

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES L. CLARK,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 01-1479
	:	
CITY OF COATESVILLE, STEPHON	:	
HINES, DAVID GRIFFITH, DAVID	:	
DeSIMONE, JOHN DOE, KEVIN	:	
ROLSTON, PAUL JANSSEN, FRANCIS	:	
PILOTTI, LAWRENCE TALTOAN,	:	
MICHELLE PORTNOFF, SAMUEL	:	
ABRAMS, THOMAS J. FRIES, YERKES	:	
ASSOCIATES, INC., THE HONORABLE	:	
ROBERT DAVIS, CLAUDIA PALMER,	:	
and NICKY SUPPLEE,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J.

OCTOBER 23 , 2001

Presently before this Court are four Motions to Dismiss the Plaintiff's Complaint under Federal Rule of Civil Procedure 12(b)(6), filed by the Defendants. Also before this Court are the Plaintiff's three Motions to Dismiss the Defendants' Motions to Dismiss. The Defendants' Motions to Dismiss must be granted and the Plaintiff's Motions to Dismiss the Defendants' Motions to Dismiss must be denied for many reasons. For example, there are various Defendants who are immune to certain claims in this Court . Also, independent of such issues, each of the Plaintiff's twenty Counts¹ fails to state a claim upon which relief can be granted by this Court. In

¹ Although the Plaintiff has twenty Counts within his Complaint they are misnumbered and various numbers are used more than once. Therefore, to distinguish between Counts which

the interests of clarity and brevity, each item will be outlined in list form below, beginning with the various immunities and ending with a short discussion of each Count. The Defendants in this action include, the City of Coatesville (“the City”); the President of the City Counsel, Stephon Hines (“Hines”); the Vice-President of the City Counsel, David Griffith (“Griffith”); City Counsel members David DeSimone (“DeSimone”), John Doe, and Kevin Rolston (“Rolston”); the City Manager, Paul Janssen (“Janssen”); the Assistant City Manager, Francis Pilotti (“Pilotti”); the City Codes Director, Lawrence Taltoan (“Taltoan”); Michelle Portnoff, Esq. (“Portnoff”); Samuel Abrams (“Abrams”); Thomas J. Fries (“Fries”), an employee of the Defendant Yerkes Associates, Inc. (“Yerkes”); The Honorable Robert Davis (“Judge Davis”); and two of Judge Davis’ staff, Claudia Palmer (“Palmer”) and Nicky Supplee (“Supplee”).

I. Immunities and Other Issues

1. Although not named in the caption, the Plaintiff asks for relief from the District Court in many of his “wherefore clauses.” To the extent that the Plaintiff seeks relief against the District Court, these claims fail because the District Court is immune from suit in this Court under the Eleventh Amendment as the District Court is a state entity. Erb v. Judge, No. 94-2124, 1994 WL 523203, at *1 (E.D. Pa. Sept. 23, 1994); aff’d, 60 F.3d 814 (3d Cir. 1995).

2. Furthermore, “[i]t is well established that judges enjoy absolute immunity from liability for acts performed within their judicial capacities.” Hassan v. Frost, No. 88-874, 1990 U.S. Dist. LEXIS 3477, at *13-14 (D.N.J. Mar. 7, 1990). Therefore, Judge Davis also is immune from such claims. Judicial administrative officers, such as Palmer and Supplee, also

are numbered the same, we will add an identifying letter to each of the duplicate numbers. For example, the first Count IX will be identified as Count IX(a), the second will be identified as Count IX(b), and so on.

receive this quasi-judicial immunity, if the act complained of was a judicial act, and the officer had jurisdiction over the matter before he or she acted. Id.

3. Under the Pennsylvania Subdivision Tort Claims Act, 42 Pa. Cons. Stat. § 8541, et seq., the City is immune from liability in this Court for the Plaintiff's state law claims.

4. While not mentioned by the parties, legislative immunity in civil rights actions extends to legislators who are sued in their individual capacities, such as city council members, when they are acting in a legislative capacity. Aitchison v. Raffiani, 708 F.2d 96, 99 (3d Cir. 1983); Agresta v. Goode, 797 F. Supp. 399, 405, (E.D. Pa. 1992).

5. Although the Plaintiff did file either a Response to each Motion, a Motion to Dismiss the Defendant's Motion to Dismiss, or both, the Responses and Motions filed by the Plaintiff are unresponsive to the arguments raised in the Defendants' Motions to Dismiss.

