

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

MICHAEL O'HANLON, et al. : CIVIL ACTION
v. :
CITY OF CHESTER, et al. : NO. 00-0664

MICHAEL O'HANLON, et al. : CIVIL ACTION
v. :
ALBERT GOSNELL : NO. 00-5617

MEMORANDUM AND ORDER

HUTTON, J.

March 12, 2002

Presently before the Court are Defendant Leo A. Hackett's Motion for Summary Judgment (Docket No. 50), Plaintiffs' Answer to Hackett's Motion for Summary Judgment (Docket No. 56), Defendant Hackett's Reply Memorandum in Support of his Motion for Summary Judgment (Docket No. 59), Defendant Allen¹ F. Gosnell's Motion for Summary Judgment (Docket No. 49), and Plaintiffs' Answer to Gosnell's Motion for Summary Judgment (Docket No. 55). For the reasons discussed below, both Defendant Hackett's and Defendant Gosnell's Motions are **GRANTED**.

¹ Defendant Gosnell's first name was erroneously listed in the Plaintiffs' Second Complaint as "Albert," not Allen. See Def. Gosnell's Mot. for Summ. J. at 1 n.2.

I. BACKGROUND

On February 4, 2000, several property owners in the City of Chester, Pennsylvania, filed a Complaint against nineteen different defendants, including Leo A. Hackett ("Hackett") and Allen F. Gosnell ("Gosnell"). The mainstay of the Complaint is that numerous Chester City officials violated Plaintiffs' civil rights when Defendants took action against various city rental properties for violations of Chester City ordinances. While seven Plaintiffs are named in the instant litigation, only three, Janette O'Hanlon, Michael O'Hanlon and CAP A.M. Corporation, assert any claims against Defendants Hackett and Gosnell.

Plaintiffs Janette and Michael O'Hanlon and CAP A.M. Corporation² (the "O'Hanlons") own a forty-two unit apartment complex located at 1000 Meadow Lane in Chester, Pennsylvania. In the Summer of 1998, the O'Hanlons were in default with regards to the payment of real estate taxes on the Meadow Lane property. Defendant Hackett, an attorney and solicitor for the Chester-Upland School District, was retained by the School District in order to pursue a course of action regarding the delinquent taxes. To this end, Hackett employed co-defendant Gosnell to investigate the Meadow Lane property. While not a formal employee of Hackett's, Gosnell was employed on a per diem basis to handle various tasks

² Plaintiffs Janette and Michael O'Hanlon are the shareholders in CAP A.M. Corporation.

for Hackett's law practice.

The purpose of Gosnell's visit to 1000 Meadow Lane was to determine the nature of the property and, if people inhabited the dwelling, to find out their names, how much they paid in rent and to whom they paid rent. Based upon the information obtained by Gosnell, Hackett hoped to determine whether he would pursue a remedy that imposed liability on the tenants for the delinquent taxes of the landowners. Accordingly, on Sunday afternoon, November 1, 1998, Gosnell went to 1000 Meadow Lane, knocked on the doors of several tenants and informed them that taxes on the property were unpaid and he was there to obtain information with regard to the property. He further informed the tenants that they would be receiving a letter instructing them to send their rent payments to the taxing authority. Sometime after Gosnell's visit to the property, the O'Hanlons contacted Hackett and the parties negotiated an installment plan agreement to resolve the matter of the back taxes.

In February of 2000, the O'Hanlons filed suit under 42 U.S.C. § 1983 against Hackett, Gosnell and Chester City officials for a deprivation of their procedural due process rights.³ The O'Hanlons allege that the actions of Hackett and Gosnell on November 1, 1998 deprived them of their right to receive rents that were due and

³ Plaintiffs' substantive due process claims against Defendants Hackett and Gosnell were dismissed under Federal Rule of Civil Procedure 12(b)(6).

owing to them. According to the O'Hanlons, various tenants moved out as a result of Gosnell's knocking on their doors and instructing them to pay their rent to the Chester-Upland School District. Defendants Hackett and Gosnell now move for summary judgment alleging that the O'Hanlons are unable to establish the elements of a section 1983 claim.

