IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PEPI SCHAFLER *

Plaintiff,

v. * CIVIL ACTION No. RWT-08-2334

EURO MOTOR CARS, et al *

Defendants.

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MEMORANDUM OPINION

To paraphrase Yogi Berra, this is a case of "deja vu all over again."[1] The matter comes before the Court a second time with the filing of a Complaint alleging the same set of facts as were alleged in *Schafler v. Scanniello*, Civil Action No. RWT-08-1840 ("Schafler I"). Once again, Plaintiff alleges that she purchased a "mongrel car"[2] from the Defendant Euro Motor Cars. She asserts that Euro Motor Cars and its officers Defendants Duke Mercer, Alex Martinowski, Adolph Tripot, Nicholas Scanniello, and Paul DiPiazza, and Defendant Ernest Lieb, who is the Chief Executive Officer ("CEO") of Mercedes Benz North America, Defendant James Dimon, who is the CEO of J.P. Morgan, and Chase Auto, the division of J.P. Morgan from which she procured financing for the car, all had duties to certify and verify the fitness of the automobile she purchased.

In Schafler I, the Court dismissed Plaintiff's Complaint *sua sponte* for lack of complete diversity on July 28, 2008, and, on August 22, 2008, the Court denied her motion for

[1]Yogi Berra, *The Yogi Book: "I Really Didn't Say Everything I Said,"* 29-30 (1998).

[2]She contends that her used Mercedes Benz "mongrel vehicle is like a circus car after a flood put together from spare parts, in which nothing matches." Compl. ¶ 10.

reconsideration. In her present suit before the Court, Plaintiff has asserted that the Court has federal question jurisdiction in addition to diversity jurisdiction over her claims. Defendants have filed various motions to dismiss, which Plaintiff has opposed. Plaintiff has also moved to amend/correct her complaint, to require that certain Defendants not share the same legal representation, and to order discovery. For reasons reminiscent of those noted in the earlier case, the Court will again dismiss the Plaintiff's complaint.

I. DISCUSSION

1. Federal Jurisdiction

Plaintiff alleges[3] that Defendants have committed mail fraud, wire fraud, and bank fraud; engaged in a civil RICO conspiracy; and have violated the provisions of the Truth in Lending Act ("TILA"). Compl. ¶¶7, 9, 12, 13, 15, 18. Despite the ink that Plaintiff has spilled in her frustration over her "mongrel vehicle," she has not alleged sufficient facts in support of her legal contentions to survive Defendants' motions to dismiss.

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) tests the sufficiency of the complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). In *Bell Atlantic Corp.*

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[3]Plaintiff has filed a motion to amend her complaint under Rule 15(a). [Paper No. 16]. Her proposed amended complaint would correct her prior misspelling of Defendant Nicholas Scanniello's name and would include a claim for money laundering under 18 U.S.C. § 1956(a)(1). The Court will grant in part and deny in part Plaintiff's motion to amend her complaint. Specifically, the Court will grant the motion to the extent that Plaintiff's complaint will be corrected to reflect the proper spelling of Defendant Nicholas Scanniello's name. The Court will, however, deny the motion to the extent that it seeks to add a claim for money laundering for reasons stated in the main text of this opinion. The Court, upon its own motion, will correct the complaint to reflect the proper spelling of Defendant Paul DiPiazza's name and Defendant James Dimon's name.

v. Twombly, — U.S. —, 127 S. Ct. 1955, 1969 (2007), the Supreme Court declared that the relevant standard was whether the plaintiff stated "enough facts to state a claim to relief that is plausible on its face," *id.* at 1974, observing that "plaintiff's obligation to provide grounds for his entitlement to relief requires more than labels and conclusions, and formalistic recitation of the elements of a cause of action will not do." *Id.* at 1964-65. In sum, "factual allegations must be enough to raise a right to relief above a speculative level." *Id.* at 1965.

