

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

ALVIN AND RUTH HOWARD	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
BOROUGH OF POTTSTOWN,	:	
RICK STUBER AND HAROLD MOYER	:	
Defendants.	:	NO. 00-3727

M E M O R A N D U M

Newcomer, S.J. February , 2001

In the above captioned case, the plaintiffs have filed a Motion for Reconsideration of this Court's February 2, 2001 Order dismissing plaintiffs' Complaint. Because the Court will grant plaintiffs' Motion for Reconsideration, defendants' Motion to Dismiss is also before the Court.

I. BACKGROUND

Plaintiffs Alvin and Ruth Howard allege that defendants, Borough of Pottstown, Rick Stuber and Harold Moyer, violated plaintiffs' constitutional rights in violation of 42 U.S.C. § 1983,¹ and are liable to plaintiffs for: malicious prosecution, abuse of process, official oppression, obstruction of justice, perjury, false swearing to authorities, tortious interference with contractual relationships, intentional infliction of emotional distress, defamation, negligent

¹ Plaintiff also alleges violations of 42 U.S.C. §§ 1985, 1986 and 1988, but all of the parties' arguments are directed toward § 1983 and plaintiffs' state law claims.

infliction of emotional distress, negligence and gross negligence.

Alvin and Ruth Howard are black citizens of the Commonwealth of Pennsylvania, and at all relevant times, resided at 347 Beech Street Pottstown, Pennsylvania.

Defendant Borough of Pottstown is a political subdivision organized and existing under the laws of the Commonwealth of Pennsylvania. Defendant Rick Stuber was, at all relevant times, the Code Enforcement Officer for the Borough of Pottstown. Defendant Harold Moyer was, at all relevant times, the Fire Marshal for the Borough of Pottstown.

Plaintiffs allege, and this Court accepts as true for purposes of today's decision, the following facts in his Complaint. The code enforcement officer and other officials in the Borough of Pottstown have harassed plaintiffs since 1982 for various alleged Code violations. Plaintiffs have also been issued numerous unjustified citations for these code violations, many of which were dismissed after a hearing. Additionally, one of their properties, the James Hotel (the "Hotel"), was involved in a fire in 1994, and from 1994 until the present, defendants Moyer and Stuber required unnecessary and excessive permits, plans and applications for plaintiffs to rebuild the Hotel.

Since at least November 23, 1994, defendants have demanded that plaintiffs comply with various use, occupancy and zoning requirements, requirements plaintiffs allege went beyond local custom, pattern and practice. The Borough of Pottstown,

through Stuber, also issued plaintiffs a cease and desist order.² Despite plaintiffs best efforts to fully comply with defendants' demands, defendants have not issued plaintiffs the necessary permits. Plaintiffs further allege that defendants have communicated "half-truths" to them and concealed certain material facts to impede plaintiffs' efforts to acquire the necessary permits.

Additionally, the plaintiffs claim that the defendants have filed court actions and threatened to issue citations against plaintiffs. In one case, plaintiffs were cited and fined \$2000 by a local district judge. Plaintiffs' Complaint alleges that the defendants have withheld permits and taken the other aforementioned actions in retaliation for plaintiffs' participation in local politics where plaintiffs have challenged the Borough's actions and decisions.

On January 6, 2001, the defendants filed a Motion to Dismiss the plaintiffs' Complaint. On February 2, 2001, this Court granted defendants' Motion to Dismiss as uncontested pursuant to Local Rule of Civil Procedure 7.1(c). On February 5, 2001, plaintiffs filed their memorandum of law opposing defendants' Motion to Dismiss, and on February 8, 2001, plaintiffs filed a motion for reconsideration of this Court's February 2, 2000 Order dismissing plaintiffs' Complaint.

II. DISCUSSION

² However, the Complaint does not articulate the substance of that Order, or the facts giving rise to it.