II. LEGAL 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, 106 S.Ct. 2548, 91 L.Ed.2d 265 (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, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

When deciding a motion for summary judgment, a court must draw

all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912, 113 S.Ct. 1262, 122 L.Ed.2d 659 (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 just rest upon mere allegations, general denials or vague statements. Saldana v. Kmart Corp., 260 F.3d 228, 232 (3d Cir. 2001).

III. DISCUSSION

Defendants Hackett and Gosnell⁴ move for summary judgment on the ground that the O'Hanlons are unable to establish the elements necessary to support a section 1983 claim. Section 1983 imposes civil liability upon any person who, acting under the color of state law, deprives another individual of any rights, privileges, or immunities secured by the Constitution or laws of the United States. 42 U.S.C. § 1983; see also Conn v. Gabbert, 526 U.S. 286, 289, 119 S.Ct. 1292, 143 L.Ed.2d 399 (1999); Gruenke v. Seip, 225 F.3d 290, 298 (3d Cir. 2000). Thus, to prevail under section 1983, a plaintiff must establish: (1) that the defendants were "state

⁴ While each Defendant filed separate motions for summary judgment, the Court will consider both Hackett's and Gosnell's motions simultaneously due to the interrelatedness of Plaintiffs' claims against these Defendants.

actors," and (2) that they deprived the plaintiff of a right protected by the Constitution. Groman v. Township of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995).

In the instant case, the O'Hanlons allege that Defendants Hackett and Gosnell deprived them of their rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution when Gosnell, acting on behalf of Hackett, knocked on the doors of tenants who occupied the O'Hanlon's apartment building and informed them that the landlords' taxes were overdue. In order to state a claim under the Due Process Clause, the O'Hanlons must prove that they were (1) deprived of their right to life, liberty or property without due process of law; (2) by a state actor. See Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 155 n.4 (1978). As the Third Circuit explained in Groman v. Township of Manalapan, 47 F.3d 628 (3d Cir. 1995), "[t]he 'under color of state law' inquiry under 42 U.S.C. § 1983 and the 'state action' requirement under the Fourteenth Amendment to the United States Constitution are identical in most contexts." Id. at 638 n.15. Therefore, "[c]onduct satisfying the state action requirement under the Fourteenth Amendment will satisfy the § 1983 requirement as well, but the reverse is not necessarily true." Id. (citations omitted). Like the Third Circuit, the Court in reviewing the merits of the instant summary judgment motion "will use the terms ['state actor' and 'under color of state law'] interchangeably." Id.

A. State Actor

Hackett and Gosnell contend that the O'Hanlons fail to set forth a claim under section 1983 because neither Hackett nor Gosnell were state actors. See Gosnell's Mot. for Summ. J. at 12. "State action is a threshold issue in a Fourteenth Amendment claim. 'The deprivation must be caused by the exercise of some right or privilege created by the State . . . or by a person for whom the state is responsible,' and 'the party charged with the deprivation must be a person who may fairly be said to be a state actor.'" Abbott v. Latshaw, 164 F.3d 141, 146 (3d Cir. 1998) (citations omitted). Accordingly, to act "under color of state law" requires that the person liable for the section 1983 violation "have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" Id. (quoting West v. Atkins, 487 U.S. 42, 48, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988)).

In order for liability to attach under section 1983, the actor in question need not be an agent of the state or municipality. Groman v. Township of Manalapan, 47 F.3d 628, 638 (3d Cir. 1995). Rather, "a private party who willfully participates in a joint conspiracy with state officials to deprive a person of a constitutional right acts 'under color of state law' for purposes of [section] 1983." See Abbott, 164 F.3d at 147-48 (citing McKeesport Hosp. v. Accreditation Council for Graduate Med. Educ.,

24 F.3d 519, 524 (3d Cir. 1994)) ("State action may be found if the private party has acted with the help of or in concert with state officials."). In other words, the actions of a private person may be classified as state action when the conduct in question is "fairly attributable to the State." Rendell-Baker v. Kohn, 457 U.S. 830, 838, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982) (quoting Lugar v. Edmondson Oil Co., 457 U.S. 922, 937, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982)). "In order to determine whether the conduct of a private party should be attributed to the [state], courts apply the 'state action' analysis set forth by the Supreme Court in Lugar v. Edmondson Oil Co., 457 U.S. 922, 937-42 . . ." Brown v. Philip Morris, Inc., 250 F.3d 789, 801 (3d Cir. 2001).

