

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

RONALD L. NATALE, JANET L. NATALE,	:	
AUGUSTINE L. NATALE, & KATHLEEN	:	
NATALE	:	
Plaintiffs	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 98-3298
LESTER W. SCHWARTZ, ELEANOR	:	
MORRIS, individually and in her capacity as	:	
President of the Board of Directors of co-	:	
defendant French & Pickering Creeks	:	
Conservation Trust, Inc., FRENCH &	:	
PICKERING CREEKS CONSERVATION	:	
TRUST, INC., its Board Members, Directors,	:	
Officers, successors, & assigns	:	
Defendants	:	

MEMORANDUM AND ORDER

YOHN, J.

December , 1999

The plaintiffs, Ronald, Janet, Augustine, and Kathleen Natale, brought suit against defendants French and Pickering Creeks Conservation Trust, Inc., its board members, directors, officers, successors, and assigns [collectively the "Trust"], Lester Schwartz, and Eleanor Morris claiming violations of their civil rights under 42 U.S.C. §§ 1983 and 1985, as well as asserting a number of state law claims. Pending before the court is the defendants' motion to dismiss the plaintiffs' first amended complaint (Doc. No. 48).

After considering the § 1983 claims in Counts III and IV that allege violations of the plaintiffs' right to procedural due process before being deprived of their property, the court concludes that the plaintiffs have failed to plead an essential element of their claims. Specifically, the plaintiffs do not allege that the state procedures for challenging the deprivations were inadequate, a necessary element of a § 1983 claim for a procedural due process violation. Consequently, the court will dismiss Counts III and IV without prejudice.

The § 1985(3) claims in Counts V and VI fail for a variety of reasons. First, § 1985(3) protects only against conspiracies motivated by racial or class-based discriminatory animus, but the plaintiffs do not sufficiently allege membership in a class that is protected by § 1985(3). This defect affects all of the plaintiffs' § 1985(3) claims in Counts V and VI. Addressing the plaintiffs' particular claims, the plaintiffs allege a conspiracy to violate their right to be left alone (Counts V.A and V.C in the Complaint Order), but the court finds that no such right exists, at least as the plaintiffs have defined it. The plaintiffs also complain of a conspiracy to deny them due process prior to the demolition of their house (Count V.B in the Complaint Order), but, as with their § 1983 claims, the plaintiffs fail to allege the inadequacy of state procedures for dealing with violations of procedural due process. Additionally, the plaintiffs claim in Count VI that the defendants conspired to deprive them of their right of access to the courts. This right is only protected against interference by the state, though, and the plaintiffs have not alleged that the defendants either planned on being, or actually were, state actors when they deprived the plaintiffs of access to the courts. For all of these reasons, the court will dismiss Counts V and VI, as well.

The plaintiffs' § 1985(2) claim in Count VII for conspiracy to commit abuse of process and, thereby, to obstruct justice in a state court also fails. As with the plaintiffs' § 1985(3) claims in Counts V and VI, the plaintiffs' § 1985(2) claim in Count VII fails because it lacks the necessary allegations that the plaintiffs were members of a class protected by the pertinent part of § 1985(2). Additionally, because the defendants' alleged conduct did not constitute abuse of process, any claim that the defendants obstructed justice by abusing process must not succeed. Therefore, I have no choice but to dismiss Count VII with prejudice.

As explained hereinafter, the court has been more than generous in giving the plaintiffs ample opportunity to amend their complaint and remedy the deficiencies therein. For this reason, I will limit the extent to which the plaintiffs may further amend their complaint. Counts V.A, V.B, VI, and VII will be dismissed with prejudice. Counts III, IV, and V.B, which allege federal civil rights violations, will be dismissed without prejudice, and leave will be granted for the plaintiffs to file one more amended complaint that remedies all remaining deficiencies in those counts. Should this amended complaint fail to state claims upon which relief can be granted, the plaintiffs' claims will be dismissed with prejudice, and leave will not be granted for further amendments. Because the survival of the plaintiffs' federal causes of action is in doubt, the court's pendent jurisdiction over the state law claims in Counts I and VIII-XIV is also in doubt, and the court declines to examine the plaintiffs' state law claims at this time. In the event that all federal claims are eventually dismissed, all state law claims will then be dismissed, as well. If not, I will then review the state law claims to determine their individual sufficiency.

