

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

ROBERT E. WRIGHT, SR. : CIVIL ACTION
 :
 v. :
 :
 MONTGOMERY COUNTY, et al. : NO. 96-4597

MEMORANDUM AND ORDER

HUTTON, J.

March 15, 1999

Presently before the Court are the Motion for Summary Judgment to Dismiss Count I of Plaintiff's Complaint by Montgomery County, Montgomery County Commissioners, Mario Mele, Commissioner of Montgomery County, Richard S. Buckman, Commissioner of Montgomery County and Joseph M. Hoeffel, III, Commissioner of Montgomery County (collectively, the "Defendants") (Docket No. 90), the response thereto by Robert E. Wright, Sr. ("Plaintiff") (Docket No. 95), and Defendants' reply brief thereto (Docket No. 113), and the Motion for Reconsideration/Hearing by Joseph J. Pizonka and Barbara Pizonka (collectively, the "Movants") (Docket No. 82), the Defendants' response thereto (Docket No. 88), and the Movants' Praecipe to Withdraw (Docket No. 100), and the Plaintiff's Motion to Quash Subpoena re: John DePaul (Docket No. 84) and the Defendants' response thereto (Docket No. 87), and the Motion of Non-Party James W. Wright to Quash Subpoena re: Wilmington Trust Corporation and Wilmington Trust Co. and Motion for Protective Order (Docket No. 91) and the Defendants' response thereto (Docket

No. 98), and Plaintiff's Motion to Quash Subpoena re: Wilmington Trust Bank (Docket No. 83), and the Defendants response thereto (Docket No. 89). For the foregoing reasons, (1) Defendants' Motion for Summary Judgment is **GRANTED in part and DENIED in part**; (2) Movants' Motion for Reconsideration/Hearing is **DENIED as moot**; (3) Plaintiff's Motion to Quash Subpoena re: John DePaul is **DENIED as moot**; (4) Motion of Non-Party James W. Wright to Quash Subpoena re: Wilmington Trust Corp. and Wilmington Trust Co. and Motion for Protective Order is **DENIED**; and (5) Plaintiff's Motion to Quash Subpoena re: Wilmington Trust Bank is **DENIED as moot**.

I. BACKGROUND

This is an employment discrimination case. In his complaint, Robert E. Wright, Sr. ("Wright" or "Plaintiff") alleges, in substance, that his employer, Montgomery County, and its employees Mario Mele, Richard S. Buckman, and Joseph M. Hoeffel, III (collectively, the "Defendants") terminated his employment as Director at the Montgomery County Department of Housing Services ("MDHS") because he is an African-American, and seeks damages. In Count One of the Complaint, Wright contends that the Defendants discriminated against, retaliated against, and harassed him because of his race, thereby violating his constitutional rights under the First, Fourth, Fifth, Sixth, Eighth and Fourteen Amendments ("Count

One"). The pleading relies upon §§ 1981, 1982, 1983, 1985(1-3), 1986, and 1988, and does not invoke Title VII.¹

Count one of the Complaint is Plaintiff's only remaining claim against the Defendants, and is the focus of this opinion. Although Count One alleges employment discrimination, it does not do so under Title VII. In an earlier opinion, see Wright v. Montgomery County, NO. CIV.A. 96-4597, 1998 WL 962100 (E.D. Pa. Dec. 22, 1998), this Court inadvertently referred to Count One of Plaintiff's Complaint as a claim brought under Title VII of the Civil Rights Act. Wright, 1998 WL 962100, at *1.

On January 28, 1999, the Defendants filed the instant summary judgment motion moving the Court to dismiss Plaintiff's sole remaining Count I of his Complaint. The Plaintiff filed a response thereto on February 11, 1999. In his response, the Plaintiff incorporates his reply to Defendants' previous motion for summary judgment. The Court therefore also refers to the parties' previous pleadings concerning Defendants' motion for summary judgment.² On

¹Because the § 1985 claim simply alleges a conspiracy to violate plaintiff's constitutional rights, and thus implicates all the same issues as the § 1983 claim, this Court will refer collectively to both claims as his § 1983 claim.

