

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

TRI LAM,)	
)	
<i>Plaintiff</i>)	
)	
v.)	No. 2:14-cv-430-JAW
)	
KEVIN GALLAGHER, et al.,)	
)	
<i>Defendants</i>)	

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS

The plaintiff has filed an application for leave to proceed *in forma pauperis* in this action (ECF No. 4) alleging fraud and breach of contract in connection with a real estate transaction. Pro Se Civil Complaint (ECF No. 1). I grant the application.

The plaintiff has filled out the *in forma pauperis* application in detail, albeit not without question. He reports annual income of \$922 from disability or worker’s compensation payments, identified further as “SSDA-Disability Income,” Application to Proceed in District Court without Prepaying Fees or Costs (“Application”) (ECF No. 4) at [1], but this may be a monthly rather than an annual disability and/or worker’s compensation figure. The plaintiff also reports that he owns a 2001 Lexus SUV, which was a gift from his brother-in-law, and \$368 in a checking or savings account “to be paid on bills by end of month.” *Id.* at [2].

He reports regular monthly expenses of \$1,145. *Id.* The items that make up this total appear reasonable, assuming that the \$240 monthly expense for transportation includes automobile insurance. The plaintiff also reports that he contributes 95% to the support of Suong Nguyen and 100% to that of a minor, *id.*, without providing any dollar amounts. However, even assuming that

the plaintiff receives \$922 a month in disability and/or worker's compensation income and even ignoring the plaintiff's support of Suong Nguyen and the dependent minor, the plaintiff's monthly itemized expenses exceed his monthly income. His application to proceed *in forma pauperis*, therefore, is granted.

The instant review does not end there, however. The statute that provides for waiver of the filing fee also requires the court to determine whether the plaintiff's case may proceed. In other words, the plaintiff's complaint must be dismissed if the court finds it to be frivolous or malicious, seeks monetary relief from a defendant who is immune from such relief, or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B). In this regard, a *pro se* plaintiff's complaint must be read liberally. *Donovan v. Maine*, 276 F.3d 87, 94 (1st Cir. 2002).

So read, the plaintiff's complaint alleges that in 2011, the defendants defrauded the plaintiff of \$4,850 in connection with a real estate "scam" in which the plaintiff thought that he was buying a six-bedroom house at 644 W. Ella T. Gilmore, Apopka, Florida. Complaint at [2]. It alleges that the parties entered into a contract for sale, but the sellers refused to abide by its terms. *Id.* at [2]-[3]. The plaintiff had paid the \$4,850 for title work and a deposit. *Id.* at [3]. The defendants have refused to return this money to the plaintiff, who alleges that he has been harmed "in excess of \$76,000," the amount which he believes he would have received, apparently by renting the property at issue. *Id.*

The complaint alleges jurisdiction by virtue of diversity of citizenship and violation of civil rights. *Id.* at [4]. The complaint cannot reasonably be read to allege a violation of the plaintiff's federal civil rights, but it does meet the jurisdictional requirements of 28 U.S.C. § 1332(a) for an action between citizens of different states. The plaintiff resides in Maine and the defendants are alleged to reside in Florida and Ohio. *Id.* at [1]. His complaint alleges damages in excess of

\$75,000. *See* 28 U.S.C. § 1332(a). The complaint sufficiently alleges breach of contract, although its allegation of fraud may not meet the requirement of Federal Rule of Civil Procedure 9(b) that the elements of a claim of fraud must be stated with particularity in the complaint. Nonetheless, the breach of contract claim is sufficient for purposes of review under section 1915(e)(2)(B).

For the foregoing reasons, the plaintiff's application to proceed *in forma pauperis* is **GRANTED**, the deadline for service of the complaint is extended to 60 days from the date of this order, and the clerk is directed to arrange for service of the complaint, along with a copy of this order, upon the defendants as soon as practicable.

NOTICE

In accordance with Federal Rule of Civil Procedure 72(a), a party may serve and file an objection to this order within fourteen (14) days after being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to review by the district court and to any further appeal of this order.

Dated this 2nd day of February, 2015.

/s/ John H. Rich III
John H. Rich III
United States Magistrate Judge

Plaintiff

TRI LAM

represented by **TRI LAM**
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