I. Background

Accepting as true all allegations in the plaintiffs' amended complaint, as well as any reasonable inferences that can be drawn from those allegations, and considering them in the light most favorable to the plaintiffs as required under a Rule 12(b)(6) motion, *see Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994), the following facts are relevant. The plaintiffs' suit grows out of almost a decade of litigation in state court over whether their house in Chester County, Pennsylvania, violated a conservation easement benefitting the Trust.¹ *See* First Amended Complaint ¶¶ 12, 14. This state court litigation resulted in court orders requiring the plaintiffs to vacate their house and remove it from the property or, should the plaintiffs not remove it themselves, authorizing the Trust and Schwartz (the plaintiffs in the state court litigation) to do so.² *See* Order of Judge Sanchez, Chester County Ct. C.P., Oct. 22, 1998 (Doc. No. 31 Ex. A); Order of Judge Sanchez, Chester County Ct. C.P., Sept. 17, 1998 (Doc. No. 31 Ex. A); Order of Judge Sugerman, Chester County Ct. C.P., July

¹The easement contains the following restriction:

The property shall be restricted to farming or to use as a wildlife sanctuary or nature conservation area, and for study of natural history. No buildings or structures shall be placed thereon, other than small buildings or structures accessory to such uses and for the exclusive use of the property.

First Amended Complaint ¶ 93 (quoting the deed to the property at issue).

²Although the plaintiffs do not specifically acknowledge these court orders in their amended complaint, they do recognize that the demolition of their house was the result of the state court litigation. *See* First Amended Complaint ¶ 82. Additionally, the plaintiffs were certainly aware of the orders because they attached Judge Sanchez's orders requiring the demolition of their house as exhibits to their motion for a temporary restraining order and a preliminary injunction (Doc. No. 31). Whether acknowledged or not, the court will exercise its discretion and take notice of the court orders in the underlying state court litigation as matters of public record. *See Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993).

17, 1997 (Doc. No. 49 Ex. D). Because the plaintiffs had failed to remove their house, on November 20, 1998, the defendants sought and obtained a demolition permit from the East Vincent Township Zoning Hearing Board [“Zoning Board”] authorizing destruction of the plaintiffs’ house without securing the plaintiffs’ presence or giving them notice. *See* First Amended Complaint ¶¶ 119-20. Three days later, the defendants’ demolition contractor entered the plaintiffs’ property and demolished the plaintiffs’ house, its contents, and their well. *See id.* ¶¶ 19, 95.

The plaintiffs filed a pro se complaint on June 26, 1998, raising a significant number of claims against myriad defendants. After substantial motion practice, the dismissal of a number of the defendants, and a hearing on the plaintiffs’ request for a preliminary injunction, the plaintiffs retained an attorney who entered an appearance on November 16, 1998. By an order of January 11, 1999 (Doc. No. 41), the court permitted the filing of an amended complaint so that the claims could be refined. The amended complaint was not filed on that date, but on February 9, 1999, plaintiffs’ counsel filed a motion to file an amended complaint.

The motion to file an amended complaint was granted on February 24, 1999, with the amended complaint to be filed by March 1, 1999. The amended complaint (Doc. No. 46) was filed on March 2, 1999, and the court accepted it as timely.

The amended complaint, rather than refining the claims, however, contained a total of seventy-four counts and was written in language that was unclear and unnecessarily repetitive, at best. This lack of clarity made meaningful consideration of the defendants’ memorandum of law in support of their motion to dismiss (Doc. No. 49) and the plaintiffs’ response thereto (Doc. No. 51) impossible. The court then held oral argument for the purpose of determining what claims

the plaintiffs were trying to pursue. To that end, the court reviewed each claim with plaintiffs' counsel so that the court could understand the intended nature of the claims. On June 18, 1999, the court entered an order (Doc. No. 55) ["Complaint Order"] construing the amended complaint in the manner set forth by plaintiffs' counsel at oral argument so that the parties would have a structure on which to base their motions and discovery.³ This order also permitted the defendants to file a new memorandum of law in support of their motion to dismiss or to rely on their old one. The defendants chose to rely in part on their old memorandum of law and in part on a new memorandum of law filed on July 7, 1999 (Doc. No. 56) ["Defs.' Rest. Mem."]. The plaintiffs also filed a new memorandum in opposition on July 29, 1999 (Doc. No. 61).

In addition to bringing a variety of state law claims, the plaintiffs' amended complaint asserts the following federal civil rights claims: Count III is a § 1983 claim based on the violation of the plaintiffs' Fifth and Fourteenth Amendment right to due process before the defendants obtained the demolition permit from the Zoning Board and demolished their house; Count IV is a § 1983 claim based on the violation of the plaintiffs' Fifth and Fourteenth Amendment right to due process prior to being deprived of their personal property, their well, and their growing wheat crop;⁴ Counts V.A and V.C are § 1985 conspiracy claims based on the violation of the plaintiffs' First and Ninth Amendment right to be "left alone" on their property; Count V.B is a § 1985 conspiracy claim based on the violation of the plaintiffs' Fifth and Fourteenth Amendment right

³Counts II and XV-LXXIV (15-74) were dismissed by the same order as duplicative and unnecessary.