²See Wright v. Montgomery County, No. CIV.A.96-4597, 1998 WL 962100 (E.D. Pa. Dec. 22, 1998) (considering Defendants' Motion for Summary Judgment Concerning their Immunity (Docket No. 39), Defendants' unopposed Motion for Summary Judgment Concerning Plaintiff's State Law Tort Claims (Docket No. 40), the Montgomery County Defendants' Motion for Summary Judgment on all claims (Docket No. 41), Plaintiff's Reply Memorandum in Opposition to Defendants' Motion for Summary Judgment (Docket No. 46), the Defendants' Reply Brief in Support of their Motions for Summary Judgment On All Claims (Docket No. 67) and Certification Pursuant to Local Rule 7.1(c) of Uncontested Motion for Summary Judgment Concerning Counts Two Through Eight of the Complaint (Docket No. 73)).

March 5, 1999, the Defendants filed a reply brief in support of their motions for summary judgment. Because this Court has not yet analyzed Plaintiff's Constitutional claims, it does so now.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the non-movant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence

in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

III. DISCUSSION

A. Title VII

In the instant motion, the Defendants argue that Count One of Plaintiff's Complaint should be dismissed because Plaintiff failed to satisfy the procedural requirements of Title VII. As stated above, Count One of Plaintiff's Complaint does not allege a violation of Title VII. Thus, the procedural requirements of Title VII are inapplicable to this matter.

Circuit courts have unanimously held that Congress did not intend to make Title VII the exclusive remedy for employment discrimination, where those claims derive from violations of Constitutional rights. See e.g., Annis v. County of Westchester, New York, 36 F.3d 251, 254 (2d Cir. 1994); Bradley v. Pittsburgh Bd. of Educ., 913 F.2d 1064, 1079 (3d Cir. 1990); Johnston v. Harris County Flood Control Dist., 869 F.2d 1565, 1573 (5th Cir. 1989), cert. denied, 493 U.S. 1019 (1990); Starrett v. Wadley, 876 F.2d 808, 814 (10th Cir. 1989); Roberts v. College of the Desert, 970 F.2d 1411, 1415-16 (9th Cir. 1988); Keller v. Prince George's

County, 827 F.2d 952, 956-63 (4th Cir. 1987); Trigg v. Fort Wayne Community Schools, 766 F.2d 299, 302 (7th Cir. 1985); Day v. Wayne County Bd. of Auditors, 749 F.2d 1199, 1205 (6th Cir. 1984).

In Bradley, the Third Circuit held that "the comprehensive scheme provided in Title VII does not preempt section 1983, and that discrimination claims may be brought under either statute, or both". Bradley, 913 F.2d at 1079. The Court explained the relationship between Title VII and 42 U.S.C. § 1983; Title VII is a comprehensive anti-discrimination statute that prohibits discrimination in the employment context, while § 1983 is a vehicle for vindicating rights secured by the United States Constitution or federal law and does not confer any substantive rights. Id.; see also Alexander v. Gardner-Denver Co., 415 U.S. 36, 48-49 (1974) ("Title VII was designed to supplement, rather than supplant, existing laws and institutions relating to employment discrimination."). Similarly, Plaintiff was not required to plead concurrently with his constitutional claims a violation of Title VII, and not required to satisfy the procedural requirements of Title VII.

B. Plaintiff's Constitutional Claims

In their previous motion for summary judgment, the Defendants argue that summary judgment standards require dismissal of the Constitutional claims alleged in Count One. The Defendants assert various arguments to support their contention that Plaintiff

has not established a claim under §§ 1981, 1982, 1983, 1985, and 1986.³ The Defendants also contend that Plaintiff's claims are barred by res judicata and collateral estoppel. The Court will evaluate the validity of each of Plaintiff's claims. As a threshold matter, however, the Court finds that the doctrine of res judicata does not prevent Plaintiff's claim from going forward.

