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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

Superior Court
Department of the Trial Court

NATHAN MCGUIRE,
Real Party in Interest
ALIAH TRUST
An Express Trust Organization

Plaintiff,

v.

COMMONWEALTH OF MASSACHUSETTS
NATHAN ALIAH MCGUIRE Agency

US DEPARTMENT OF THE TREASURY

MASSACHUSETTS DEPARTMENT OF
REVENUE

FIDELITY INVESTMENTS BOARD OF
TRUSTEES

Known and Unknown Nominal Auxiliary
Beneficiaries,

Defendants.

C.A. No. 2384CV01124

**DEFENDANT FIDELITY INVESTMENTS BOARD OF TRUSTEE'S
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS**

Defendant “Fidelity Investments Board of Trustees” (“Fidelity”)¹ respectfully submits this Memorandum of Law in Support of Its Motion to Dismiss Plaintiff’s Complaint (Dkt. No. 1) pursuant to Massachusetts Rules of Civil Procedure 8(a) and 12(b)(6).

Sprawling and largely incomprehensible, the Complaint asserts, among other fictions, that Plaintiff has a contractual right to over **\$300 billion** deposited with the United States Department

¹ Plaintiff names “Fidelity Investments Board of Trustees” as a Defendant. No such legal entity exists, although there are a number of boards associated with the Fidelity family of companies and funds. Because the grounds for dismissal apply equally regardless of which board Plaintiff intended to assert claims against, this Motion does not seek dismissal based on any technicality related to Plaintiff’s properly naming of the Defendant.

of Treasury (Compl. ¶¶ 6-9) and \$5 million deposited with Fidelity (Compl. ¶ 17), and that Plaintiff is foreign to the United States and not subject to its laws (Compl. Ex. E). In support of these claims, Plaintiff attaches hundreds of pages of exhibits that are replete with purported agreements and certificates – fabricated by Plaintiff – that have no legal authority.²

While pro se litigants are afforded “some leniency” in complying with pleading requirements, the “right of self-representation is not a license to evade the rules of procedure.” *See Kahyaoglu v. Sillari*, 190 N.E.3d 1121, at *1 (Mass. App. Ct. 2022); *see also Brossard v. W. Roxbury Div. of Dist. Ct. Dep’t*, 417 Mass. 183, 184, (1994) (“The fact that the plaintiff represents himself does not excuse his noncompliance with procedural rules.”) (collecting cases).

Here, even affording Plaintiff all deference due as a pro se litigant, the Complaint is concerning for its fabrications, and falls far short of meeting the requisite pleading standards. The Complaint should be dismissed on two independent grounds: (1) pursuant to Massachusetts Rule of Civil Procedure 8(a) for failing to set forth a “short and plain statement of the claim showing that the pleader is entitled to relief;” and (2) pursuant to Massachusetts Rule of Civil Procedure 12(b)(6) for failing to state an actionable claim against Fidelity. Dismissal should be with prejudice because no amendment can remedy the Complaint’s pleading deficiencies.

ARGUMENT

A. The Complaint Does Not Meet Rule 8’s Pleading Requirements.

A complaint must set forth “a short and plain statement of the claim showing that the pleader is entitled to relief.” Mass. R. Civ. P. 8(a). “Each averment of a pleading shall be simple,

² This is not the first time Plaintiff has asserted fabricated claims. In 2022, the Massachusetts Federal District Court rejected Plaintiff’s attempt to register what he purported to be a foreign judgment for over \$16 million, where Plaintiff attached some of the same self-authored documents he attaches here. *See In re Aliah Trust*, No. 22-mc-91116, ECF No. 5 (D. Mass. Apr. 22, 2022).

concise, and direct.” Mass. R. Civ. P. 8(e)(1). While a complaint “need not state with precision all elements that give rise to a legal basis for recovery,” it must “notify a defendant fairly of the ‘nature of the claim and the grounds on which the plaintiff relies.’” *Garrity v. Garrity*, 399 Mass. 367, 369 (1987) (citations omitted). Courts routinely dismiss complaints, like Plaintiff’s, that fail to meet these basic pleading requirements. *See Garrity*, 399 Mass. at 369 (“The rambling complaint fails to separate the various allegations into a short and plain statement of claims. The complaint therefore was subject to dismissal on that ground.”); *Schaer v. Brandeis Univ.*, 432 Mass. 474, 477 (2000) (“sprawling” complaint subject to dismissal under Rule 8); *G.E.B. v. S.R.W.*, 778 N.E.2d 31, at *2 (Mass. App. Ct. 2002) (affirming dismissal of “rambling, overbroad, and disorganized” complaint with a “variety of unclear and unconnected allegations”).

