

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

DONALD MUHAMMAD EL ALI, *pro se*, : CIVIL ACTION
a/k/a DONALD MUHAMMAD ALI, :
a/k/a DONALD SMITH, :
a/k/a DONALD A. SMITH, :
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v. :
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LOUIS P. VITTI, et al. : NO. 05-CV-1823

September 13, 2005

Pratter, District Judge

MEMORANDUM and ORDER

I. FACTUAL BACKGROUND, PROCEDURAL HISTORY AND SUMMARY DECISION

On February 4, 2005, this Court entered an order enjoining Mr. Donald Smith (a/k/a Donald Muhammad El Ali and Donald A. Smith) (hereinafter, “Mr. Smith”)¹ and his wife, Lisa Smith, from filing any subsequent complaints with the United States District Court for the Eastern District of Pennsylvania without permission from this Court. The Court issued its extraordinary Order only after finding that Mr. Smith, and others associated with Mr. Smith, had engaged in a series of frivolous, vexatious filings in the United States District Court and the Bankruptcy Court for the Eastern District of Pennsylvania. This Court’s prior Order reads, in pertinent part, as follows:

¹ It appears that Mr. Smith has chosen to use the alias, “Donald Muhammad El Ali” as a vehicle for avoiding this Court’s prior order that he seek permission before filing any subsequent civil action.

AND NOW, this 4th day of February, 2005, upon consideration of the Complaint, the Defendants' Motion to Dismiss the Complaint, with prejudice, and the Memorandum of Law in Support, filed by Litton Loan Servicing, LP, and Credit-Based Asset Securitization, LLC (Docket No. 4), the failure of Plaintiffs Donald Smith and Lisa Smith to respond within fourteen (14) days to the Defendants' Motion to Dismiss or respond at all, pursuant to Local Civil Rule 7.1(c), the failure of Plaintiffs Donald Smith and Lisa Smith to attend the Initial Pretrial Conference, held at the United States Courthouse, 601 Market Street, Philadelphia, on January 4, 2005, at 9:30 a.m., pursuant to notice sent by the Court on December 7, 2004, to the Plaintiffs' address at 241 Righters Ferry Road, Bala Cynwyd, Pennsylvania, 19004, and the fact that Plaintiffs were notified by the Court at the telephone numbers provided to the Court on the Case Management Track Designation Form, dated June 28, 2004, and, additionally, in consideration of Mr. Smith's failure to appear for previous court-scheduled conferences and respect the court's notices and orders in the matter of Donald Smith ex rel. Donald Muhammed El Ali v. Altegra Credit Co., et al., 02-CV-8221, and in consideration of the respective records in Mr. Smith's previous filings in the United States Court of Appeals for the Third Circuit, the United States District Court for the Eastern District of Pennsylvania and the United States Bankruptcy Court for the Eastern District of Pennsylvania, and with due consideration of Plaintiffs' Amended Verified Complaint (Docket No. 10), Plaintiffs' Motion for Temporary Restraining Order (Docket No. 11), the discussions between the parties and the Court during the Second Initial Pretrial Conference, held by the Court on January 27, 2005 (see Docket No. 12), the document titled "Notice" faxed to the Court by the Smiths on February 2, 2005, and Plaintiffs' failure to file a response to Defendants' Motion to Dismiss, as ordered by this Court, filed on January 7, 2005 (Docket No. 8), for the reasons stated in the accompanying Memorandum Opinion, it is hereby ORDERED:

1. Defendants' Motion to Dismiss is GRANTED;
2. Plaintiffs' Complaint is DISMISSED, in its entirety;
3. Plaintiffs' Amended Complaint is DISMISSED, in its entirety;
4. Plaintiffs' Motion for Temporary Restraining Order is DENIED, with prejudice.
5. **Neither Donald Smith, Donald A. Smith, Donald Muhammad El Ali nor Lisa Smith shall file or assist in filing any further actions within the United States Bankruptcy Court for the Eastern District of**

Pennsylvania or within **the District Court for the Eastern District of Pennsylvania without providing due notice to *this* Court.**

6. To protect the integrity of the courts, Defendants, and any potential Defendants from the harassment of further frivolous litigation initiated by Donald and/or Lisa Smith (the “Smiths”), **the Court issues the following injunctions:**

(a) The Court **enjoins** the Smiths, **or any entity acting on their behalf**, from filing any action in any court, state or federal, against the Defendants named in the instant action, **without first obtaining leave of this Court;**

(b) The Court **enjoins** the Smiths, or any entity acting on their behalf, **from filing any new action** or proceeding **in any federal court, without first obtaining leave of *this* Court;** and

(c) The Court **enjoins** the Smiths **from filing any further papers in any case**, either pending or terminated, in the Eastern District of Pennsylvania, **without first obtaining leave of *this* Court.**

7. In light of Mr. Smith’s history of litigious conduct, **the Court finds it likely that *the Smiths will attempt to ignore this Court’s action*; therefore, the Court ORDERS the Clerk of Court to refuse to accept any submissions for filing except petitions for leave of court, unless such submissions for filing are accompanied by an order of this Court granting leave.** In the event that the Smiths succeed in filing papers in violation of this Order, upon such notice, the Clerk of Court shall, under authority of this Court’s Order, immediately and summarily strike the pleadings or filings.