1. Res Judicata

The doctrine of res judicata, or claim preclusion, gives a prior judgment dispositive effect, and bars subsequent litigation based on any claim that was, or could have been, raised in the prior proceeding. See Board of Trustees of Trucking Employers v. Centra, 983 F.2d 495, 504 (3d Cir. 1992). This is true regardless of whether the prior decision was correctly decided, see, e.g., Federated Department Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981), as the doctrine exists precisely to draw the line at which the priorities of the legal system shift from accuracy to finality. The doctrine accepts the risk of inaccuracy in the individual case in exchange for what courts have determined to be greater benefits—repose and the reliability of final judgments over time, and

³The Defendants do not challenge Plaintiff's claim brought under § 1988. A prevailing party in a civil rights action is entitled to reasonable attorney's fees. 42 U.S.C. § 1988(b). See Hensley v. Eckerhart, 461 U.S. 424 (1983). The definition of "prevailing party" should be construed broadly to trigger a fee shifting statute. Public Interest Group of N.J. v. Windall, 51 F.3d 1179, 1185 (3d Cir. 1995). A prevailing party is one who is successful on any significant claim and who is afforded some of the relief sought. See Texas State Teachers Ass'n v. Garland Indep. School Dist., 489 U.S. 782, 791, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989); Metro. Pittsburgh Crusade for Voters v. City of Pittsburgh, 964 F.2d 244, 250 (3d Cir. 1992).

across the entire legal system. See generally 18 Charles A. Wright, Arthur R. Miller, et al., Federal Practice and Procedure § 4403 (2d ed. 1996).

To establish the affirmative defense of res judicata, the party asserting it must establish that: (1) the first suit resulted in a final judgment on the merits; (2) the second suit involves the same parties or their privies; and (3) the second suit is based on the same cause of action as the first. See United States v. Athlone Indus., Inc., 746 F.2d 977, 983 (3d Cir. 1984); Harding v. Duquesne Light Co., 1995 WL 916926, *2 (W.D. Pa. Aug. 4, 1995). In the instant matter, the Defendants argue that on July 5, 1996, Plaintiff filed a Motion to Withdraw and End the action he filed in this Court at Civil Action No. 96-3340. The Defendant argues that Civil Action No. 96-3340 was also a § 1983 claim arising out of the same facts and circumstances brought by Plaintiff against identical Defendants. Thus, the Defendants conclude that Plaintiff's claim must be dismissed.

Collateral estoppel is inappropriate because the Defendants fail to satisfy the first requirement set forth in Athlone. Athlone, 746 F.2d at 983. This Court's "Order" in Wright v. Montgomery County, et al., Civ.A. No.96-3340 (E.D.Pa. Jul. 19, 1996) was not a "final judgment on the merits." See Id. Indeed, this court dismissed the action after granting the Plaintiff's motion to withdraw the complaint. Id. Clearly, the court never reached the merits of the Plaintiff's civil rights claims. The doctrine of res judicata does not apply where, as here, the court

did not render a final adjudication on the merits of the prior action. See Wade v. City of Pittsburgh, 765 F.2d 405, 410 (3d Cir. 1985) (finding that a state court decision granting summary judgment to a municipality on the basis of statutory immunity did not preclude a subsequent federal action on the same incident); Superior Oil Co. v. City of Port Arthur, Tex., 553 F. Supp. 511, 512 (E.D. Tx. 1982) (holding that the lower court's finding that the claim presented a political question was a jurisdictional decision, thus not a judgment on the merits and will not serve as a bar under res judicata principles), rev'd on other grounds, 726 F.2d 203 (5th Cir. 1984); see also Talley v. Southeastern Pennsylvania Transp. Auth., No. CIV. A.93-3060, 1993 WL 496702, at *3 (E.D. Pa. Nov. 30, 1993) (holding that res judicata does not apply to bar second cause of action where prior wrongful termination action was dismissed with prejudice for failure to exhaust administrative remedies) (citing Solar v. Merit Sys. Protection Bd., 600 F. Supp. 535, 536 (S.D. Fla. 1984) (same)).