⁴Because the plaintiffs' well was destroyed, they could not adequately water their wheat crop. *See* First Amended Complaint ¶ 100.

to due process before being deprived of their electricity⁵ and their property through execution of the demolition order; Count VI is a § 1985 conspiracy claim based on the violation of the plaintiffs' Fifth and Fourteenth Amendment right of access to the courts, particularly the Zoning Board; and Count VII is a § 1985 conspiracy claim for abuse of process under state law through vexatious litigation. *See id.* ¶¶ 64-183; Complaint Order.

II. Legal Standard

The defendants have filed a motion to dismiss for failure to state claims upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the complaint. *See Sturm v. Clark*, 835 F.2d 1009, 1011 (3d Cir. 1987). In deciding a motion to dismiss, a court must “accept as true all allegations in the complaint and all reasonable inferences that can be drawn from them after construing them in the light most favorable to the [non-moving party].” *Jordan*, 20 F.3d at 1261. At this stage of the litigation, then, “[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

III. Discussion

The defendants argue that the plaintiffs have not pleaded facts sufficient to state a cause of action under either 42 U.S.C. §§ 1983 or 1985. *See* Defs.’ Rest. Mem. at 3-4. With respect to

⁵Incident to the demolition of the house, the defendants caused PECO Energy to shut off electricity to the plaintiffs’ property. *See* First Amended Complaint ¶ 124.

the § 1983 claims, the defendants assert that they were not state actors and, thus, cannot be held liable under § 1983 for violations of the plaintiffs' civil rights. *See id.* at 4. As explained below, because the plaintiffs have failed to plead a different but no less essential element of their § 1983 claims, I will dismiss these claims without reaching the issue of whether the defendants were state actors. With respect to the § 1985 claims, the defendants argue that the plaintiffs, as Americans of Italian descent, are not members of a protected class under § 1985 and, thus, cannot make claims thereunder. *See id.* at 3. The defendants are correct insofar as the plaintiffs' allegations in Counts V through VII do not support the contention that Americans of Italian descent are members of a protected class under § 1985. For this and other reasons, I will dismiss Counts V through VII.

The defendants have also asked the court to dismiss the plaintiffs' state law claims in Counts I and VIII through XIV. *See id.* at 8. The court declines to examine these state law claims until the survival of the plaintiffs' federal causes of action is more certain.

A. Counts III and IV: § 1983 Claims

In Counts III and IV of their amended complaint, the plaintiffs claim that the defendants' destruction of the plaintiffs' house and other property deprived the plaintiffs of their property without the adequate notice and hearing required by the Due Process Clause of the Fifth and Fourteenth Amendments and, thus, violated § 1983.⁶ *See* First Amended Complaint ¶¶ 64-109;

⁶Besides a vague reference to the Due Process Clause, the plaintiffs do not indicate the particular source of their right to notice and hearing. They do not point to the part or parts of either the East Vincent Township Zoning Ordinances or the Pennsylvania Municipalities Planning Code that would require notice and hearing before the execution of duly obtained court orders requiring the demolition of a house. Alternatively, they do not point to any particular

Complaint Order. Generally, in order to state a cause of action under 42 U.S.C. § 1983,⁷ a plaintiff must allege that a defendant “acted under the color of state law and denied [the plaintiff] a federally protected constitutional or statutory right.” *Angelico v. Lehigh Valley Hosp., Inc.*, 184 F.3d 268, 277 (3d Cir. 1999) (citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 930 (1982); *Jordan*, 20 F.3d at 1264).

The defendants argue that because they were merely carrying out court orders from the state court litigation, they were not state actors when they demolished the plaintiffs’ home and that they are, thus, not liable under § 1983. *See* Defs.’ Rest. Mem. at 4-6. The correctness of this assertion, however, is unclear. In *Shelley v. Kraemer*, the Supreme Court of the United States held that enforcing a racially restrictive covenant through the courts constitutes state action. *See* 334 U.S. 1, 18-19 (1948). The idea that judicial enforcement can constitute state action has been further refined in the Third Circuit so that “[b]efore private persons can be considered state actors for the purposes of section 1983, the state must significantly contribute to the constitutional deprivation, e.g., authorizing its own officers to invoke the force of law in aid of the private

federal authority requiring notice and hearing before the execution of duly obtained court orders. Given the extensive state court history of this dispute, I question whether further notice and hearing were needed. In any event, in giving the plaintiffs a final opportunity to amend their complaint, I encourage them to set forth, as they must do eventually, the specific zoning ordinance and the specific provision or provisions thereof, the specific provision or provisions of the municipalities planning code, and/or the particular authority under federal law on which the plaintiffs rely in their claims in Counts III and IV that further notice and hearing were necessary before the court orders were executed. After receiving this final amendment and whatever further motion to dismiss the defendants may file, I will make a determination as to the survival of the plaintiffs’ § 1983 claims.

