N.Y. Sept. 17, 2013) (“Interlocutory appeals are strongly disfavored in federal practice”). The Second Circuit has further emphasized that § 1292(b) certification should be “strictly limited because only exceptional circumstances [will] justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment.” *In re Flor*, 79 F.3d 281, 284 (2d Cir. 1996) (internal quotation omitted). “[E]ven where the three legislative criteria of Section [] 1292(b) appear to be met, district courts retain unfettered discretion to deny certification if other factors counsel against it.” *In re Facebook, Inc., IPO Sec. and Derivative Litig.*, No. 12 Civ. 2389 (RWS), 2014 WL 988549, at *2 (S.D.N.Y. Mar. 13, 2014); *Transp. Workers Union of Am., Local 100 v. New York City Transit Auth.*, 358 F. Supp. 2d 347, 351 (S.D.N.Y. Feb. 25, 2005).

necessary conditions are met, the district court may amend its order, either on its own or in response to a party’s motion to include the required permission or statement.

Fed. R. App. P. 5(a)(3).

2. Plaintiff Has Failed to Identify a Basis for Certification

Construing Plaintiff's submissions liberally, given his *pro se* status, the Court nonetheless finds that Plaintiff has failed to satisfy the criteria for certification of an order for interlocutory appeal. In particular, Plaintiff has failed to identify a substantial ground for difference of opinion concerning the questions of law implicated by the dismissal of certain of his claims. By way of background, a substantial ground for difference of opinion exists "when [i] there is conflicting authority on the issue, or [ii] the issue is particularly difficult and of first impression for the Second Circuit." *Capitol Records, LLC v. Vimeo, LLC*, No. 09 Civ. 10101 (RA), 2013 WL 6869648, at *10 (S.D.N.Y. Dec. 31, 2013) (quoting *In re Enron Corp.*, No. 06 Civ. 7828 (SAS), 2007 WL 2780394, at *1 (S.D.N.Y. Sept. 24, 2007)). Neither of these requirements is satisfied here.

It is well settled in the Second Circuit that a plaintiff's claims survive a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6) if, drawing all reasonable inferences in plaintiff's favor and assuming all well-pleaded factual allegations to be true, the court determines that plaintiff's claims plausibly give rise to an entitlement to relief. *See, e.g., Faber v. Metro. Life Ins. Co.*, 648 F.3d 98, 104 (2d Cir. 2011) (internal quotation marks omitted) (quoting *Selevan v. N.Y. Thruway Auth.*, 584 F.3d 82, 88 (2d Cir. 2009)). It is similarly well-established that a plaintiff need not plead every relevant fact, but rather must allege only "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also In re Elevator Antitrust Litig.*, 502 F.3d 47, 50 (2d Cir. 2007).

Furthermore, the elements of the claims at issue — extortion, blackmail, harassment, breach of contract, and intentional infliction of emotional distress — are not disputed in the Second Circuit, nor are they a matter of first impression. As the Court walked through each of these claims in its August 11 Opinion, it will not do so again here. (See Dkt. #42 at 5-6, 12-14, 19-21).

Much like Rule 12(b)(6), Federal Rule of Civil Procedure 9(b) governing the pleading of fraud claims has been thoroughly addressed in the Second Circuit, with no significant division of authority. Specifically, the law in the Second Circuit requires a fraud claim to “[i] specify the statements that the plaintiff contends were fraudulent, [ii] identify the speaker, [iii] state where and when the statements were made, and [iv] explain why the statements were fraudulent.” *Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 290 (2d Cir. 2006) (internal quotation marks and citations omitted). Again, as discussed in the Court’s August 11 Opinion, Plaintiff did not meet this settled standard. (Dkt. #14-19).

Because Plaintiff’s claim fails to satisfy one of the three prongs of § 1292(b), the Court need not address the other two requirements. See *Straub*, 2013 WL 4399042, at *2 (“These three criteria are ‘conjunctive, not disjunctive,’ and courts may only certify an interlocutory appeal where all three are satisfied.”). Plaintiff’s Motion for an Order Amending the Court’s August 11 Opinion is accordingly denied.

C. The Court Grants Plaintiff's Request to Stay the District Court Proceedings

Notwithstanding the lack of permission to file an interlocutory appeal, Plaintiff has proceeded to file a Notice of Appeal in the United States Court of Appeals for the Second Circuit. (See Dkt. #46). Plaintiff thus requests that the Court stay the present case pending the outcome of his appeal.

As the United States Supreme Court has explained, the “filing of a notice appeal is an event of jurisdictional significance.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). It confers exclusive jurisdiction on the appellate court while divesting the lower court “of its control over those aspects of the case involved in the appeal.” *Id.* While the Court reiterates that it has denied Plaintiff’s request for certification of an interlocutory appeal, a notice of appeal has nevertheless been filed. The Court must accordingly stay the current action pending the outcome of that appeal. Additionally, to the extent that the Court retains jurisdiction over Plaintiff’s non-dismissed claims, judicial efficiency counsels in favor of a stay in order to avoid piecemeal litigation. Plaintiff’s motion for a stay of the current case is therefore granted. The Court notes, however, that this stay may be of limited duration. It is the Court’s belief that the order from which Plaintiff has taken an appeal — comprising as it does both the granting in part and the denying in part of a motion to dismiss — is a non-final order that may not be appealed at this time. See *United States v. 228 Acres of Land and Dwelling Located on Whites Hill Road in Chester, Vt.*, 916 F.2d 808, 811 (2d Cir. 1990) (discussing general proposition that an order denying a dispositive motion or granting it only in part is

nonfinal, and is not subject to appellate review until the entry of final judgment). If the Second Circuit agrees with this Court, the parties should contemplate that the case will soon be returned to this Court's docket.

D. The Court Denies Plaintiff's Request for Immediate Monetary Relief

Plaintiff's "Motion B," also contained within his September 20 Letter, requests that the Court order Defendants to give him a sum of \$300,000 during the pendency of his suit. (Dkt. #49 at 4). Plaintiff has not provided any legal basis upon which he would be entitled to such relief, nor can the Court identify one. Plaintiff's motion for immediate monetary relief is therefore denied.

CONCLUSION

For the reasons set forth above, Plaintiff's motion for an order amending the Court's August 11 Opinion is DENIED; his motion to stay this litigation is GRANTED; and his motion for monetary relief is DENIED. Additionally, the Court DISMISSES WITH PREJUDICE Plaintiff's claims for fraud and intentional infliction of emotional distress.

SO ORDERED.

Dated: September 28, 2015
New York, New York



KATHERINE POLK FAILLA
United States District Judge