2. Section 1981 Claim

Section 1981 provides in relevant part that:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981(a) (1994). Although § 1981 has proven effective

in battling discrimination, its scope is limited to cases of race discrimination. Saint Francis College v. Al-Khazraji, 481 U.S. 604, 613 (1987). Thus, these sections may only be invoked when discrimination is alleged against "identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics." Id. "Congress amended § 1981 in 1991 to allow suits for workplace harassment. See 42 U.S.C. § 1981(b). "[Accordingly, c]laims of a hostile working environment that arise after 1991 are ... actionable under § 1981." Simpson v. Martin, Ryan, Andrada & Lifter, No. CIV.A. 96-4590, 1997 WL 542701, at * 3 (N.D. Ca. Aug. 26, 1997) (citations and footnote omitted). Retaliation claims are also actionable under § 1981. Patterson v. Augat Wiring Sys., Inc., 944 F. Supp. 1509, 1519-21 (M.D. Ak. 1996); see Freeman v. Atlantic Ref. & Mktg. Corp., No. CIV.A. 92-7029, 1994 WL 156723, at * 8 (E.D. Pa. Apr. 28, 1994) ("Section 1981's prohibitions against discrimination extend to the same broad range of employment actions and conditions as in Title VII.").⁴ In the instant matter, "Plaintiff's Section 1981 claim is based upon retaliation for his freedom of speech/association activities." (Pl.'s Reply Mem. in Opp'n to

⁴Title VII's § 2000e-2(a)(1) states:

It shall be an unlawful employment practice for an employer--to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1).

Defs.' Mot. for Summ. J. at 17.)

a. Retaliation

To make out a prima facie case of retaliation, the Plaintiff must show that: (1) he engaged in protected conduct; (2) his employer took adverse action against him; and (3) there was a causal link between the protected conduct and the adverse action. Kohn v. Lemmon Co., Civ.A. No.97-3675, 1998 WL 67540, *5 (E.D. Pa. Feb. 18, 1998) (citing Kachmar v. SunGard Data Sys., Inc., 109 F.3d 173, 177 (3d Cir. 1997)). Protected activity consists of opposition to conduct prohibited by Title VII or participation in an investigation of or proceeding regarding such conduct. See 42 U.S.C. § 2000e-3(a); Walden v. Georgia-Pacific Corp., 126 F.3d 506, 513 n.4 (3d Cir. 1997) (grievances about working conditions not protected activity when they do not concern acts made unlawful by Title VII), cert. denied, 118 S. Ct. 1516 (1998); Sumner v. United States Postal Service, 899 F.2d 203, 208 (2d Cir. 1990) (Title VII "prohibits employers from firing workers in retaliation for their opposing discriminatory employment practices"). To establish the requisite causal connection, a plaintiff must proffer evidence "sufficient to raise the inference that [his] protected activity was the likely reason for the adverse action." Zanders v. National R.R. Passenger Corp., 898 F.2d 1127, 1135 (6th Cir. 1990) (citing Cohen v. Fred Meyer, Inc., 686 F.2d 793, 796 (9th Cir.

1982)). Plaintiff must also show that the persons who took the adverse employment action against him knew of the protected activity and acted with a retaliatory motive. Gemmell v. Meese, 655 F. Supp. 577, 582 (E.D. Pa. 1986).

In this case, Wright claims that he was retaliated against for (1) advocating against discrimination practiced in Montgomery County, and (2) protesting against his own mistreatment for being a member of a racial minority. (Pl.'s Compl. ¶ 2.) The Court will deal with each allegation in turn.