⁷Section 1983 provides, in part, that anyone “who, under color of any statute . . . of any State . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured.” 42 U.S.C. § 1983 (1994).

persons' request." *Jordan*, 20 F.3d at 1266. Court orders mandating the demolition of the plaintiffs' house were allegedly obtained by private persons for discriminatory purposes, and these orders were presumably enforceable by the sheriff, so this demolition may possibly have constituted state action. Because the plaintiffs' § 1983 claims fail for a different reason, and because the plaintiffs did not brief this issue and the defendants did not distinguish these cases, I will not decide at this time whether the defendants were acting under color of state law but will await a motion for summary judgment based on a more complete record before making that decision.

In order to state a cause of action under § 1983 for a procedural due process violation, such as the ones alleged by the plaintiffs in Counts III and IV, a plaintiff must claim not only that he was "deprived . . . of a protected property interest" but also "that the state procedure for challenging the deprivation does not satisfy the requirements of procedural due process." *Midnight Sessions, Ltd. v. City of Philadelphia*, 945 F.2d 667, 680 (3d Cir. 1991) (citing *Parratt v. Taylor*, 451 U.S. 527, 537 (1981), *overruled on different grounds by Daniels v. Williams*, 474 U.S. 327, 330-31 (1986)). Although the plaintiffs allege that the defendants deprived them of their protected property interests in their house, personal property, well, and growing wheat crop, *see* First Amended Complaint ¶¶ 64-109, the plaintiffs make no mention whatsoever of the state procedures available for challenging these deprivations and, thus, fail to state a cause of action under 42 U.S.C. § 1983. Consequently, the court will grant the defendants' motion to dismiss as it relates to these counts and will dismiss Counts III and IV without prejudice to the plaintiffs' right to correct the defects in these counts in a second amended complaint, if they can do so consistent with the requirements of Federal Rule of Civil Procedure 11.

B. Counts V and VI: § 1985(3) Claims

In Count V, the plaintiffs allege that the defendants violated § 1985 by conspiring to deprive them of their First and Ninth Amendment right to be “left alone” (Counts V.A and V.C), as well as their Fifth and Fourteenth Amendment right to due process prior to the execution of the demolition permit that deprived the plaintiffs of their property (Count V.B). *See* First Amended Complaint ¶¶ 110-22; Complaint Order. In Count VI, the plaintiffs claim that the defendants violated § 1985 by conspiring to deprive them of their right of access to the courts in obtaining the demolition permit from the Zoning Board *ex parte*. *See* First Amended Complaint ¶¶ 123-45; Complaint Order. For the reasons discussed below, the court holds that the plaintiffs have failed to state causes of action under 42 U.S.C. § 1985 in both Count V and Count VI. The court will, therefore, dismiss both counts.

1. Counts V and VI: Generally

The plaintiffs do not specify the subsection of § 1985 on which their claims in Counts V and VI rely, but a careful reading of the amended complaint, the Complaint Order, and the statute reveals that § 1985(3), which concerns conspiracies to deprive persons of equal protection,⁸ is the

⁸Section 1985(3) provides, in part, for a cause of action against:
[T]wo or more persons in any State or Territory [who] conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . [and] do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States.
42 U.S.C. § 1985(3) (1994).

only subsection potentially applicable to these claims. In order to state a cause of action under § 1985(3), a plaintiff must allege:

(1) a conspiracy; (2) motivated by a racial or class based discriminatory animus designed to deprive, directly or indirectly, any person or class of persons to [sic] the equal protection of the laws; (3) an act in furtherance of the conspiracy; and (4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States.

Lake v. Arnold, 112 F.3d 682, 685 (3d Cir. 1997) (citing *United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott*, 463 U.S. 825 (1983); *Griffin v. Breckenridge*, 403 U.S. 88, 91 (1971)).

Although § 1985(3)'s requirement of class-based discrimination initially seemed restricted to racial discrimination, the Supreme Court has declined to rule out the coverage of non-racial class-based discrimination. *See Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 269 (1993) (noting the openness of the question as to whether non-racial class-based discrimination is actionable under § 1985(3)); *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971) (finding a conspiracy motivated by "racial, or perhaps otherwise class based, invidiously discriminatory animus" to be a conspiracy to deny equal protection in violation of § 1985(3)). The Third Circuit has gone further than the Supreme Court and actually allowed the survival of § 1985(3) claims of discrimination based on mental retardation, as well as on gender. *See Lake*, 112 F.3d at 688 (holding that the mentally retarded were a protected class under § 1985(3)); *Novotny v. Great Am. Fed. Sav. & Loan Ass'n*, 584 F.2d 1235, 1243 (3d Cir. 1978) (en banc) (holding that gender was a protected class under § 1985(3)), *vacated on other grounds*, 442 U.S. 366 (1979).

