

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

ILENE SCHWARTZ, et al.,

CIVIL ACTION

v.

JOHN DUNMIRE, et al.

NO. 00-1140

**ORDER**

AND NOW, this 10<sup>th</sup> day of May, 2001, upon consideration of the defendants' Motions to Dismiss (Docket # 4, 6, 7), and all responses thereto, and after holding such Motions in abeyance upon the plaintiffs' request for leave to file an amended complaint, and it appearing that the plaintiffs have not so filed, **IT IS HEREBY ORDERED** that the Motions *are* GRANTED for the following **reasons**.

Mr. Lalley and Mr. Durham have filed a motion to dismiss for failure to make service under Fed. R. Civ. Pro. 4(m) ("Motion I"). This case has been pending for over fourteen months and these two defendants still have not been served. The plaintiffs claim that they were unable to discover the whereabouts of these defendants despite having made a good faith effort to locate them. The plaintiffs state that they **spoke** with Mr. Lalley's former attorney and that they conducted **an** internet search for Mr. Durham.

**As** the defendants point out, these actions do not constitute good faith effort sufficient to excuse a violation of Rule 4(m). The plaintiffs do not seem to have made any requests of the other defendants, or of **any** third **parties**. Nor did they make any written requests, or even conduct an internet search for Mr. Lalley. **In** the absence of any other evidence of good faith effort, the Court will grant Motion I and dismiss the complaint as to these defendants.

The motion to dismiss by Mr. Kehs, Mr. Dunmire, and Ms. Holmes (“Motion II”), and the motion to dismiss by Mr. Konsecki, Mr. Durante, the Montgomery County Court Reporters, the Montgomery County Board of Commissioners, Sheriff Durante, and Mr. Donnelly (“Motion III”), contend that the complaint lacks the specificity required to state valid claims under the federal civil rights statute, 42 U.S.C. § 1983, the federal conspiracy statute, 42 U.S.C. § 1985, and the federal RICO statute, 18 U.S.C. § 1961. Both motions argue that the complaint fails to state how any of the individual defendants took **part** in the activities alleged.

In response to these motions, the plaintiffs requested leave to amend the complaint. In an Order dated December 15, 2001, the Court stated that it would hold all motions in abeyance until February 15, 2001, and reminded the parties that under Fed. R. Civ. Pro. 15(a), the plaintiffs would be able to amend the complaint without leave of the Court at any time before an answer was filed. **It** has now been almost three months since that date, and over eight months since the plaintiffs first requested leave to amend the complaint. On the basis of the complaint that has been on file for over fourteen months, the Court will grant Motion II and Motion III.

**As** an initial matter, the complaint does not allege which individuals participated in which activities. **All** of the acts alleged are merely said to have been committed by “defendants” or “various defendants.” Without more information, the Court agrees with the defendants that the complaint fails to state a viable claim against any of the individual defendants. The Court now turns to the claim-specific arguments raised in Motion II and Motion III.

In Motion II, the defendants, **Mr.** Kehs, Mr. Dunmire, and Ms. Holmes, argue first that the complaint fails to state a valid claim under 42 U.S.C. § 1983. The plaintiffs argue

that the defendants conspired to deny the plaintiffs' access to the Montgomery County Courthouse. The Supreme Court has held that a claim for denial of access to the courts requires an allegation of actual injury, such as the loss or rejection of a legal claim. See Lewis v. Casey, 518 U.S. 343 (1996). In the instant case, as the defendants point out, the complaint "alleges that unidentified persons failed to file unidentified documents or to make unidentified transcriptions available to plaintiffs or, in one instance, removed plaintiffs from a courthouse, but nowhere do plaintiffs assert actual injury to a legal claim because of these alleged actions." Mot. II at 3. Second, the Motion II defendants argue that the complaint fails to make factual allegations with respect to the claim of conspiracy, presumably under 42 U.S.C. § 1985, which demonstrate collusion or concerted action among the alleged co-conspirators. The Court agrees with the defendants. The plaintiffs allege a series of disconnected events, involving different unidentified court or county employees and officials over an unspecified period of time. This is insufficient to state a claim for conspiracy. Third, the Motion II defendants argue that the complaint **fails** to allege a RICO violation. The plaintiffs have not defined an alleged enterprise, but rather an assortment of individuals and entities with whom they evidently have come into contact over the course of their various litigations in state courts. The plaintiffs also fail to specify the racketeering activity in which the defendants allegedly participated. The complaint does not state a valid claim against any of these defendants. Motion II is therefore granted.

Motion III makes the same arguments as above. The defendants also point out that the complaint fails to allege any of the elements of a RICO claim – an enterprise, a separate

and distinct “person,” racketeering activity, specific instances thereof, or a pattern of racketeering activity. For these reasons, Motion III is granted.

BY THE COURT:

  
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MARY A. McLAUGHLIN, J.