

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

STEPHEN FREMPONG-ATUAHENE : CIVIL ACTION
: :
v. : :
: :
CITY OF PHILADELPHIA, et al. : NO. 99-4386

MEMORANDUM AND ORDER

HUTTON, J.

February 24, 2000

Pro se plaintiff Stephen Frempong-Atuahene ("Plaintiff" or "Frempong") filed the instant action on or about August 31, 1999, alleging various violations of his civil rights and property rights.

Frempong is a frequent litigant in this Court. It appears that each lawsuit filed by Frempong in the Eastern District of Pennsylvania arises from Frempong's belief that various public and private entities discriminated against him, his family, and business enterprises. Over the last several years, Frempong has waged a war of harassment in the courts of the Eastern District of Pennsylvania against many private and public entities on the basis that those entities somehow wronged him, his family, or his business enterprises. Moreover, said campaign has continued in the face of repeated defeats on multiple adjudicated claims. Frempong puts forth frivolous legal arguments in equally frivolous lawsuits that are vexations and abusive of the judicial process. Therefore, this Court enjoins Frempong from filing any actions in the Eastern

District of Pennsylvania without receiving the prior authorization of this Court.

I. BACKGROUND

Frempong has filed approximately ten lawsuits in the Eastern District of Pennsylvania, most of which have been filed since 1996.¹ Frempong has also appealed numerous trial court rulings to the Third Circuit Court of Appeals and has filed actions in various Commonwealth courts.

It goes without saying that every perceived wrong does not warrant a federal lawsuit. It also goes without saying that every actual and concrete wrong does not warrant a federal lawsuit. Nevertheless, when a party resorts to litigation, that party is bound by, inter alia, precedent and applicable rules of procedure. Legal precedent and rules of procedure level the playing field for all parties, rich or poor, small or large, sophisticated or novice. As such, they serve integral roles in the American system of justice. Frempong, however, either ignore precedent and rules of procedure or employs them in ways that are foreign to their purpose. Ultimately, Frempong's numerous lawsuits demonstrate that his objective is not justice but harassment and delay.

¹ The Court can only approximate the number of cases filed by Plaintiff as he used variations of his name in these cases (e.g., Stephen Frempong-Atuahene in CIV.A. Nos. 99-1956 & 99-704; Steven Atuahene in CIV.A. No. 98-930; Stephen Frempong Atuahene in CIV.A. No.99-965; and Steve Frempong-Atuahene in CIV.A. No. 99-1956). Moreover, the Court also believes that Frempong filed actions in the name of business enterprises owned or controlled by him.

For example, in CIV.A. No. 99-965, the Court granted as unopposed Frempong's Motion for Enlargement to respond to his adversary's dismissal motion. Plaintiff, however, failed to serve his adversaries with a copy of his enlargement motion, in violation of Federal Rule of Civil Procedure 5(a), although he represented to the Court that he executed service. Therefore, when this Court granted Frempong's motion as unopposed, it did so in reliance upon his express representation that his adversaries had notice of and an opportunity to respond to his motion. Frempong's case was dismissed.

In CIV.A. No. 99-704, this Court dismissed Frempong's case when he failed to respond to one group of defendants' dismissal motion although he was granted an extension of time to file a response. He also failed to respond to the dismissal motion filed by a second group of defendants. Although Frempong filed an Amended Complaint which, inter alia, added additional defendants to his lawsuit, the Court determined that Frempong's addition of these defendants was merely an attempt to employ a strategy of delay and harassment. His case was dismissed as to all defendants.

In CIV.A. No. 99-1956, Frempong originally filed suit in the Court of Common Pleas of Philadelphia County. He then filed a removal motion, which was granted by the state court. He contended that removal was appropriate because he could not "obtain justice in the Court of Common Pleas of Philadelphia County." Frempong-

Atuahene v. Zoning Bd. of Adjustment of the City of Philadelphia
Law Dept., CIV.A. No. 199 WL 1018262, at *1 (E.D. Pa. Nov. 8,
1999). Defendants were then forced to fight Frempong's removal via
a remand motion. As master of his own claim, Frempong was clearly
precluded from removing to federal court the action he filed in
state court. This Court granted one defendant's remand motion and
also granted attorneys' fees and costs.

In CIV.A. No. 99-1359, Frempong alleged that, inter alia, a
racial conspiracy existed against him and his family and that the
conspirators were various unnamed John and Jane Does, the City of
Philadelphia, its agencies, and its employees. He alleged that
this conspiracy was manifested when the City demolished some of his
properties, allegedly without predeprivation notice. Instead of
seeking remuneration or other recourse under the Commonwealth's
Eminent Domain Code for the alleged unlawful taking of his
property, Frempong filed a civil rights action. The law is clear
in that it required Frempong to first exhaust his state remedies
before bringing constitutional claims in federal court.
Nevertheless, defendants were forced to defend Frempong's untimely
suit at great expense. The Court dismissed without prejudice
Frempong's suit on the basis that he failed to exhaust his state
remedies.

In CIV.A. No. 98-930, Judge Newcomber of the Eastern District
of Pennsylvania remonstrated Plaintiff for his dilatory delay

tactics. Judge Newcomber stated that "plaintiff has delayed, without explanation, the service of his original complaint, the filing of his responses to defendant's motions, and in this instance, the filing of an amended complaint." Atuahene v. Sears Mortgage Corp., CIV.A. No. 98-930, 2000 WL 134326, at *2 (E.D. Pa. Feb. 4, 2000). Plaintiff's case was dismissed.