In an attempt to satisfy § 1985(3)'s requirement of class-based discriminatory animus, the plaintiffs claim that the defendants' state court litigation was motivated by an "intent to drive the

‘Guineas’ (meaning the Natales) off the property.” First Amended Complaint ¶ 128; *see id.*

¶ 134. The defendants argue, however, that national origin-based discrimination does not qualify as class-based discrimination under § 1985(3). *See* Defs.’ Rest. Mem. at 3-4. That is clearly not the case in at least one other circuit, and it may not be the case in the Third Circuit. *See Haverstick Enters. v. Financial Fed. Credit*, 32 F.3d 989, 994 (6th Cir. 1994) (holding that “[a] class protected by section 1985(3) must possess the characteristics of a discrete and insular minority, such as race, national origin, or gender”). The Third Circuit has articulated its standard for determining protected class status under § 1985(3) in such a way as to theoretically allow for the protection of national origin:

“The fact that a person bears no responsibility for [a handicap], combined with the pervasive discrimination practiced against [the mentally retarded] and the emerging rejection of [this discrimination] as incompatible with our ideals of equality convince[s] us that whatever the outer boundaries of the concept, an animus directed against [the mentally retarded] includes the elements of a ‘class based invidiously discriminatory’ motivation.”

Lake, 112 F.3d at 688 (quoting *Novotny*, 584 F.2d at 1243). The logic of Third Circuit’s holding in *Lake* applies as easily to national origin as to mental retardation, assuming that there has been historically pervasive discrimination against people of a particular national origin. Counts V and VI are, however, devoid of any allegations of historically pervasive discrimination against Americans of Italian descent. Absent allegations of such discrimination, the plaintiffs have not sufficiently alleged that the defendants were motivated by class-based discriminatory animus and, thus, have failed to state claims upon which relief can be granted under § 1985(3).

Moreover, even if the plaintiffs had alleged that the defendants were motivated by class-based discriminatory animus, their § 1985(3) claims in Counts V and VI have additional faults,

as explained at greater length below. For all of these reasons, the court will dismiss Counts V and VI.

2. Counts V.A and V.C: The Right to Be Left Alone

In addition to lacking sufficient allegations of historically pervasive discrimination against Americans of Italian descent, *see supra* Part III.B.1, the plaintiffs' § 1985(3) claims in Counts V.A and V.C also lack allegations that the plaintiffs suffered deprivation of a protected right. I have been unable to find any mention of a right to be "left alone" that is protected by the Constitution, and neither party has cited any authority recognizing such a right. The most similar cognizable right is the right to privacy. Privacy cases generally have fallen into one of two groups, depending on the interest asserted. *See Whalen v. Roe*, 429 U.S. 589, 599 (1977); *Doe v. Southeastern Pennsylvania Transp. Auth.*, 72 F.3d 1133, 1137 (3d Cir. 1995). One group of privacy cases concerns "the individual interest in avoiding disclosure of personal matters." *Whalen*, 429 U.S. at 599. The other group deals with "the interest in independence in making certain kinds of important decisions." *Id.* The cases comprising this second group have involved government interference with decisions regarding "matters relating to marriage, procreation, contraception, family relationships, and child rearing and education." *Id.* at 599-600, n.26; *see American Future Sys., Inc. v. Pennsylvania State Univ.*, 688 F.2d 907, 915 (3d Cir. 1982) (citing *Paul v. Davis*, 424 U.S. 693, 713 (1976)). Neither of these two types of privacy interests bears any resemblance to the interest in being "left alone" that forms the basis for the plaintiffs' § 1985(3) claims in Counts V.A and V.C. Because the right to be "left alone" is not a protected right or privilege of a citizen of the United States, Counts V.A and V.C must fail,

regardless of the facts alleged. Therefore, the court will grant the defendants' motion to dismiss as it relates to Counts V.A and V.C and will dismiss those counts with prejudice.

