

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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APRIL GALLOP, for Herself and as :
Mother and Next Friend Of :
ELISHA GALLOP, a Minor, :
 :
Plaintiff, :

- against - :

DICK CHENEY, Vice President of :
the U.S.A., DONALD RUMSFELD, :
former U.S. Secretary of Defense, :
General RICHARD MYERS, U.S.A.F. :
(Ret.), and JOHN DOES Nos. I-X, :
all in their individual :
capacities, :
 :
Defendants. :

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MEMORANDUM DECISION

08 Civ. 10881 (DC)

APPEARANCES: (See last page)

CHIN, District Judge

On September 11, 2001, four commercial airliners were hijacked in the northeastern United States. Two crashed into the World Trade Center towers in New York; a third crashed into the Pentagon in Washington, D.C.; and the fourth crashed in rural Pennsylvania, apparently as it was en route to the White House or the Capitol.

In this case, plaintiff April Gallop, represented by counsel, contends that officials of the United States government aided in the attacks. Indeed, she sues former Vice President Dick Cheney, former Secretary of Defense Donald Rumsfeld, and former Acting Chairman of the Joint Chiefs of Staff Richard Myers individually, claiming that they and other government officials

conspired "to facilitate and enable the hijacking of the airliners" for use as "living bombs to attack buildings containing thousands of innocent victims." (Compl. ¶ 1). Gallop further alleges that defendants then conspired "to cover up the truth about what they had done." (Id.).

Before the Court is defendants' motion to dismiss the complaint for failure to state a claim upon which relief may be granted. Because I conclude that the complaint fails to allege a plausible claim for relief, defendants' motion is granted and the complaint is dismissed.

STATEMENT OF THE CASE

A. The Facts

The complaint alleges the following:

At all relevant times, Gallop was a career member of the U.S. Army who was stationed at the Pentagon on September 11, 2001. (Id. ¶¶ 6, 10). That day was Gallop's first day back at work from maternity leave, and she had her two-month old baby, Elisha, with her at the Pentagon. (Id. ¶¶ 6, 10). As she sat down to work, "there was an explosion, then another; walls collapsed and the ceiling fell in." (Id. ¶ 6). Both Gallop and her baby were hit by debris and suffered head and brain injuries. (Id. ¶¶ 6, 7, 10, 57-59). Gallop grabbed her baby, and they managed to escape through an opening in the wall. (Id. ¶ 6).

In fact, Gallop alleges, no plane crashed into the Pentagon. (Id. ¶ 4). Instead, she contends, the "explosion and fireball were engineered by other means, a planted bomb or bombs

and/or a missile." (Id.). The "official" reports of a hijacked plane crashing into the Pentagon were "false," and were issued to further defendants' unlawful conspiracy. (Id. ¶ 4).

Gallop seems to acknowledge that two planes crashed into the World Trade Center towers in New York and a third crashed in Pennsylvania. (Id. ¶ 14 ("Two [planes] were evidently crashed into the World Trade Center towers in New York, which later collapsed; . . . and the fourth [plane], supposedly aiming for the White House or the Capitol, was reported crashed in Pennsylvania by its passengers, fighting back against the hijackers.")). But Gallop contends that defendants and other U.S. government officials aided and facilitated the attacks:

to bring about an unprecedented, horrifying and frightening catastrophe of terrorism inside the United States, which would give rise to a powerful reaction of fear and anger in the public, and in Washington. This would generate a political atmosphere of acceptance in which the new Administration could enact and implement radical changes in the policy and practice of constitutional government in our country. . . . By helping the attack succeed, defendants and their cohorts created a basis for the seizure of extraordinary power, and a pretext for launching the so-called Global War on Terror, in the guise of which they were free to pursue plans for military conquest, "full spectrum dominance" and "American primacy" around the world; as they have done.

(Id. ¶ 2).

