

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, et al

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CIVIL ACTION NO. 4:16-cv-01969

vs.

CANDACE KUNZ-FREED, et al

MOTION TO DISMISS

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Defendant Bernard Lise Mathews, III, erroneously sued and served as “Bernard Lyle Mathews, III” (hereinafter referred to as “Mathews”) hereby files this Motion to Dismiss for Failure to State a Claim and for Lack of Subject Matter Jurisdiction and would respectfully show the Court the following:

I. SUMMARY OF MOTION

1. Plaintiffs do not have an actual case or controversy with Mathews. Plaintiffs cannot articulate any action traceable to Mathews, which has caused any injury under any of the theoretical approaches taken by Plaintiffs. Additionally, Mathews cannot be held liable to Plaintiffs. Accordingly, Mathews requests that this Court dismiss Plaintiffs' claim for failure to state a claim and for lack of subject matter jurisdiction.

II. BACKGROUND

2. Mathews handled only an Emergency Motion for Removal of Lis Pendens in the case

of Candace Curtis vs. Anita and Amy Brunsting; in Civil Action 4:12-cv-00592, also file in this District Court. The purpose of the motion was to seek relief from a *lis pendens* to permit the trustees to consummate a fair market sale of residential real property owned by the Brunsting Family Living Trust. A telephone conference with the Judge was held on the motion with Candace Curtis participating. At the conclusion of this hearing Judge Kenneth Hoyt, on his own motion, dismissed the underlying action for lack of jurisdiction.

3. Candace Curtis appealed this dismissal, but Anita and Amy Brunsting hired new counsel who handled the appeal, the subsequent remanded action, and various other matters. Mathews had no other involvement in this case, or any other legal proceedings involving any of the parties to this case. Although acting at various times as “Of Counsel” to the firm of Vacek & Freed, Mathews never had any role in designing, drafting, administering or enforcing the provisions of the Brunsting Family Trust. Mathews has had no contact with the plaintiff’s outside of the above-mentioned Motion, and has had no substantive contact with any of the co-defendants who are asserted to have engaged in various conspiracies in Plaintiff’s Verified Complaint for Damages. There are no factual allegations in the Complaint that would tie Mathews to any of the fanciful theories of liability. In essence, Mathews is just an unfortunate bystander caught in the net of craziness that is the *modus operandi* of Candace Curtis and her surrogate, Rik Munson.

III. BASIS FOR MOTION TO DISMISS AND STANDARD OF REVIEW

4. Rule 12(b)(6) authorizes dismissal of an action for "failure to state a claim upon which relief can be granted" if the plaintiffs complaint lacks "direct allegations on every material

point necessary to sustain a recovery" or fails to "contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." FED. R. Civ. P. 12(b)(6); *Campbell v. San Antonio*, 43 F.3d 973, 975 (5th Cir. 1995). Although a court is required to accept all well-pleaded facts as true, a court does not accept as true conclusory allegations, "unwarranted deductions of fact," or "legal conclusions masquerading as factual conclusions." See, e.g., *Tuchman v. DSC Communications*, 14 F.3d 1061, 1067 (5th Cir. 1994). A claim must be dismissed if the claimant can prove no set of facts that would entitle it to relief. *Campbell v. City of San Antonio*, 43 F.3d 973, 975 (5th Cir. 1995) "The court is not required to 'conjure up unpled allegations or construe elaborately arcane scripts to save a complaint." *Id.* For the reasons set forth in more detail below, Plaintiffs' claims should be dismissed because Plaintiffs have failed to state a claim upon which relief may be granted.

5. Rule 12(b)(1) permits the dismissal of an action for lack of subject matter jurisdiction when the district court lacks authority to hear the dispute. See generally, *U.S. v. Morton*, 467 U.S. 822 (1984). The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). To establish subject matter jurisdiction, a party must show that an actual case or controversy exists between himself and the party from whom relief is sought. Standing is an essential element in the determination of whether a true case or controversy exists. A motion to dismiss for lack of subject matter jurisdiction should be granted if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief.

Id.

IV.

ARGUMENTS AND AUTHORITIES

6. Mathews adopts the Arguments and Authorities set forth by all other Defendants in their Motions to dismiss on file herein, and adopts by reference that material as if set forth herein verbatim.

V. PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant Bernard Lilse Mathews, III, hereby requests that his Motion to Dismiss for Failure to State a Claim on all claims alleged by Plaintiffs be granted.

Respectfully submitted,

/s/

BERNARD LILSE MATHEWS, III

Pro se

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Certificate of Service

I certify that on the 6th day of November, 2016, a true and correct copy of the foregoing was served via the Court's ECF system on the Plaintiffs and all other parties of record.

/s/

Bernard Lilse Mathews, III