(1) Advocating Against Discrimination

Taking all reasonable inferences in Wright's favor, Wright has established the first two elements of a prima facie case of retaliation. First, he was engaged in an activity protected by Title VII when he voiced his opposition to the discriminatory employment practices in Montgomery County. Second, the Defendants took adverse action against Wright by subsequently terminating his employment. Wright has failed, however, to satisfy the third prong of his prima facie case. He has not produced any evidence from which a reasonable fact finder could infer a causal link between the protected activity and his termination.

First, there is no evidence that any of the Defendants viewed Wright's political views or views on the treatment of black employees of Montgomery County negatively. As such, there is no factual basis from which a reasonable fact finder could infer a

causal link between the protected activity and his termination.

Furthermore, there is no evidence that the individuals who Wright alleges were involved in the decision to terminate his employment (Mele, Buckman, and Hoeffel) were aware that he had expressed a concern about race discrimination regarding black employees in Montgomery County. Indeed, Wright does not even allege in his complaint that he professed to the Defendants his views on racism within Montgomery County. To establish a prima facie case of retaliation, a plaintiff must have evidence that the relevant decision makers were actually aware of his protected activity. See, e.g., Krouse v. American Sterilizer Co., 126 F.3d 494, 504 (3d Cir. 1997); Gemmell, 655 F. Supp. at 582. Since there is no evidence that the alleged decision makers, Mele, Buckman, and Hoeffel, were even aware that Wright had raised the issue of race discrimination regarding black employees of Montgomery County, they could not possibly have intended to retaliate against him for doing so.

(2) Protesting Against His Own Mistreatment

Taking all reasonable inferences in Wright's favor, Wright has established all three elements of a prima facie case of retaliation. First, he was engaged in an activity protected by Title VII when he complained of the bias of his treatment. Second, the Defendants took adverse action against Wright by subsequently terminating his employment. Third, Wright alleges that Mele, Buckman, and Hoeffel were aware that he had expressed a concern

about his mistreatment. (Pl.'s Reply Mem. in Opp'n to Defs.' Mot. for Summ. J. at 19.) Moreover, Defendants do not refute having had such knowledge. Defendants dispute, however, that Wright's termination was racially motivated. They contend that Montgomery County terminated Wright because an audit by the United States Department of Housing and Urban Development, Office of Inspector General ("HUD Audit") revealed that Plaintiff Wright, and two other Caucasian employees, Thomas Raimondi and Philip Montefiore, all engaged in conflicts of interest by using these same HUD contractors to perform work on their own private properties.

The disputed causal connection and the credibility of the proffered explanation are, of course, issues that a jury must resolve. A plaintiff "need not prove at th[e summary judgment] stage that the employer's purported reason for its actions was false, but the plaintiff must criticize it effectively enough so as to raise a doubt as to whether it was the true reason for the action." Solt v. Alpo Pet Foods, Inc., 837 F. SUPP. 681, 684 (E.D. PA. 1993) (citing Naas v. Westinghouse Elec. Corp., 818 F. Supp. 874, 877 (W.D. Pa. 1993)). Accordingly, Plaintiff's claim under § 1981, which claims retaliatory discharge for protesting his own mistreatment for being black, is not dismissed.

3. The § 1982 Claim

Section 1982 provides that:

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U.S.C. § 1982. The Defendants argue that Plaintiff's claim under § 1982 must fail because "Plaintiff has not been deprived of any real or personal property." (Defs.' Mem., Docket No. 41 at 59.) Because 42 U.S.C. § 1982 by its plain language relates to discrimination in real and personal property transactions, and has no connection whatsoever to employment discrimination, the Plaintiff's claim under that section will be dismissed. See Lewis v. B.P. Oil, Inc., CIV.A. No.88-5561, 1990 WL 6116, *2 (E.D. Pa. Jan. 26, 1990) (citing Irizarry v. Palm Springs Gen'l Hospital, 657 F. Supp. 739, 741 (S.D. Fl. 1986)).