Gallop alleges the following in support of her conspiracy theory:

- defendants and other U.S. government officials ignored "an increasingly explicit series of

warnings" of planned Al Qaeda attacks inside the United States (id. ¶ 17);

- "[r]esponsible intelligence officials" ignored "critical investigative leads" (id. ¶ 18);
- "the many warnings of a coming attack by Al Qaeda forces (as many as forty messages in all, according to the [9/11] Commission Report, from eleven different countries) were studiously ignored" (id. ¶ 19);
- "defendants and others in the highest circles of Government" did not respond (id. ¶ 20);
- the U.S. air defense system failed to respond to the early reports of the hijackings (id. ¶¶ 22-26);
- Gallop was present at the Pentagon and saw no sign of a plane or any wreckage of or from a plane (id. ¶ 33);
- it was unlikely if not "nearly impossible" for a plane of this size to have maneuvered as this plane reportedly did, i.e., to have smashed into a side wall of the Pentagon rather than straight down into the top of the building (id. ¶¶ 37-40);
- there are no photographs or video of plane, either before or after the crash, from surveillance cameras (id. ¶¶ 40(a), (b));
- an odor of cordite, a high explosive used in gunpowder, was detected at the Pentagon in the aftermath, which is suggestive of explosives rather than a fire from burning jet fuel (id. ¶ 40(f));
- on September 10, 2001, the day before, Rumsfeld acknowledged that \$2.3 trillion in defense funds could not be accounted for; to plaintiff's knowledge and belief, the bombing at the Pentagon destroyed records relevant to the tracing of those funds (id. ¶ 42);
- "the plainly visible pattern of damage on the outside and in the other photographic views makes it clear the building was not hit by a plane" (id. ¶ 43);

- there was time for the U.S. to send jets to intercept the two planes that hit the towers in New York, but this was not done (id. ¶ 47);
- the reports of what occurred on Flight 93, which crashed in Pennsylvania were false, because "the science is clear that, at least in 2001, cell phones couldn't operate at the high altitude where the struggle supposedly took place" (id. ¶ 48); and
- the reports of debris from the plane in Pennsylvania a mile or more from the crash are "an obvious impossibility," and the photographs of the crash site do not reveal visible debris or any sign of the plane (id. ¶ 50).

The true facts of what happened on September 11, 2001, Gallop alleges, were covered up by defendants and other U.S. government officials. (Id. ¶¶ 51-56).

B. Procedural History

This action was commenced on December 15, 2008. The complaint asserts three causes of action: (1) a claim pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), for violation of the constitutional rights of Gallop and her child; (2) a claim for common law conspiracy to cause death and great bodily harm; and (3) a claim under the Antiterrorism Act, 18 U.S.C. § 2333(a), which provides civil remedies, including treble damages and attorneys' fees, to U.S. nationals injured by "an act of international terrorism." 18 U.S.C. § 2333(a). The complaint seeks compensatory and punitive damages against defendants personally, on a joint and several basis, "in such amounts as the Jury may see fit to award," as well as treble damages and attorneys' fees and costs. (Compl. at 27).

The Court conducted a pretrial conference on April 8, 2009, and three lawyers appeared for Gallop. Defendants were represented by the United States Attorney's Office for the Southern District of New York. One of Gallop's attorneys described her claims:

We allege that this was a wide-ranging enormous conspiracy by members of the government, and we picked three principals, Donald Rumsfeld, Dick Cheney, and General Richard Myers, and have alleged that they conspired to facilitate the attack in essence.

(4/8/09 Tr. 2). Counsel suggested that the World Trade Center towers were blown up by explosives after they were hit by airplanes. (Id. 2, 4). Counsel suggested that a plane flew toward and over -- but not into -- the Pentagon and then some explosives inside the Pentagon were set off. (Id. 3). After the Court inquired as to the good faith basis for bringing the law suit, the following exchange between the Court and counsel ensued:

THE COURT: So I am clear, you are asserting that Cheney, Rumsfeld, Myers were personally involved in some kind of plot to blow up the World Trade Center and the Pentagon.

MR. VEALE: That's correct.

THE COURT: That's the allegation.

MR. CUNNINGHAM: I think we might back a little away from that in the sense that we do believe they were involved in a plot that allowed the planes to get to the World Trade Center and to the Pentagon, in other words --

THE COURT: Meaning they knew it was going to happen and they did nothing to stop it and knowingly let it go forward.

MR. CUNNINGHAM: Yes, and interfered in such a way to keep the normal operation of the interceptor fighter plane system from happening; they cut off those planes. Then the issue of the bombing in either place is a little more problematic, but still that's what we have come to believe.

(Id. 4-5).

Defendants expressed their intent to file a motion to dismiss the complaint, a briefing schedule was set, and this motion followed. In her opposition, Gallop submitted several affidavits and affirmations, and submitted numerous references to books about and studies of the attacks of September 11, 2001.

DISCUSSION

Defendants move to dismiss the complaint on several grounds: Gallop has not sufficiently alleged constitutional violations; defendants are entitled to qualified immunity; the Anti-Terrorism Act claim fails to state a claim upon which relief may be granted; Gallop's claims are barred by the doctrine of judicial estoppel; the constitutional claims are untimely; and the complaint is frivolous. I reach only the last prong of the motion: I agree that the complaint is frivolous. Hence, the motion is granted and the complaint is dismissed, with prejudice.