A. Plaintiffs' Motion for Reconsideration

Plaintiffs' Counsel, Theodore Q. Thompson, does not dispute that under Local Rule of Civil Procedure 7.1(c), plaintiffs' response to defendants' Motion to Dismiss was due on or about January 22, 2001. Additionally, Mr. Thompson acknowledges that he failed to timely respond to defendants' Motion when he filed plaintiffs' response on February 5, 2000. Instead, Mr. Thompson claims that he informed the Court on February 1, or 2, 2001 that he was experiencing "problems with his computer", and that those problems prevented him from timely filing his response.

Assuming plaintiff's Counsel was experiencing "problems with his computer", he should have taken some action between January 22, 2001 and February 1, 2001 to request an extension. Moreover, in an age where rentable computers abound at office supply stores or photocopy service stores, that Mr. Thompson had undetailed "computer problems" is an impotent excuse for his failure to file a timely response to defendants' Motion.

Nonetheless, given the discretionary nature of Local Rule 7.1(c), and this Court's reluctance to punish the plaintiffs for their counsel's negligence, this Court will treat plaintiffs' Motion for Reconsideration as a Motion for an Enlargement of Time pursuant to Federal Rule of Civil Procedure 6(b)(2).³

³Apparently recognizing that plaintiffs' Motion for Reconsideration is a Motion for Enlargement of Time, defendants' treat plaintiffs' Motion as one for enlargement of time in their response.

Consequently, this Court will grant plaintiffs' Motion for an Enlargement of Time to respond to defendants' Motion to Dismiss, and thus now turns to defendants' Motion to Dismiss.

B. Defendants' Motion to Dismiss

Defendants first move to dismiss plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1).

Specifically, defendants claim that this Court should abstain from exercising jurisdiction over this matter pursuant to the Younger and Rooker-Feldman doctrines.

In Younger v. Harris, 401 U.S. 37 (1971), the Supreme Court held that a federal court may not enjoin a pending state criminal proceeding except in the very unusual situation where an injunction is necessary to prevent great and immediate irreparable injury. The Supreme Court has extended the Younger doctrine to pending state civil and administrative proceedings in which important state interests are involved. See, e.g., Huffman v. Pursue, Ltd., 420 U.S. 592, 604- 605 (1975).

Under the Younger doctrine, three requirements must be satisfied before a federal court may abstain from hearing a case over which it has jurisdiction: (1) there must be pending or ongoing state proceedings which are judicial in nature; (2) the state proceedings must implicate important state interests; and (3) the state proceedings must afford an adequate opportunity to raise any constitutional issues. See O'Neill v. City of Philadelphia, 32 F.3d 785, 789 (3rd Cir. 1994).

Despite Mr. Thompson's failure to even address whether

this Court should abstain from exercising jurisdiction here under the Younger doctrine, the Court does not find that there are pending or ongoing state judicial proceedings in this case. Plaintiffs' Complaint does not reference any ongoing judicial proceedings, but rather refers to the ongoing nature of defendants' unconstitutional actions. Additionally, defendants do not present any evidence of ongoing judicial proceedings. Consequently, this Court will not abstain from exercising jurisdiction under the Younger doctrine.⁴

Similarly, this Court will not abstain from exercising jurisdiction under the Rooker-Feldman doctrine.⁵ The Rooker-Feldman doctrine provides that "federal district courts lack subject matter jurisdiction to review final adjudications of a state's highest court or to evaluate constitutional claims that are 'inextricably intertwined with the state court's [decision] in a judicial proceeding.'" Blake v. Papadakos, 953 F.2d 68, 71 (3rd Cir. 1992). When a plaintiff seeks to litigate a claim in a federal court, the existence of a state court judgment in another case bars the federal proceeding under Rooker-Feldman only when entertaining the federal court claim would be the equivalent of an appellate review of that order. See FOCUS v. Allegheny County

⁴Nonetheless, should it become more clear that there are ongoing state proceedings in this case, defendants remain free to raise this issue again.

⁵This doctrine arises out of two Supreme Court cases: District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983), and Rooker v. Fidelity Trust Company, 263 U.S. 413 (1923).

Court of Common Pleas, 75 F.3d 834, 840 (3rd Cir.1996).