4. Section 1983 Claim

Section 1983 provides that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983. To establish a prima facie case under § 1983, a plaintiff must show: (1) the action occurred "under color of law" and (2) the action is a deprivation of a constitutional right or a federal statutory right. See Paratt v. Taylor, 451 U.S. 527, 535 (1981). The Defendants claim that Wright has failed to adequately allege the second prong of his 1983 claim. Specifically, the Defendants argue that the Plaintiff has no federally protected interest in continued employment as the Director of MDHS.

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. The Court looks to state law to ascertain whether such a property or liberty interest exists. Carter v. City of Philadelphia, 989 F.2d 117, 120 (3d Cir. 1993). In Pennsylvania, public employees are employees at-will unless he or she "demonstrate[s] entitlement to a property interest created expressly by state statute or regulation or arising from government policy or a mutually explicit understanding between a government employer and an employee." Id. (citation omitted); see also Sanquigni v. Pittsburgh Bd. of Public Educ., 968 F.2d 393, 401 (3d Cir. 1992) (citation omitted) ("property interest in state employment exists where an employee has a legitimate claim of entitlement to such employment under state law, policy, or custom").

Plaintiff does not argue that a state statute or regulation created a property interest in his employment with MDHS. Nor does

he argue that the policy and custom of MDHS created a property interest in his position with MDHS. Rather, he alleges that he "is being deprived of property, positions in employment, salary, promotions, job duties, benefits and other emoluments to which Plaintiff has a right." (Pl.'s Compl. ¶ 51). This bare allegation is not sufficient to assert a property right in continued employment with MDHS. Cf. Sanguigni, 968 F.2d at 401 ("conclusory allegation without more is plainly insufficient to satisfy our requirement that claims of this nature be pled with some specificity"). Because the Plaintiff has not demonstrated that he is entitled to his position as Director at MDHS by state statute or regulation or arising from government policy or a mutually explicit understanding between himself and his employer, his claim under § 1983 must be dismissed.

5. Section 1986 Claim

Section 1986 states in pertinent part:

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case ...

42 U.S.C. § 1986. Since Wright has failed to state a claim against the Defendants for violations of § 1985, a fortiori, a claim under

§ 1986 cannot exist. Marino v. Bowers, 483 F. Supp. 765, 769 (E.D. Pa. 1980), aff'd, 657 F.2d 1363 (3rd Cir. 1981) (citations omitted); J.D. Pflaumer, Inc. v. United States Dept. of Justice, 450 F.Supp. 1125, 1131 (E.D. Pa. 1978).

C. Movants' Motion for Reconsideration/Hearing

The Movants have withdrawn their motion to reconsider order or, in the alternative, for a hearing. Accordingly, the Movants' Motion is denied as moot.

D. Motion to Quash Subpoena to DePaul

Defendants assert that they have served John DePaul ("DePaul") with two subpoenas on July 30, 1997, and December 22, 1998. DePaul states that he does not oppose Defendants' subpoena. (DePaul, letter dated Jan. 8, 1999.) Thus, Plaintiff's Motion is denied as moot.

E. Motion to Quash Subpoenas to Wilmington Trust Corp. and Co.

On December 23, 1998, Defendants served a subpoena on Wilmington Trust Corp. seeking information related to James Wright's involvement in financial transactions with Plaintiff Wright, Mr. Pizonka and Northowne Realty. On January 11, 1999, Defendants issued a subpoena to Wilmington Trust Co. seeking similar information. Rule 45(c)(3)(A) of the Federal Rules of Civil Procedure requires a court to quash or modify a subpoena that subject a person to undue burden." Fed. R. Civ. P.

45(c)(3)(A)(iv), 28 U.S.C. (1994). James Wright has failed to show how the subpoena poses an undue burden on him. Moreover, as this Court has explained previously, "[a]ny evidence supporting a justification for the termination of the Plaintiff from his position as Director of MDHS is highly probative and therefore outweighs any possible prejudicial value." (Dec. 4, 1998, Mem. and Order at 16.) Thus, the instant motion must be denied.