3. Count V.B: The Right to Due Process

In addition to lacking sufficient allegations of historically pervasive discrimination against Americans of Italian descent, *see supra* Part III.B.1, the plaintiffs' § 1985(3) claim in Count V.B also lacks allegations that the plaintiffs were actually deprived of due process. In Count V.B, the plaintiffs claim that the enforcement of the demolition order occurred "without any (let alone a full and fair) opportunity for the plaintiffs to be heard."⁹ First Amended Complaint ¶ 117. Like the plaintiffs' § 1983 procedural due process claims in Counts III and IV, *see supra* Part III.A (discussing the elements of a procedural due process civil rights claim), the plaintiffs' due process claim in Count V.B lacks the necessary allegation of inadequate state procedures for challenging the deprivation of due process. Absent such an allegation, Count V.B must fail. For this reason, as well as for failure to sufficiently allege historically pervasive discrimination against Americans of Italian descent, *see supra* Part III.B.1, the court will dismiss

⁹Again, besides a vague reference to the Due Process Clause, the plaintiffs do not indicate the particular source of their right to notice and hearing. They do not point to the part or parts of either the East Vincent Township Zoning Ordinances or the Pennsylvania Municipalities Planning Code that would require notice and hearing before the execution of duly obtained court orders requiring the demolition of a house. Alternatively, they do not point to any particular federal authority requiring notice and hearing before the execution of duly obtained court orders. Given the extensive state court history of this dispute, I question whether further notice and hearing were needed. I repeat my earlier encouragement to the plaintiffs, *see supra* note 6, to set forth, as they must do eventually, the specific zoning ordinance and the specific provision or provisions thereof, the specific provision or provisions of the municipalities planning code, and/or the particular authority under federal law on which the plaintiffs rely in their claim in Count V.B that further notice and hearing were necessary before the court orders were executed.

Count V.B without prejudice to the plaintiffs’ right to correct the defects in this count in a second amended complaint, if they can do so consistent with the requirements of Federal Rule of Civil Procedure 11.

4. Count VI: The Right of Access to the Courts

In addition to lacking sufficient allegations of historically pervasive discrimination against Americans of Italian descent, *see supra* Part III.B.1, the plaintiffs’ § 1985(3) claim in Count VI also lacks allegations that the plaintiffs were deprived of a protected right. One of the fundamental rights protected by the Constitution is the right of access to the courts; it “lies at the foundation of orderly government.” *Chambers v. Baltimore & Ohio R.R. Co.*, 207 U.S. 142, 148 (1907). This right of access to the courts stems from three parts of the Constitution: the Privileges and Immunities Clause of Article 4, the Fourteenth Amendment Due Process Clause, and the First Amendment right to petition. *See Brown v. Grabowski*, 922 F.2d 1097, 1111 (3d Cir. 1990) (citing *Chambers, supra*, for the Privileges and Immunities Clause of Article 4, *Wolff v. McDonnell*, 418 U.S. 539 (1974), for the Fourteenth Amendment Due Process Clause, and *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508 (1972), for the First Amendment right to petition).

The parts of the Constitution in which the right of access to the courts originates—the Article 4 Privileges and Immunities Clause, the Fourteenth Amendment, and the First Amendment—only protect against unlawful interference and deprivations by the state, not by private individuals. *See United Bldg. & Construction Trades Council v. Mayor & Council of Camden*, 465 U.S. 208, 219 (1984) (acknowledging that the Article 4 Privileges and Immunities

Clause “imposes a direct restraint on *state* action” (emphasis added)); *United Brotherhood of Carpenters & Joiners v. Scott*, 463 U.S. 825, 831-33 (1983) (noting that a § 1985(3) conspiracy to violate First Amendment rights requires state involvement); *United States v. Guest*, 383 U.S. 745, 755 (1966) (recognizing that the Fourteenth Amendment protects against state action, not private action). Indeed, the Fifth Circuit has recognized that the right of access to the courts is “guaranteed and protected from unlawful interference and deprivations *by the state*,” not by private individuals. *Ryland v. Shapiro*, 708 F.2d 967, 972 (5th Cir. 1983) (emphasis added); *see also Peavey v. Polytechnic Inst. of New York*, 775 F. Supp. 75, 79 (E.D.N.Y. 1991), *aff’d*, 969 F.2d 1042 (2d Cir. 1992). For this reason, at least one court has held that “[a] purely private conspiracy to deprive a person of that right cannot, therefore, violate § 1985(3).” *Peavey*, 775 F. Supp. at 79. The court agrees with this statement of the law.

Although the plaintiffs claim in Count VI that the defendants conspired to deprive them of their right of access to the courts,¹⁰ the plaintiffs have made no allegation that the defendants were acting as or in concert with the state in denying them this right, for example by claiming that they conspired with the Zoning Board, nor can any reasonable inferences be drawn to that

¹⁰Again, besides a vague reference to the Due Process Clause, the plaintiffs do not indicate the particular source of their right to have access to the Zoning Board prior to the execution of court orders requiring the demolition of a house. They do not point to the part or parts of either the East Vincent Township Zoning Ordinances or the Pennsylvania Municipalities Planning Code that would require such access. Alternatively, they do not point to any particular federal authority requiring such access. Given the extensive state court history of this dispute, I question whether further notice and hearing were needed. I repeat my earlier encouragement to the plaintiffs, *see supra* note 6, to set forth, as they must do eventually, the specific zoning ordinance and the specific provision or provisions thereof, the specific provision or provisions of the municipalities planning code, and/or the particular authority under federal law on which the plaintiffs rely in their claim in Count VI that access to the Zoning Board was required before the court orders were executed.