8. Leave of court shall be forthcoming upon the Smiths demonstrating, through a properly filed petition, that the proposed filing:

(a) can survive a challenge under Federal Rule of Civil Procedure 12;

(b) is not barred by principles of claim or issue preclusion;

(c) is not repetitive or violative of a court order; and

(d) is in compliance with Federal Rule of Civil Procedure 11.

9. The Court ORDERS the Smiths to attach a copy of this Order and Injunction to any such petition for leave of court.

10. The Court ORDERS the Clerk of Court to file and enter into the docket this Memorandum Opinion, Order, and Injunction and provide a copy of same to all parties in each case against whom Donald and/or Lisa Smith has actions pending in the Eastern District of Pennsylvania.

...

It is so ORDERED.

See Smith v. Litton Loan Servicing, LP, 2005 WL 289927 at *15-16 (E.D.Pa. Feb. 04, 2005)

(emphasis added) (hereinafter the “Litton Order”).

Despite the Litton Order, on April 20, 2005, Mr. Smith filed a document called Notice of Removal for Writ of Habeas Corpus. (Docket No. 1) (hereinafter, the “Complaint”).² In his Complaint, Smith names the following Defendants: Louis Vitti, Leslie Carson, National City Mortgage Corporation (f/k/a Altegra Credit Company), the Philadelphia Sheriff Department, a state court judge and a federal judge.³ Thereafter, Mr. Smith filed a Motion in the Nature of a

² Mr. Smith chose to sign his submissions in the following manner:

“: Donald – Muhammad :El Ali©, U.C.C. 1-207, **WITHOUT PREJUDICE**, Holder in Due Course, U.C.C. 3-302(a)(2)(i) and 3-303, Secured Party/Creditor, Movant/Affiant Victim Exempt from Levy; without recourse:
Non-Domestic Non-Resident
C/o: 241 Righters Ferry Road Bala Cynwyd, Pennsylvania state
Near [30032-9999], in the Republic in the united States in America”.

Such language is merely one representation of the vexatious jargon and incomprehensible legal positions upon which Mr. Smith (and those similarly situated) have chosen to bring actions before our courts, without due respect to the valuable and limited resources possessed by the federal courts. Every litigant who properly brings a matter before a court for adjudication is entitled to a thoughtful, fair and equitable adjudication of said matter. However, upon a thoughtful and clear review of the Plaintiff’s “Petition” and accompanying document, this Court is unable to divine any other purpose from Plaintiff Smith’s actions save unlawful and inequitable delay and frustration of proceedings that are properly before the courts of the Commonwealth of Pennsylvania.

³ It appears that each of the Defendants has been named because of his, her, or its relationship with one or more of Mr. Smith’s recent matters before the District Court. See Smith ex rel. Muhammed El Ali v. Altegra Credit Co. (No. 02-cv-8221).

Writ of Mandamus Protective Order and Restraining Order. (Docket No. 3). Mr. Smith then filed a Request for Default (Docket No. 5) and Notice of Intent to Take Default (Docket No. 6). Each of Mr. Smith's filings are in violation of the Litton Order.

Plaintiff Smith has filed the instant action in an attempt to enjoin the Philadelphia Court of Common Pleas "by surprise" with regard to the foreclosure procedures commenced against a piece of real property, specifically 1517 Tasker Street, Philadelphia, Pennsylvania. This matter was previously adjudicated in Donald Smith ex rel. Donald Muhammad El Ali v. Altegra Credit Co., 02-cv-8221, 2004 WL 2399773 at *1, 3 (E.D.Pa. Sept. 22, 2004) (case dismissed with prejudice for failure to prosecute, *inter alia*, failure to participate, without reasonable excuse).

Traditionally, a writ of habeas corpus "has been accepted as the specific instrument to obtain release from [unlawful] confinement." Wilkinson v. Dotson, 125 U.S. 1242, 1246 (2005) (quoting Preiser v. Rodriguez, 411 U.S. 475, 486 (1973)). The primary function of such a writ is to release an individual from unlawful imprisonment. The writ of habeas corpus is "directed to the person detaining another, and commanding him to produce the body of the prisoner, or person detained ... the purpose of which is to test the legality of the detention or imprisonment; not whether [the person detained] is guilty or innocent." BLACK'S LAW DICTIONARY 638 (5th ed. 1979). In the instant matter, however, Plaintiff Smith is again attempting to prevent foreclosure on a piece of real property rather than testing the legality of his detention or imprisonment, inasmuch as Mr. Smith is not currently incarcerated or otherwise restrained. Rather, the gravamen of Mr. Smith's various filings appears to be his desire to avoid the sheriff's sale of a residence at 1517 Tasker Street, Philadelphia, Pennsylvania.

Mr. Smith is in violation of this Court's prior Order. Not only did he file the instant

matter without proper leave of Court, but it is clear from them that the Complaint and related filings have no basis in law or fact, but rather, were filed frivolously and with the intent to frustrate the proper operation of the state and federal court systems. Therefore, the instant matter is dismissed with prejudice. Subsequent violations of the Litton Order risks imposition of contempt of court sanctions.

An appropriate Order follows.

BY THE COURT:

/S/

Gene E.K. Pratter

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
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September 13, 2005

Pratter, District Judge

ORDER

AND NOW, this 13th day of September, 2005, consistent with the discussion in the attached Memorandum, IT IS HEREBY ORDERED that this entire matter is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

BY THE COURT:

/S/
Gene E.K. Pratter
UNITED STATES DISTRICT JUDGE