F. Motion to Quash Subpoena to Wilmington Trust Bank

In Plaintiff's motion, he moves the Court to quash the subpoena issued to Wilmington Trust Bank. Enclosed as Exhibit A, however, the Plaintiff provides the Court with a copy of a subpoena issued to Wilmington Trust Corp. dated December 23, 1998. As this Court has already decided this issue above, the Plaintiff's motion is denied as moot.

An appropriate Order follows.

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

ROBERT E. WRIGHT, SR. : CIVIL ACTION
 :
 v. :
 :
 MONTGOMERY COUNTY, et al. : NO. 96-4597

O R D E R

AND NOW, this 15th day of March, 1999, upon consideration of the Motion for Summary Judgment to Dismiss Count I of Plaintiff's Complaint by Montgomery County, Montgomery County Commissioners, Mario Mele, Commissioner of Montgomery County, Richard S. Buckman, Commissioner of Montgomery County and Joseph M. Hoeffel, III, Commissioner of Montgomery County (collectively, the "Defendants") (Docket No. 90), and the response thereto by Robert E. Wright, Sr. ("Plaintiff") (Docket No. 95), and the Motion for Reconsideration/Hearing by Joseph J. Pizonka and Barbara Pizonka (collectively, the "Movants") (Docket No. 82), the Defendants' response thereto (Docket No. 88), and the Movants' Praecipe to Withdraw (Docket No. 100), and the Plaintiff's Motion to Quash Subpoena re: John DePaul (Docket No. 84) and the Defendants' response thereto (Docket No. 87), and the Motion of Non-Party James W. Wright to Quash Subpoena re: Wilmington Trust Corporation and Wilmington Trust Co. and Motion for Protective Order (Docket No. 91) and the Defendants' response thereto (Docket No. 98), and Plaintiff's Motion to Quash Subpoena re: Wilmington Trust Bank (Docket No. 83), and the Defendants response thereto (Docket No. 89), IT IS HEREBY ORDERED THAT: (1) Defendants' Motion for Summary

Judgment is **GRANTED in part and DENIED in part**; (2) Movants' Motion for Reconsideration/Hearing is **DENIED as moot**; (3) Plaintiff's Motion to Quash Subpoena re: John DePaul is **DENIED as moot**; (4) Motion of Non-Party James W. Wright to Quash Subpoena re: Wilmington Trust Corp. and Wilmington Trust Co. and Motion for Protective Order is **DENIED**; and (5) Plaintiff's Motion to Quash Subpoena re: Wilmington Trust Bank is **DENIED as moot**.

IT IS FURTHER ORDERED that:

- (1) Plaintiff's claim brought under § 1981 is **NOT DISMISSED**;
- (2) Plaintiff's claim brought under § 1982 is **DISMISSED**;
- (3) Plaintiff's claim brought under § 1983 is **DISMISSED**;
- (4) Plaintiff's claim brought under § 1985 is **DISMISSED**;
- (5) Plaintiff's claim brought under § 1986 is **DISMISSED**;
- (6) Plaintiff's claim brought under § 1988 is **NOT DISMISSED**;
- (7) John DePaul **SHALL** comply with the subpoena served upon him and appear for deposition within fifteen (15) days from the date of this Order, and produce to Defendants within ten (10) days of this Order all documents responsive to Defendants' subpoenas dated July 30, 1997, and December 22, 1998;
- (8) Wilmington Trust Corporation **SHALL** comply with the subpoenas served upon it and fully produce the subpoenaed documents to Defendants' counsel within ten (10) days of this Order; and

(9) Wilmington Trust Company **SHALL** comply with the subpoenas served upon it and fully produce the subpoenaed documents to Defendants' counsel within ten (10) days of this Order.

BY THE COURT:

HERBERT J. HUTTON, J.