end. Because the defendants must, thus, be considered private individuals, any conspiracy between them to deny the plaintiffs access to the courts would have been purely private in nature and not actionable under § 1985(3). For this reason, as well as for the failure to sufficiently allege historically pervasive discrimination against Americans of Italian descent, *see supra* Part III.B.1, the court will grant the defendants’ motion to dismiss as it relates to this count and will dismiss Count VI with prejudice.

C. Count VII: § 1985(2) Claim

Count VII of the amended complaint alleges a § 1985 conspiracy for the state law tort of abuse of process through vexatious litigation in state court. *See* First Amended Complaint ¶¶ 146-83; Complaint Order. Again, the plaintiffs do not specify the subsection of § 1985 on which their claim in Count VII relies. Generally, § 1985 creates a cause of action not for conspiracies to commit state law torts but for conspiracies to violate particular civil rights. After closely examining the statute and the amended complaint, the court concludes that the plaintiffs intended Count VII to state a claim that the defendants conspired to commit the state law tort of abuse of process and that this abuse of process would have constituted an obstruction of the due course of justice in a state court, thus giving rise to liability under § 1985(2)’s prohibition on conspiracies to commit such obstruction.¹¹

¹¹Section 1985(2) provides, in part, for a cause of action against “two or more persons conspir[ing] for the purpose of impeding, hindering, obstructing, or defeating . . . the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws.” 42 U.S.C. § 1985(2) (1994).

Like all § 1985(3) claims, a § 1985(2) claim of conspiracy to obstruct justice in state court must include allegations that the conspiracy was motivated by racial or class-based discriminatory animus. *See Davis v. Township of Hillside*, 190 F.3d 167, 171 (3d Cir. 1999). As they did in Counts V and VI, *see supra* Part III.B.1, the plaintiffs fail to sufficiently allege historically pervasive discrimination against Americans of Italian descent. Thus, in Count VII, just as in Counts V and VI, the plaintiffs fail to state a claim upon which relief can be granted. *See supra* Part III.B.1. Additionally, because the plaintiffs' § 1985(2) claim is for obstruction of justice through abuse of process, failure to find any abuse of process is fatal to that claim. The plaintiffs' amended complaint does not allege sufficient facts to allow the court to find an abuse of process under Pennsylvania law. For both of these reasons, the plaintiffs' § 1985(2) claim fails.

Abuse of process is essentially the “improper use of process after it has been [properly] issued, that is, a perversion of it.” *Publix Drug Co. v. Breyer Ice Cream Co.*, 32 A.2d 413, 415 (Pa. 1943). The Superior Court of Pennsylvania has explained abuse of process in the following way:

In order to state a cause of action for abuse of process it must be alleged that the defendant used a legal process to accomplish a purpose for which the process was not designed. *Rosen v. American Bank of Rolla*, 627 A.2d 190, 192 (Pa. Super. Ct. 1993); *Rosen v. Tesoro Petroleum Corp.*, 582 A.2d 27, 32 (Pa. Super. Ct. 1990), *allocatur denied*, 592 A.2d 1303 (1991). “The classic example is the initiation of a civil proc[ess] to coerce the payment of a claim completely unrelated to the cause of action sued upon.” *Triester v. 191 Tenants Ass'n* 415 A.2d 698, 712 (Pa. Super. Ct. 1979). It is not enough that the defendant had bad or malicious intentions or that the defendant acted from spite or with an ulterior motive. *Rosen v. Tesoro Petroleum Corp.*, 582 A.2d at 32-33. Rather, there must be an act or threat not authorized by the process, or the process must be used for an illegitimate aim such as extortion, blackmail, or to coerce or compel the plaintiff to take some collateral action. *Id.* See also: *Junod v. Bader*, 458 A.2d

251, 253 (Pa. Super. Ct. 1983). “[T]here is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.” *Shaffer v. Stewart*, 473 A.2d at 1019, citing *Di Sante v. Russ Financial Co.*, 380 A.2d 439, 441 (Pa. Super. Ct. 1977).

Al Hamilton Contracting Co. v. Cowder, 644 A.2d 188, 191-92 (Pa. Super. Ct. 1994) (parallel citations omitted) (second alteration in original).