6. The Plaintiff has failed to properly serve Fries, Yerkes, and Supplee.

II. The Counts of the Complaint

The Plaintiff basically alleges that disputes arose between himself and the Defendants regarding the state of his rental properties in the City and the validity of his licences for the rental properties. The Plaintiff also alleges that others were not required to repair their rental properties as he was required to do. The Plaintiff further claims that many city and state officials were part of a scheme to extort money from him. The Plaintiff also makes other allegations relating to his rental properties involving drug sales, damage to the properties and allegedly false trash collection bills. Separate from the issues raised above in section I, each of the Plaintiff's Counts is insufficient as a matter of law and fails to state a claim upon which relief can be granted by this Court.

Count I: “Equal Protection”: The Plaintiff alleges that Taltoan inspected one of the Plaintiff’s rental properties and would not approve it because of a lack of smoke detectors. The Plaintiff further alleges that the Defendants did not require DeSimone to have smoke detectors in his rental properties. The Plaintiff has failed to make out a *prima facie* Equal Protection case in this Count. For example, “[t]he conscious exercise of some selectivity in enforcement is not in itself a Constitutional violation.” Knepp v. Lane, 848 F. Supp. 1217, 1221 (E.D. Pa. 1994) (quoting Oyler v. Boles, 368 U.S. 448, 456 (1962)). The plaintiff must show that the Defendants were motivated by a discriminatory purpose, which he has failed to do. Id.

Count II: “Equal Protection Under the Law”: The facts alleged by the Plaintiff in this Count are substantially the same as those pled in Count I. The deficiencies in this Count are also the same.

Count III: “Negligence/ Equal Protection”: The Plaintiff alleges that the City, Taltoan and the City Counsel forced him to make certain repairs on his rental properties which they did not force others, such as DeSimone, to make. The Plaintiff also alleges that the Defendants were negligent in not requiring others to make similar repairs to their property. To the extent that the Plaintiff attempts to raise an Equal Protection issue, it fails for the same reasons as Counts I and II. Any attempted negligence claim fails because, *inter alia*, the Plaintiff has not established a *prima facie* case as he has failed to sufficiently allege causation and damages. Galullo v. Fed. Exp. Corp., 937 F. Supp. 392, 394-95 (E.D. Pa. 1996).

Count IV: “Negligence”: The Plaintiff alleges that the City, Janssen, Pilotti and Taltoan were negligent in failing to stop illegal drug sales in the east end of the City, after he asked them to do so. The Plaintiff further alleges that these drug sales have made it more difficult for

him to rent out his properties. The Plaintiff has failed to establish a *prima facie* case of negligence because, *inter alia*, he has failed to establish a duty that has been breached. Casey v. Geiger, 499 A.2d 606, 612 (Pa. Super. 1985).

Count V: “Malicious Prosecution”: The Plaintiff claims that Taltoan filed citations against him for not having real estate licences for his properties. The Plaintiff admits that during a hearing on the citations, in front Judge Davis, he “was found guilty on all charges.” (Compl., ¶ 63). Therefore, for this reason, among others, the Plaintiff cannot establish a *prima facie* case of malicious prosecution. Valenti v. Sheeler, 765 F. Supp. 227, 232 (E.D. Pa. 1991).

Count VI: “Intentional Infliction of Emotional Distress”: The Plaintiff alleges that Taltoan, Pilotti, Janssen, and the City intentionally inflicted emotional distress on him when they first encouraged him to repair his properties, and then after he had made numerous repairs, told him that his property was going to be demolished. The Plaintiff has failed to establish a *prima facie* case because, *inter alia*, he has failed to plead sufficiently extreme and outrageous conduct and has not established adequate damages. Cox v. Keystone Carbon, 861 F.2d 390, 395 (3d Cir. 1988); Hoy v. Angelone, 720 A.2d 745, 754 (Pa. 1998).

Count VII: “Deceit”: The facts alleged in this Count are substantially similar to those pled in Count VI. The Plaintiff has failed to establish a *prima facie* case of fraud or deceit under Pennsylvania law because, *inter alia*, he has not alleged his claim with the requisite particularity and has failed to make out a false representation of an existing fact. Bash v. Bell Tel. Co. of Pa., 601 A.2d 825, 831 (Pa. Super. 1992); DelConte v. Stefonick, 408 A.2d 1151, 1152 (Pa. Super. 1979).

