

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

TRI-COUNTY CONCERNED CITIZENS	:	CIVIL ACTION
ASSOCIATION, PATTY BRANN,	:	
KATHY BRILL, WILLIAM CRANSTON,	:	NO. 98-4184
HOLLY HARTSHORNE, and	:	
BARBARA MESSNER,	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
	:	
RAYMOND CARR, MORGANTOWN	:	
PROPERTIES, INC., WILLIAM BETZ,	:	
JUDITH BETZ, ROBERT G. WILLIAMS,	:	
CAROLYN WILLIAMS, CHERYL	:	
CONKEL, and NEW MORGAN BOROUGH	:	
	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

January 30, 2001

Plaintiffs have filed two motions as a result of this Court's Memorandum dated December 11, 1000 (hereafter "Memorandum"). First is a Motion for Reconsideration, Stay and Recusal, and the second is a Motion for an Evidentiary Hearing on the Motion for Reconsideration, Stay and Recusal.

Both motions are based on the faulty premise that this Court made findings of fact as to counsel's actions and motives. This is simply not correct. The Court's Memorandum was issued in the context of explaining its Rule 15 analysis, and the individual factors which militate against granting leave to amend. It contains no "findings of fact". To the extent the

memorandum sets forth facts of record, that record, being docket entries and their content, speaks for itself. To the extent the Court drew inferences from those facts, those inferences are fair and appropriate in the context of a Rule 15 analysis. The order following the Memorandum makes that crystal clear. It simply denies the motion to amend and grants plaintiffs leave to file its December 7, 1998 amended complaint.

Counsel for plaintiffs and pro se's motion for recusal is surprising. Frankly, my only recollection of him is a March 10, 2000 conference at which I found counsel for plaintiffs and pro se to be cordial professionally and personally.

Counsel submit the following paragraph relative to recusal:

In view of (a) the Court having already determined the facts, (b) and the content and tone of its Memorandum of December 11, together with the Court's prior actions (c) denying plaintiffs leave to amend in January 1999; and (d) denying plaintiffs an opportunity to respond to defendants' extra specially allowed brief in November 2000, thereto pursuant to constitutional protections and established law as set forth in the attached Memorandum, the Court must recuse itself.

This is simply not the type of judicial conduct that supports recusal, even if it were totally accurate, which it is not. This Court has made no findings of fact. It should also be noted relative to the so-called "defendants' extra specially allowed brief in November 2000" that said brief was no more than a surreply to plaintiffs' reply (Docket No. 48).

The paragraph in support of the motion for stay states as follows:

A stay is required because based on the discussion in the Court's memorandum of December 11, 2000, it appears that the Court intends to dismiss if the Amended Complaint is filed, therein causing serious prejudice to plaintiffs (Memo, pg. 5) (amendment would "prolong this litigation").

This, of course, is totally without foundation. The Court, because of the history of this case, has never even had a chance to consider the merits of Defendants' Motion to Dismiss the Amended Complaint, or Plaintiffs' response thereto.

An order follows.

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	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 30th day of January, 2001, upon consideration of Plaintiffs' Motion for Reconsideration, Stay and Recusal, and Defendants' Joint Response in Opposition thereto, it is hereby ORDERED as follows:

1. Plaintiffs' Motion for Reconsideration, Stay and Recusal (Docket No. 51) and Plaintiffs' Motion for an Evidentiary Hearing on that motion (Docket No. 52) are DENIED in all respects.
2. Plaintiffs are granted ten (10) days from the date of this Order to file and serve their December 7, 1998 Amended Complaint.

3. Any failure by Plaintiffs' counsel to file and serve the December 7, 1998 Amended Complaint as required herein may result in the dismissal of Plaintiffs' claims, upon subsequent motion of the Defendants.

BY THE COURT:

RONALD L. BUCKWALTER, J.