The plaintiffs’ claim of abuse of process is based on allegedly vexatious litigation. More specifically, the claim is based on allegations of the defendants’ wrongful institution and prosecution of the state court suit to enforce the conservation easement. *See* First Amended Complaint ¶¶ 147-163. This abuse of process claim is faulty in two ways. First, the plaintiffs’ contention that the defendants wrongfully brought suit against them in state court, *see* First Amended Complaint ¶ 147, deals with the state law tort of wrongful use of process, not abuse of process. *See Al Hamilton Contracting*, 644 A.2d at 191 (recognizing that allegations regarding the institution of legal process concern the tort of wrongful use of process, whereas allegations regarding the use of legal process after its institution concern the tort of abuse of process). Even if the plaintiffs had claimed the wrongful use of process, such a claim would fail because wrongful use of process requires that the underlying proceedings terminate in favor of the wrongful use of process plaintiff, and the Trust’s suit to enforce the easement did not terminate in the Natale’s favor. *See Al Hamilton Contracting*, 644 A.2d at 191. Thus, in considering whether the maintenance of the suit constituted an abuse of process, the court must assume “the proper issuance of the original process.” *Triester*, 415 A.2d at 703.

Additionally, the defendants’ maintenance and prosecution of the suit against the plaintiffs do not constitute an abuse or perversion. Supposedly, the defendants carried forward

the suit to enforce the conservation easement not because they wanted to preserve the character of the land but instead because they did not like the plaintiffs and hoped to cause them harm. *See* First Amended Complaint ¶¶ 147-163. Assuming, as I must, that the defendants were motivated by malice, the prosecution of the state court suit to enforce the easement does not constitute abuse of process. The defendants are not alleged to have threatened to continue the state court litigation unless the plaintiffs sold their property, nor are the defendants alleged to have offered to cease the litigation as part of any quid pro quo with the plaintiffs. On the contrary, the defendants are alleged only to have pursued enforcement of the easement through state court litigation to the extent that they obtained court orders requiring compliance with the easement, the logical conclusion of such a suit. Whether the defendants' actions were motivated by malice is irrelevant because there is no abuse of process "where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions." *Al Hamilton Contracting*, 644 A.2d at 192 (internal quotation marks and citations omitted).

Because a claim for abuse of process is not stated by allegations that a defendant maliciously carried out a process to its authorized conclusion, *see id.*, the plaintiffs have not stated a claim for abuse of process on which relief can be granted nor, thus, for obstruction of justice through the abuse of process. For this reason, and because the plaintiffs have failed to sufficiently allege historically pervasive discrimination against Americans of Italian descent, *see supra* Part III.B.1, I will grant the defendants' motion to dismiss as it relates to Count VII and will dismiss that count with prejudice.

IV. Conclusion

For the above reasons, the court will grant the defendants' motion to dismiss with respect to Counts III through VII and deny the defendants' motion to dismiss with respect to Counts I and VIII through XIV. The court will dismiss Counts V.A, V.C, VI, and VII with prejudice. The court will dismiss Counts III, IV, and V.B without prejudice and will grant the plaintiffs leave to amend these counts within ten (10) days of the date hereof in order to correct the defects pointed out herein, if they can do so. An appropriate order follows.

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

RONALD L. NATALE, JANET L. NATALE,	:	
AUGUSTINE L. NATALE, & KATHLEEN	:	
NATALE	:	
Plaintiffs	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 98-3298
LESTER W. SCHWARTZ, ELEANOR	:	
MORRIS, individually and in her capacity as	:	
President of the Board of Directors of co-	:	
defendant French & Pickering Creeks	:	
Conservation Trust, Inc., FRENCH &	:	
PICKERING CREEKS CONSERVATION	:	
TRUST, INC., its Board Members, Directors,	:	
Officers, successors, & assigns	:	
Defendants	:	

ORDER

YOHN, J. December , 1999

AND NOW, this day of December, 1999, upon consideration of the defendants' motion to dismiss (Doc. No. 48), the defendants' memorandum of law in support of their motion to dismiss (Doc. No. 49), the plaintiffs' response thereto (Doc. No. 51), the defendants' restated motion to dismiss (Doc. No. 56), and the plaintiffs' response thereto (Doc. No. 61), IT IS HEREBY ORDERED and DECREED that the motion to dismiss is GRANTED IN PART AND DENIED IN PART. The motion to dismiss is GRANTED with respect to Counts III through VII. Counts III, IV, and V.B are DISMISSED WITHOUT PREJUDICE, and leave is GRANTED for the plaintiffs to amend those counts within ten (10) days of the date hereof in order to correct the

defects pointed out in the accompanying memorandum. Counts V.A, V.C, VI, and VII are DISMISSED WITH PREJUDICE. With respect to Counts I and VIII through XIV, the motion to dismiss is DENIED without prejudice to the defendants' right to renew.

William H. Yohn, Jr.