

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-14-90013

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: OCTOBER 21, 2014

Complainant, a pro se litigant, filed a complaint, under 28 U.S.C. § 351(a), alleging that the district judge who presided over complainant's civil action against her mortgage company and others engaged in misconduct. Complainant alleges that the judge wrongfully denied complainant's request for injunctive relief and dismissed the case.

Complainant asserts that, at a hearing on complainant's motion for a preliminary injunction to prevent the foreclosure of her property, the judge "pretended that he didn't know what [complainant] was talking about and said that the mortgage company could charge [complainant] whatever they [sic] wanted to." Complainant further asserts that the judge called complainant "a liar," and said that complainant's "story was unbelievable

because it sounded just like everyone else's story with the mortgage company."

Describing what she sees as a national mortgage corruption scheme by organized crime groups, complainant adds that the defendants in her case have been the subject of multiple other similar lawsuits and asserts that she is not leaving her home because of the judge's failure to recognize this "well-known problem." Complainant contends that, as the home is also a rental property and the site of complainant's businesses, the wrongful dismissal of the case has caused her irreparable financial harm and "has taken away [complainant's] financial means of paying for [her] basic needs." Complainant concludes that the judge's statements during the hearing demonstrate that he is "allowing the corrupt mortgage companies to take other people's homes as well."

The misconduct complaint is baseless and is not cognizable. The reviewed record - including the docket, pleadings and orders issued in the case, as well as the transcript of the evidentiary hearing held on complainant's motion - lend no support to complainant's allegations. At the cited hearing, the judge spent over an hour endeavoring to understand complainant's legal claims and discern any potential grounds for success. The court gave complainant unrestricted time to present her case, explicitly stating that complainant was to tell the judge everything that she wanted the judge to know.

In response to defense counsel's argument that complainant's recent payments had reinstated the loan but had not, as complainant claimed, paid it off in full, the court repeatedly asked complainant her reason for concluding that the loan had been satisfied,

such as a settlement agreement, letter, or other documentation. The court explained that, without any such "proof," complainant's claim was "difficult . . . to believe"

Contrary to complainant's allegations, the judge did not "pretend[]" that he didn't know what [complainant] was talking about [or say] that the mortgage company could charge [complainant] whatever they [sic] wanted to." Nor did the judge call complainant "a liar." The judge made a general reference to the difficulties encountered in such cases, but did not say that complainant's "story was unbelievable because it sounded just like everyone else's story with the mortgage company." Accordingly, these allegations are dismissed as explicitly controverted by the record in the case. See 28 U.S.C. § 352(b)(1)(B), and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rule 11(c)(1)(D).

Several days after the hearing, the court issued an order denying complainant's motion for injunctive relief. In this order, the judge reiterated determinations made orally at the hearing and explained that, insofar as complainant misunderstood the status of her loan, she had offered no information suggesting that the defendants had misled her or engaged in any other conduct that would give rise to a valid cause of action. The court subsequently dismissed the case because the complainant failed to oppose the motion to dismiss filed by two of the defendants and execute service on the others. Where, as here, there is no evidence of improper motive, complainant's disagreement with the court's rulings does not give rise to cognizable misconduct. See 28 U.S.C. § 352(b)(1)(A)(ii),

and Rules of Judicial-Conduct, Rule 11(c)(1)(B). See also Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling . . . , without more, is merits-related.").

Finally, it is not misconduct for a court to make credibility determinations based on evidence offered at a hearing, especially where, as here, there is no claim, let alone any evidence, that such determinations were improperly motivated or based on extraneous information. See 28 U.S.C. § 352(b)(1)(A)(i), and Rules of Judicial-Conduct, Rule 11(c)(1)(A).

For the reasons stated, Complaint No. 01-14-90013 is dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(i), 352(b)(1)(A)(ii), and 352(b)(1)(B). See also Rules of Judicial-Conduct, Rules 11(c)(1)(A), 11(c)(1)(B) and 11(c)(1)(D).

Date

10/21/14

Chief Judge Lynch