Though the Court must consider all well-pled allegations in a complaint as true, *see Albright v. Oliver*, 510 U.S. 266, 268 (1994), and must construe factual allegations in the light most favorable to the plaintiff, *see Lambeth v. Bd. of Comm'rs of Davidson County*, 407 F.3d 266, 268 (4th Cir. 2005), it is not required to accept as true "a legal conclusion couched as a factual allegation," *Papasan v. Allain*, 478 U.S. 265, 286 (1986), conclusory allegations devoid of any reference to actual events, *United Black Firefighters v. Hirst*, 604 F.2d 844, 847 (4th Cir. 1979), or "allegations that are merely conclusory, unwarranted deductions of fact or unreasonable inferences," *Veney v. Wyche*, 293 F.3d 726 (4th Cir. 2002).

Here, Plaintiff has not borne her burden of invoking this Court's limited subject matter jurisdiction by providing the Court with "a short and plain statement of the grounds for the Court's jurisdiction." Fed. R. Civ. P. 8(a)(1); *see also Kokkonen v. Guardian Life Ins. Co. of Am.,* 511 U.S. 375, 377 (1994) (holding that subject matter jurisdiction may not be presumed). Plaintiff has not provided the Court with anything but her speculative, unsupported, and conclusory allegations. Indeed, the sole mention of mail, wire, and bank fraud, and money laundering is on the title page of the complaint; there are no supporting factual allegations in the following pages of the complaint that suffice to "raise a right to relief above a speculative level." *Twombly,* 127 S. Ct. at 1965.

Plaintiff fares no better on the civil RICO claim; she proffers only that Defendants "through a civil RICO conspiracy harmed and defrauded her," that Mercedes Benz had a duty "to protect the public from . . . a RICO enterprise," that Defendant Chase Auto Financing "ha[d] a mutually beneficial arrangement with Euro Motor Cars a de facto racketeering conspiracy to provide financing," and that Defendant Chase Auto Financing was a "conspirator[] in this civil RICO enterprise." Compl. ¶¶ 9, 12, 15, 18. These legal conclusions masquerading as facts do not suffice to meet Plaintiff's burden. Finally, the complaint is devoid of *any* allegation that Plaintiff did not receive any required disclosures under the TILA or that Defendants violated the TILA in any fashion. *See, e.g.* 15 U.S.C. § 1601, *et seq.* Because Plaintiff has failed to present facts supporting the exercise of this Court's federal question jurisdiction, the Court must dismiss her complaint. Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action"). The Court is thus prohibited from otherwise considering Plaintiff's allegation that she was sold a "mongrel" automobile because, in the absence of jurisdiction, the Court is not competent to entertain the action.[4]

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[4]Because the Court is dismissing the complaint due to the lack of subject matter jurisdiction, the Court notes that the same infirmity of pleading also warrants dismissal on personal jurisdiction grounds. Fed. R. Civ. P. 12(b)(2). Nowhere in the complaint does Plaintiff allege why the exercise of personal jurisdiction over Defendant Ernest Lieb, who is a resident of New Jersey and the Chief Executive Officer of Mercedes Benz of North America, is proper under either Maryland's long-arm statute or the Due Process Clause. *See* Md. Code Ann., Cts & Jud. Proc. § 6-103(a)-(b); *see Johansson Corp. v. Bowness Constr. Co.,* 304 F. Supp. 2d 701, 704 (D. Md. 2004) (holding that Plaintiff "must identify a specific Maryland statutory provision authorizing [personal] jurisdiction."). Plaintiff's allegation that "Mr. Lieb and Mercedes Benz who import Mercedes Benz automobiles . . . are responsible for the vehicles, the brand name and their advertised claims" does not suffice to allege that there is specific personal jurisdiction (i.e. whether Lieb was personally and directly involved in any of the conduct alleged to be violative of state and federal) or general personal jurisdiction (i.e. whether Lieb engaged in such systematic and continuous activities in Maryland unrelated to this transaction). Compl. ¶ 11.