A. Applicable Law

To survive a motion to dismiss pursuant to Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. v. Twombly, 550 U.S. 544, 570 (2007)). The

Supreme Court in Iqbal set out a "two-pronged" approach for courts considering a Rule 12(b)(6) motion to dismiss. Id. at 1950.

First, the court accepts plaintiff's factual allegations as true and draws all reasonable inferences in his favor. See id. The court considers only the factual allegations in the complaint and "any documents that are either incorporated into the complaint by reference or attached to the complaint as exhibits." Blue Tree Hotels Inv. (Can.), Ltd. v. Starwood Hotels & Resorts Worldwide, Inc., 369 F.3d 212, 217 (2d Cir. 2004).¹ Legal conclusions "must be supported by factual allegations." Iqbal, 129 S. Ct. at 1950. Pleadings that are "no more than conclusions are not entitled to the assumption of truth," and a court need assume the veracity only of "well-pleaded factual allegations." Id.

Second, the court determines whether the "well-pleaded factual allegations . . . plausibly give rise to an entitlement to relief." Id. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. at 1949 (citing Twombly, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. (citing Twombly, 550 U.S.

¹ Here, I do not consider the affidavits and affirmations submitted by plaintiff in opposition to the motion, as they are not properly considered as part of the complaint.

at 556). Facts that are "merely consistent with" a defendant's liability are insufficient if they do not establish the "plausibility of 'entitlement to relief.'" (Id. (quoting Twombly, 550 U.S. at 557). Determining plausibility is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." Id. at 1950.

In Iqbal, the complaint alleged that following the attacks of September 11, 2001, high-ranking federal officials (the Attorney General and the Director of the FBI) directed the FBI to label thousands of Arab Muslim men as "high interest" and then to arrest and detain them -- for invidious and discriminatory reasons, i.e., their race, religion, or national origin. Id. at 1951-52. The Court held that "purposeful, invidious discrimination" was not a "plausible conclusion" in light of an "obvious alternative explanation" for the arrests: the high-ranking federal officials acted based on their "nondiscriminatory intent to detain aliens who were illegally present in the United States and who had potential connections to those who committed terrorist acts." Id. at 1951-52. In other words, the Court rejected Iqbal's proffered explanation for the defendants' actions, finding it implausible when compared to a more compelling -- and "obvious" -- alternative explanation.

B. Application

First, I consider the factual content of the complaint, keeping in mind that I am obliged to assume the veracity only of well-pleaded factual allegations, and that mere conclusions are

not entitled to the assumption of truth. Second, I consider whether the well-pleaded facts, assumed to be true, give rise not just to a possible claim but to a plausible claim. In these analyses, I am required to draw on my judicial experience and to apply my common sense.

1. Factual Content of the Complaint

The complaint pleads little in terms of factual content beyond what Gallop saw and experienced herself at the Pentagon on September 11th. She did not see any signs of a plane, but this is hardly compelling evidence that no plane was there, given her description of the chaos around her -- a "huge explosion," followed by more explosions, walls collapsing, ceilings falling, flames shooting out of her computer, debris falling on her and her baby, smoke and dust all about, and the front of the building being blown open. (Compl. ¶¶ 6, 7, 33, 34). Indeed, she alleges that she collapsed outside and did not wake up until some time later when she found herself in a hospital. (Id. ¶ 34). Under these circumstances, the fact that she did not see any sign of a plane, assuming that to be true, does not mean no plane hit the Pentagon.²

Certain other allegations are arguably factual in nature. Gallop alleges that government officials missed warnings

² It should be noted that in a prior lawsuit, Gallop took the position that a passenger airliner did crash into the Pentagon. (See McShain Decl., Ex. B ¶ 2 (Amended Complaint, dated Mar. 23, 2005, filed in Vadhan v. Riggs Nat'l Corp., No. 04 Civ. 7281 (RCC))).

that Al Qaeda was going to attack and that fighter jets had sufficient time to intercept the hijacked airplanes but failed to do so. I will assume, for purposes of this motion, that these factual allegations are true; after all, four commercial jetliners were hijacked and three of the four attacks succeeded. Beyond these facts, however, the complaint contains little more than speculation and conjecture. The allegations that high-ranking officials of the United States knew that the attacks were coming and that they facilitated the attacks and let them happen, knowing that thousands of civilians would die, to create an atmosphere of fear that would permit the administration to seize extraordinary power and start a pretextual global war on terror are not factual in nature. Rather, they are mere conclusions, unsupported by any specific factual assertion. Accordingly, the Court is not required, under Iqbal, to assume their truth.