Here, it does not appear that plaintiffs seek the appellate review of any state Order that decided whether plaintiffs' constitutional rights were violated. Accordingly, the Court will not refrain from exercising jurisdiction over plaintiffs' case. See 409 Smiley's, Inc. v. Township of Ridley, NO. CIV. A. 00-1269, 2000 WL 876578, at *2 (E.D.Pa., Jun 30, 2000).

Because the Court finds it has subject matter jurisdiction, the Court now turns to defendants' contention that plaintiffs' Complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6). When evaluating a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court must accept each allegation in a well pleaded complaint as true. See Albright v. Oliver, 510 U.S. 266, 268 (1994). Additionally, a Motion to Dismiss should only be granted if the Court finds that no proven set of facts would entitle the plaintiff to recovery under the filed pleadings. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Defendants first argue that plaintiffs' civil rights claims are barred by the statute of limitations.⁶ Defendants may raise the statute of limitations defense in a motion to dismiss

⁶ Yet again, Mr. Thompson has failed to respond to defendants' argument, thus depriving this Court of plaintiffs' perspective on the statute of limitations issue.

if the defect is apparent of the face of the plaintiff's pleading. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384, n.1 (3rd Cir. 1994). Accordingly, Pennsylvania's two year statute of limitations for personal injury claims is applicable to federal civil rights claims. See Bougher v. University of Pittsburgh, 882 F.2d 74, 78 (3rd Cir. 1989).

Generally, a claim accrues in a federal cause of action as soon as a potential claimant either is aware, or should be aware, of the existence of and source of an injury. See Keystone Insurance Co. v. Houghton, 863 F.2d 1125, 1127 (3rd Cir. 1988). However, "in most federal causes of action, when a defendant's conduct is part of a continuing practice, an action is timely so long as the last act evidencing the continuing practice falls within the limitations period; in such an instance, the court will grant relief for the earlier related acts that would otherwise be time barred." Brenner v. Local 514, United Broth. of Carpenters and Joiners of America, 927 F.2d 1283, 1296 (3rd Cir. 1991); see also DiBartolo v. City of Philadelphia, NO. CIV. A. 99-CV-1734, 2000 WL 217746, at *4 (E.D.Pa., Feb 15, 2000) (applying continuous violation theory to § 1983 claim).

Here, although plaintiffs first claim that defendants violated their rights in 1982, plaintiffs allege that defendants have continued to violate their rights until the present time as

part of a conspiracy. Therefore, the Court does not find that the statute of limitations bars plaintiffs' civil rights claims at this time.

Next, the Court finds defendants' arguments that plaintiffs' claims are barred by the doctrines of collateral estoppel and law of the case unpersuasive, as plaintiffs' claims have not been litigated before.

Turning to defendants' argument that plaintiffs' state law claims should be dismissed for failure to state a claim upon which relief can be granted. Upon a review of plaintiffs' Complaint, defendants' motion and supporting brief, and the applicable law, the Court shall dismiss each of plaintiffs' state law claims.⁷

Finally, defendants argue that plaintiffs' claim for punitive damages must be dismissed. Under § 1983, punitive damages are not available against municipalities. See City of Newport v. Fact Concerts Inc., 453 U.S. 247, 271-72 (1981). Likewise, individuals sued in their official capacities under § 1983 may not be held liable for punitive damages. See Brandon v. Holt, 469 U.S. 464, 467-77 (1985).

⁷ Once again, Mr. Thompson has utterly failed to respond to any of defendants' arguments on this issue. To the extent that a response was feasible, Mr. Thompson's failure to respond was irresponsible. On the other hand, if there was simply no possible response to defendants' arguments on this issue, Mr. Thompson's placement of these claims in the Complaint was frivolous.

Here, plaintiffs' sue the Borough of Pottstown, a municipality, and Rick Stuber and Harold Moyer in their official capacity. Consequently, the defendants may not be liable for punitive damages for their § 1983 claims as a matter of law.

In light of the foregoing, the Court will grant defendants Motion to Dismiss in part and deny it in part.

Clarence C. Newcomer, S.J.