Count VIII: “Equal Protection/Negligence”: The Plaintiff alleges that a waterproofing company, while attempting to waterproof the property next to his, caused large quantities of water to flood his property. The Plaintiff claims that he advised Pilotti and the City of his problem and that these Defendants said that they would correct the problem, but in fact, did not. The Plaintiff further alleges that although he must obtain permits to perform work on his property, the waterproofing company did not have a permit to perform the work. To the extent that the Plaintiff attempts to raise an Equal Protection issue, it fails for the same reasons as Counts I-III. Furthermore, such a claim also fails because the Plaintiff is not similarly situated to the waterproofing company. Any attempted negligence claim fails because, *inter alia*, the Plaintiff has not established a *prima facie* case as he has failed to establish a duty that has been breached. Casey, 499 A.2d at 612.

Count IX(a): “Violation of Right to Privacy”: The Plaintiff alleges that Fries, among others, were sent to inspect his rental property in connection with a search warrant obtained by the City of Coatesville. The Plaintiff further claims that the search warrant was improperly issued and did not authorize Fries to enter his property. The Plaintiff claims that Fries broke into his property and would not stop taking pictures or leave when the Plaintiff told him to do so. This Count fails because, *inter alia*, the Plaintiff does not plead a Constitutional violation which is actionable in this Court. Mimms v. Phila. Newspaper, Inc., 352 F. Supp. 862, 865 (E.D. Pa. 1972)(finding that not every tort is actionable under 42 U.S.C. § 1983).

Count X(a): “Violation of 4th Amendment Rights Against Unreasonable Search”: The facts alleged in this Count are substantially similar to those alleged in Count IX(a). The Count is also insufficient for the same reasons. Id.

Count X(b): “Racketeering Corruption Act”: The Plaintiff alleges that Portnoff sent him false trash collection bills and filed liens against him when he would not pay the bills. The Plaintiff alleges that Portnoff and the and the City invested the money illegally gained from him into an enterprise. This Count fails because, *inter alia*, it does not allege a sufficient pattern of conduct under RICO. Resolution Trust Corp. v. Farmer, 836 F. Supp. 1123, 1133 (E.D. Pa. 1993).

Count XI(a): “Chester County District Court and the City of Coatesville Acted Under Color of State Law”: The Plaintiff alleges that during a hearing in front of Judge Davis concerning the Plaintiff’s lack of rental licences, Taltoan lied to the court about the Plaintiff not having rental licences. The Plaintiff further claims that Judge Davis found the Plaintiff guilty of not having rental licences despite the Plaintiff’s insistence that he did have licences for at least four of his properties. The Plaintiff also alleges that in a secret meeting with the City and Taltoan, Judge Davis withdrew four of the charges against the Plaintiff and that this, in some way, violated the Plaintiff’s Fourth Amendment rights. Besides the fact that this Count is facially deficient, it is also barred by the Rooker Feldman Doctrine, which stands for the proposition that “lower federal courts lack subject matter jurisdiction to engage in appellate review of state court determinations or to evaluate constitutional claims that are inextricably intertwined with the state court’s decision in a judicial proceeding.” Port Auth. Police Benevolent Assoc. v. Port Auth., 973 F.2d 169, 177 (3d. Cir. 1992)(internal quotations omitted).

Count XII(a): “Chester County District Court and the City of Coatesville Violated James L. Clark’s Right Under the 4th Amendment of The United States Constitution”: The Plaintiff alleges that the District Court, in collusion with the City, acted

illegally and in bad faith in issuing the search warrant of his rental property. This claim is also barred by the Rooker Feldman Doctrine. Id.

Count IX(b): “Violation of Due Process Rights”: The Plaintiff alleges that he told Palmer to lift the warrant for his arrest because he had filed an appeal. The Plaintiff further alleges that Palmer told him that she would not lift the warrant, that he had to pay the fines in full, and that a payment agreement would not be offered. The Plaintiff has simply failed to allege any violation of any Constitutional right. Therefore, for this reason and others, this claim fails.