As an alternate basis for subject matter jurisdiction, Plaintiff in her Opposition asserts, for the first time, that she "has claimed the jurisdiction of this Court pursuant to 28 U.S.C.A. # [sic] 1332 diversity jurisdiction . . . along with other issues of federal law." Pl.'s Opp. to Defs.' Euro Motorocars, Inc.'s Mot. to Dismiss at 5. As a threshold matter, the Court notes that Plaintiff "is bound by the allegations contained in [her] complaint and cannot, through the use of motion briefs, amend the complaint." *Zachair, Ltd. v. Driggs,* 965 F. Supp. 741, 748 n.4 (D. Md. 1997). Even if the Court permitted such an amendment, Plaintiff has failed to allege facts in support of her contention that diversity jurisdiction exists – namely, Plaintiff concedes that "[t]his question of state citizenship has not been fully determined as yet." Pl.'s Opp. to Defs.' Euro Motorocars, Inc.'s Mot. to Dismiss at 5. To invoke the Court's diversity jurisdiction, Plaintiff must allege complete diversity (i.e. that "no party shares common citizenship with any party on the other side"). *Baltimore Cty v. Cigna Healthcare,* 238 Fed. Appx. 914, 920, 2007 WL 1655461, at *4 (4th Cir. 2007). Therefore, as a case of deja vu all over again, in the absence of factual support from Plaintiff that complete diversity exists between the parties, the Court must also, for the second time, dismiss the action for lack of diversity jurisdiction. Fed. R. Civ. P. 12(h)(3).[5]

Similarly, Plaintiff has failed to plead sufficient facts necessary for the Court to exercise personal jurisdiction over Defendant James Dimon; his sole mention in the complaint refers to his employment as the Chief Executive Officer of J.P. Morgan Chase. Compl. ¶ 14. Finally, the Court denies Plaintiff's Motion to Order the Joinder of Austrian Motors Corp., which is the purported parent company of Euro Motorcars, Inc. because the Complaint has failed to allege any factual basis or allegation against Austrian Motors Corp.

[5]Plaintiff has filed a Motion to Deny Defendant E. Lieb's Motion to Dismiss, which the Court has construed as her Opposition and will accordingly deny.

Because Plaintiff's remaining claims rest upon alleged state causes of action[6], the Court declines to exercise supplemental jurisdiction over those pendent state claims. *See* 28 U.S.C. § 1367(c)(3) (providing that the district court may decline to exercise supplemental jurisdiction when it "has dismissed all claims over which it has original jurisdiction.").

2. Other Pending Motions

Plaintiff has also filed a motion that seeks a Court Order to Defendants to provide facts about her "mongrel" car including the bill of lading and the vehicle history. What Plaintiff seeks is discovery, which, at the time she filed her motion, was, and still is, premature because no scheduling order has issued. *See* Local Rule 104.4 ("Unless otherwise ordered by the Court or agreed upon by the parties, discovery shall not commence and disclosures need not be made until a scheduling order is entered."). As a result of the Court's dismissal of the case, this motion for discovery will be denied.

Finally, Plaintiff's motion seeking the Court to order Defendants Euro Motorcars, Inc., Scanniello, DiPiazza, Mercer, Dimon, and Chase to obtain separate counsel is without merit and the Court will deny it accordingly. There is no prohibition against co-defendants in a civil case opting for joint representation by counsel, and Plaintiff has not supported her motion with any decisional or statutory law to the contrary.

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[6]Plaintiff also alleges "general consumer fraud, violation of the Maryland Motor Vehicle Code, [and] infliction of emotional distress." Compl. at 1.

II. CONCLUSION

For the foregoing reasons, the Court will, by separate order, grant Defendants' Motions to Dismiss.[7]

Date: February 5, 2009

/s/
Roger W. Titus
United States District Judge

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[7]Though Plaintiff is proceeding *pro se*, Plaintiff's representation to the Court that she is an attorney, including her use of the initials "J.D." after her name, suggests that she has had some legal training. As such, the Court reminds Plaintiff that by presenting to this Court (or a Circuit Court in Maryland, if she pursues her claims in state court) a pleading, motion, or other paper that she is certifying that it is not being presented for any improper purpose, that her legal contentions are warranted by existing law, and that her factual contentions have evidentiary support (or are likely to have evidentiary support after a reasonable opportunity for further investigation). Fed. R. Civ. P. 11(b); Md. Rule 1-341. To date, Plaintiff's numerous filings in this case and Schafler I have repeatedly failed to allege subject matter jurisdiction in this Court and have resulted in the substantial expenditures of Defendants' time and money. The patience of this Court is not without limits. Though the Court is not currently ordering Plaintiff to show cause why she should not be sanctioned for repeatedly advancing unsupported claims despite numerous opportunities to cure those defects, the Court reserves its ability to do so in the future, if necessary. Fed. R. Civ. P. 11(c)(3).