In the instant action, Frempong filed a lawsuit against the City of Philadelphia and numerous other defendants on August 31, 1999, alleging various violations of his property rights and civil rights. He failed to serve his Complaint on defendants within 120 days as required under Federal Rule of Civil Procedure. On the one hundred and twentieth day, however, Frempong motioned for an enlargement of time to complete service. Not having received said filing, on January 7, 2000, the Court dismissed without prejudice Plaintiff's Complaint. In its Order, the Court instructed Frempong that his Complaint could be reinstated if he demonstrated that good cause existed for his delay of service. Plaintiff then filed a Motion to Vacate the Court's Order. Frempong's Motion failed to demonstrate that good cause existed for Frempong's delay in serving all defendants with his Complaint. Although Plaintiff alleges that he hired a process server to serve his Complaint on the named defendants, he alleges that service was untimely because of "several deaths in his [and not the process server's] family," because one defendant was closed for the holidays, and because the

process server went away for the holidays. These reasons do not amount to "good cause" and his Motion to Vacate is therefore denied. Frempong's actions in the instant lawsuit demonstrate again that his objective is undue delay and harassment rather than adjudication of his claims.

II. DISCUSSION

Federal courts are invested with the equitable power to issue injunctions when such issuance is necessary to effectuate orders of the court and to avoid relitigation of identical or similar issues. In re Packer Ave. Assoc., 884 F.2d 745, 747 (3d Cir. 1989). The All Writs Act, which codifies this equitable power, provides in pertinent part that "all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of the law." 28 U.S.C. § 1651(a) (1999). Section 1651(a) therefore authorizes district courts to issue an injunction, thereby restricting the access to federal courts of parties who repeatedly file frivolous lawsuits. Abdul-Akbar v. Watson, 901 F.2d 329, 332 (3d Cir. 1990); Wexler v. Citibank, No. CIV.A. 94-4172, 1994 WL 580191, at *7 (E.D. Pa. Oct. 21, 1994). Moreover, "[f]ederal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions." In re Martin-Trigona, 737 F.2d 1254, 1261 (2d Cir. 1984). Pro se litigants are

not entitled to any special handling or exceptions and, therefore, do not have license to abuse the judicial process with impunity. Wexler, 1994 WL 580191, at *6; Mallon v. Padova, 806 F. Supp. 1189 (E.D. Pa. 1992).

The court therefore has broad discretion to protect its jurisdiction. Lysiak v. Commissioner of Internal Revenue, 816 F.2d 311, 313 (7th Cir. 1987). Enjoining a plaintiff from filing additional actions is an appropriate sanction to curb frivolous litigation. Id.

In the instant action, Frempong has filed at least ten lawsuits under Pennsylvania and federal law alleging groundless infringements of his legal rights. This Court recognizes that Frempong's litigious conduct in the Eastern District of Pennsylvania rises to the level whereby the All Writs Act may be invoked. Although this remedy is extreme, the Court is of the view that such action is warranted in this circumstance. It is imperative that this Court ensure that its limited resources are allocated in such a way as to promote and protect the interests of justice. Cognizant that this Court should be flexible when dealing with a pro se litigant, see In re McDonald, 489 U.S. 180, 184, 109 S. Ct. 519, 520, (1972), the time has come where this Court can no longer tolerate Frempong's abuse of the judicial system.

Accordingly, this Court enjoins Frempong from access to the federal court system without prior leave of this Court. Leave

of court will be granted upon Frempong's showing through a properly filed petition that the proposed filing: (1) can survive a challenge under Federal Rule of Civil Procedure 12; (2) is not barred by principles of claim or issue preclusion; (3) is not repetitive or violative of a court order; and (4) is in compliance with Federal Rule of Civil Procedure 11. The Order and Injunction will not apply to the filing of timely notices of appeal from this Court to the Third Circuit Court of Appeals and papers solely in furtherance of such appeals. Finally, the Court orders the Clerk of Court to mark as closed this case (99-4386) in the Eastern District of Pennsylvania in which Frempong is a plaintiff.

An appropriate Order follows.

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O R D E R

AND NOW, this 24th day of February, 2000, the Court enters the following Orders and Injunctions:

(1) Plaintiff's Motion for Enlargement of Time to Complete the Service of Complaint and Summons (Docket No. 2) is **DENIED**; and

(2) Plaintiff's Motion to Vacate Court's January 10, 2000 Order (Docket No. 6) is **DENIED**.

To protect the integrity of the courts, all Defendants, and any potential Defendants from the harassment of further frivolous litigation initiated by Frempong, the Court issues the following injunctions:

(1) The Court enjoins Frempong, or any entity acting on his 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;

(2) The Court enjoins Frempong, or any entity acting on his behalf, from filing any new action or proceeding in any federal court, without first obtaining leave of this Court; and

(3) The Court enjoins Frempong 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.

In light of Frempong's history of litigious conduct, the Court finds it likely that Frempong 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 Frempong succeeds in filing papers on 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.

Leave of court shall be forthcoming upon Frempong's demonstrating through a properly filed petition, that the proposed filing: (1) can survive a challenge under Federal Rule of Civil Procedure 12; (2) is not barred by principles of claim or issue preclusion; (3) is not repetitive or violative of a court order; and (4) is in compliance with Federal Rule of Civil Procedure 11.

The Court **ORDERS** Frempong to attach a copy of this Order and Injunction to any such petition for leave of court.

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 Frempong has actions pending in the Eastern District of Pennsylvania.

The Court **DENIES** any remaining motions filed by Frempong or anyone acting on his behalf not specifically enumerated herein.

The Court **ORDERS** the Clerk of Court to mark as **CLOSED** this case and all other cases in which Frempong is a plaintiff and which are pending in the Eastern District of Pennsylvania.

BY THE COURT:

HERBERT J. HUTTON, J.