Count X(c): “Violation of the Unfair Trade Practice and Consumer Protection Law”: The Plaintiff alleges that during the hearing concerning the Plaintiff’s lack of rental licences, Taltoan, who is not an attorney, represented the City’s interests. The Plaintiff claims that Taltoan and Abrams represented the City in violation of 42 Pa. C.S.A. § 2524. This Count fails to state a claim upon which relief can be granted because, *inter alia*, the Plaintiff has not shown that the named Defendants were doing anything more than participating in a hearing. Furthermore, 42 Pa. C.S.A. § 2524 does not provide for monetary damages.

Count XI(b): “Violation of Rights to Due Process”: The Plaintiff alleges that Supplee advised him that there was a warrant out for his arrest. The Plaintiff further contends that he told Supplee that she “had the wrong person” and to ask Judge Davis to lift the warrant, which Supplee refused to do. As in Count IX(b), the Plaintiff has simply failed to allege any violation of any Constitutional right. Therefore, for this reason and others, this claim fails.

Count XII(b): “Violation of 14 Amendment Rights and Equal Protection Under the Law”: The Plaintiff alleges that the City, Taltoan, Janssen, Pilotti and the city counsel have not searched the rental properties of other similarly situated landlords. This Count fails, *inter*

alia, for the same reasons set forth in Counts I-III and VIII.

Count XIII: “Racketeering Corruption Act”: The Plaintiff alleges that the City, Taltoan, Janssen, Pilotti and Judge Davis extorted money from the citizens of Coatesville, particularly black landlords and businessmen, by filing false citations and receiving money from fines. This Count fails to state a claim upon which relief can be granted because, *inter alia*, the Plaintiff does not allege a sufficient pattern of conduct or enterprise under RICO. Resolution Trust Corp., 836 F. Supp. at 1133; Gaynor v. Nelowet, No. 99-6413, 2000 WL 427274, at *3 (E.D. Pa. Apr. 19, 2000). Furthermore, the predicate acts of mail fraud are not pled with the required particularity. Rolo v. City Investing Co. Liquidating Trust, 155 F.3d 644, 657-59 (3d Cir. 1998).

Count XIV: “Violation of the Constitutional Right to Trial by the District Court”: The Plaintiff alleges that Judge Davis refused on several occasions to permit the Plaintiff to have a hearing unless he posted a bond. Besides the fact that the Plaintiff has not actually alleged a deprivation of the right to trial, this Count is also barred by the Rooker Feldman Doctrine. Daily v. Daily, 96 F. Supp.2d 463, 466 (E.D. Pa. 2000).

Count XV: “Violation of the Right to Know Law”: The Plaintiff alleges that Taltoan refused to let him see public records relating to DeSimone’s property. This Claim fails because, *inter alia*, under 65 Pa. C.S.A. § 66.4, this Court cannot grant the Plaintiff’s demand for relief and this Court lacks jurisdiction over this claim. Barton v. Penco, 436 A.2d 1222, 1223 n.2 (Pa. Super. 1981); Proffitt v. Davis, 707 F. Supp. 182, 188-189 (E.D. Pa. 1989).

For the reasons stated above, and for others not listed, the Defendants’ Motions to Dismiss must be granted and the Plaintiff’s Complaint must be dismissed.

An appropriate Order follows.

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Plaintiff,

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CITY OF COATESVILLE, STEPHON
HINES, DAVID GRIFFITH, DAVID
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ROLSTON, PAUL JANSSEN, FRANCIS
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ABRAMS, THOMAS J. FRIES, YERKES
ASSOCIATES, INC., THE HONORABLE
ROBERT DAVIS, CLAUDIA PALMER,
and NICKY SUPPLEE,

Defendants.

CIVIL ACTION

NO. 01-1479

ORDER

AND NOW, this 23rd day of October, 2001, upon consideration of the Defendants' Motions to Dismiss (Dkt. Nos. 4, 6, 10 and 18) and Plaintiff's Motions to Dismiss Defendants' Motions to Dismiss (Dkt. Nos. 14, 15 and 16), and any Responses or Replies thereto, it is hereby ORDERED that the Defendants' Motions to Dismiss (Dkt. Nos. 4, 6, 10 and 18) are GRANTED and Plaintiff's Complaint is DISMISSED with prejudice.

It is hereby further ORDERED that Plaintiff's Motions to Dismiss Defendants' Motions to Dismiss (Dkt. No.'s 14, 15 and 16) are DENIED. The Clerk of Court is hereby directed to mark this case as closed.

BY THE COURT:

Robert F. Kelly,

J.