Spanning fourteen pages – with hundreds of pages of exhibits – Plaintiff’s Complaint is nearly impossible to make sense of. Far from setting forth the requisite “short and plan statement” showing why Plaintiff is entitled to relief, the Complaint is sprawling, rambling, and overbroad, and should be dismissed.

B. The Complaint Fails to State a Claim Against Fidelity.

Plaintiff’s claim against Fidelity should be dismissed for the independent reason that it fails to state a claim upon which relief can be granted. Mass. R. Civ. P. 12(b)(6); *see also Schaer*, 432 Mass. at 477. The Complaint asserts one claim against Fidelity – specific performance of a purported contract between Plaintiff and Fidelity. *See* Compl. Demand for Relief ¶ 6. Specific performance is an “extraordinary equitable remedy” almost exclusively limited to real estate disputes. *See Normandin v. Eastland Partners, Inc.*, 862 N.E.2d 402, 414 (Mass. App. Ct. 2007).

Even if it was an available remedy here, Plaintiff fails to state a viable claim because he does not adequately allege the existence of any contract, let alone the breach of any such contract.³

Reading the Complaint in a light most favorable to Plaintiff, it alleges that Plaintiff sent a self-authored “Security and Control Agreement” to Fidelity along with self-authored “Money Order” for \$5 million.” *See* Compl. ¶ 17; Compl. Ex. N. By Plaintiff’s logic, Fidelity “had every right to not accept the contract,” but “silence constitutes acceptance and Petitioner is owed performance.” Compl. ¶ 17. In other words, Plaintiff asserts that Fidelity owes him \$5 million under a unilateral contract and a facially fraudulent money order (Compl. Ex. N) that Fidelity neither accepted nor deposited. Plaintiff’s fraud should not be countenanced. Among the many deficiencies with this story, “silence in response to an offer to enter into a contract does not constitute an acceptance of the offer.” *Casavant v. Norwegian Cruise Line, Ltd.*, 63 Mass. App. Ct. 785, 798 (2005) (citation omitted). While there are certain exceptions to this general rule – e.g., where there is an established relationship – none are applicable here. *See Polaroid Corp. v. Rollins Envtl. Servs.*, 416 Mass. 684, 690.

Even accepting Plaintiff’s far-fetched allegations as true, Plaintiff does not and cannot allege that his self-authored “Security and Control Agreement” is a binding contract giving rise to any obligations under the law, and Plaintiff’s claims against Fidelity should be dismissed. Dismissal should be with prejudice because any attempt to amend the Complaint would be futile as no pleading could remedy the fact that Plaintiff’s claims are based on a fabricated agreement.

³ To state an actionable claim for breach of contract, a complaint must allege: (1) a valid, binding contract; (2) performance or ability and willingness to perform by the plaintiff; (3) that defendant breached the terms of the contract; and (4) that plaintiff sustained damages as a result of the breach. *Columbia Plaza Assocs. v. Ne. Univ.*, 93 Mass. App. Ct. 1113, 104 N.E.3d 682 (2018).

CONCLUSION

Fidelity respectfully requests that this Court dismiss with prejudice the claims against Fidelity pursuant to Rules 8(a) and 12(b)(6) of the Massachusetts Rules of Civil Procedure.

Dated: June 20, 2023

Respectfully submitted,

Fidelity Investments Board of Trustees

By its attorneys,

/s/ Nathaniel P. Bruhn

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CERTIFICATE OF SERVICE

I hereby certify that, on June 20, 2023, pursuant to Superior Court Rule 9A, the foregoing document was served via priority mail on all parties.

/s/ Nathaniel P. Bruhn

Nathaniel P. Bruhn