2. Plausibility of Plaintiff's Claims

Even assuming the factual allegations of the complaint are true, Gallop's claims are not plausible. It is simply not plausible that the Vice President of the United States, the Secretary of Defense, and other high-ranking officials conspired to facilitate terrorist attacks that would result in the deaths of thousands of Americans. If anything, the allegations are the product of cynical delusion and fantasy.

A court may dismiss a claim as "factually frivolous" if the facts alleged are "clearly baseless," that is, "fanciful," "fantastic," or "delusional." Denton v. Hernandez, 504 U.S. 25,

32-33 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325, 327, 328 (1989)). Courts have not hesitated to dismiss complaints asserting delusional claims of conspiracy.³ Indeed, courts have dismissed other cases alleging delusional conspiracy theories about the attacks of September 11, 2001.⁴ Because

³ See, e.g., McCormick v. Jackson, No. 07 Civ. 7893 (JSR), 2008 WL 3891260 (S.D.N.Y. Aug. 21, 2008) (dismissing complaint alleging that plaintiff's co-workers at U.S. Department of Housing and Urban Development engaged in vast conspiracy to create and disseminate non-consensual pornographic videos of her using secret cameras), aff'd mem. sub nom. McCormick v. Donovan, No. 08-5900-cv, 2010 WL 456686 (2d Cir. Feb. 11, 2010); Bloom v. United States Government, No. 02 Civ. 2352 (DAB), 2003 WL 22327163 (S.D.N.Y. Oct. 10, 2003) (dismissing claims of government conspiracy to "murder and lynch" plaintiff and drugging him to keep him from pursuing practice of dentistry); Tyler v. Carter, 151 F.R.D. 537, 537-38 (S.D.N.Y. 1993) (dismissing complaint sua sponte where plaintiff, a self-identified "cyborg," alleged that former Presidents Carter and Clinton were part of conspiracy to reinstitute slavery and breed humans for slaughter), aff'd mem., 41 F.3d 1500 (2d Cir. 1994); George Washington America v. New York Passport Ctr., No. 91 Civ. 2731 (MJL), 1991 WL 258763, at *1 (S.D.N.Y. Nov. 27, 1991) (dismissing complaint alleging U.S. government, CIA, and communist conspirators used laser beams to weaken plaintiff's ability to concentrate, bugged his phone, and interfered with his sex life), aff'd mem., 969 F.2d 1042 (2d Cir. 1992); see generally Fitzgerald v. First East Seventh Street Tenants Corp., 221 F.3d 362, 363 (2d Cir. 2000) (holding that district courts have "inherent authority" to dismiss frivolous cases, whether filed in forma pauperis or by fee-paying plaintiffs, and to do so quickly "to preserve scarce judicial resources").

⁴ See, e.g., Stitch v. United States Government, 108 Fed. App'x 32 (2d Cir. 2004) (affirming district court's sua sponte dismissal of complaint alleging conspiracy involving government officials and agencies that facilitated seizure of four airliners on September 11, 2001); Wood ex rel. United States v. Applied Research Assocs., Inc., No. 07 Civ. 3314 (GBD), 2008 WL 2566728, at **1, 3 (S.D.N.Y. June 26, 2008) (dismissing claims that World Trade Center towers were not hit by hijacked airliners but were "struck by high powered laser beams" fired by a "United States military's laser-like weaponry"); Haas v. Gutierrez, No. 07 Civ. 3623 (GBD), 2008 WL 2566634, at **1, 6 (S.D.N.Y. June 26, 2008) (dismissing as frivolous complaint alleging "existence of a nefarious conspiracy of epic proportion" involving governmental

Gallop's claims are factually baseless -- indeed, because they are fanciful, fantastic, and delusional -- they are dismissed.

CONCLUSION

For the foregoing reasons, defendants' motion to dismiss is granted, and the complaint is dismissed, with prejudice. The Clerk of the Court shall enter judgment accordingly.

Dated: New York, New York
March 15, 2010


DENNY CHIN
United States District Judge

and non-governmental actors "to "further[] the false claim that two wide-body jetliners hit the World Trade Center on 9/11/01" when towers were actually destroyed by U.S. military).

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