As the Third Circuit recently summarized, "Lugar requires courts to ask 'first whether the claimed constitutional deprivation resulted from the exercise of a right or privilege having its source in [state] authority . . . and second, whether the private party charged with the deprivation could be described in all fairness as a [state] actor.'" Brown, 250 F.3d at 801 (quoting Edmonson v. Leesville Concrete, 500 U.S. 614, 620, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991)). Under Lugar, a "person may be found to be a state actor when (1) he is a state official, (2) 'he has acted together with or has obtained significant aid from state officials,' or (3) his conduct is, by its nature, chargeable to the state." Angelico v. Lehigh Valley Hosp., Inc., 184 F.3d 268, 277

(3d Cir. 1999). The main focus of the inquiry is to determine whether "the defendant exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed in the authority of state law." Groman, 47 F.3d at 639 n.17 (citations omitted).

1. Hackett

Defendant Hackett argues that neither his status as the solicitor for the Chester-Upland School District, nor his occupation as an attorney render him a state actor for the purpose of section 1983 liability. See Hackett's Mot. for Summ. J. at 10.

It is undisputed that Hackett was the solicitor for the Chester-Upland School District. However, Hackett contends that his testimony makes "clear that he was acting as an independent attorney in . . . connection with the collection of real estate taxes." Id. at 10. The O'Hanlons counter that Hackett, though Gosnell, was engaged in the "levying and collections of taxes" which is "the exclusive function of a sovereign . . ." See Pl.'s Reply Brief at 2. The O'Hanlons further reason that, "since local taxes are authorized by state law, those who are engaged in those functions are acting under color of state law . . ." Id.

Courts have recognized that "[a]ttorneys performing their traditional functions will not be considered state actors solely on the basis of their position as officers of the court." See Angelico v. Lehigh Valley Hosp., Inc., 184 F.3d 268, 277 (3d Cir.

1999). Nevertheless, an attorney may be a state actor if the attorney employs the state to enforce or execute a state-provided procedure. See Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1267 (3d Cir. 1994). Accordingly, the Court must determine whether, under the facts and circumstances of this case, Hackett was "clothed in the authority of state law" when he instructed Gosnell to investigate the Meadow Lane property. Groman v. Township of Manalapan, 47 F.3d 628, 639 n.17 (3d Cir. 1995). Drawing all reasonable inferences in the light most favorable to the O'Hanlons, the Court concludes that Hackett exerted no such authority and, as such, was not a state actor for the purposes of section 1983.

The undisputed evidence of record shows that Hackett was a private attorney employed by a private law firm who periodically represented public entities. His role as the solicitor for the Chester-Upland School District does not render him a state actor per se. Hackett's position as solicitor for the School District was not an elected position, he does not maintain a government office, nor is he on the government payroll. Rather, Hackett maintains a private law office in Media, Pennsylvania, and is retained by both the City and the School District in his professional capacity as an attorney in order to provide legal services on specific issues affecting the public entities. According to Hackett, a representative from the Chester-Upland

School District would, from time to time, refer specific cases to him "for the purpose of pursuing various remedies that were available to the school district and the City" to collect on delinquent real estate taxes. See Dep. of Leo A. Hackett, Aug. 13, 2001, at 7-8.

In the Summer of 1998, Hackett received such a referral from the Chester-Upland School District regarding the Meadow Lane property, which was delinquent on its real estate taxes. See id. at 9-10. Hackett, in turn, hired Gosnell in the Fall of 1998 to investigate the property. See id. at 15. Specifically, Hackett instructed Gosnell to "go down and check out the property. See if it's an occupied or abandoned property. . . . If there are people living in the property, . . . find out the names of the tenants for me. . . . [and] . . . how much rent they are paying, and to whom they are paying rent." Id. at 16. Hackett explained that his purpose in seeking this information "was to determine, based upon [Gosnell's] report . . . whether or not we would pursue any type of remedy . . . to impose liability on the tenants for the . . . delinquent taxes that were due." Id. Gosnell then went to the property, knocked on the doors of the apartments, and spoke with the tenants. See Dep. of Allen Gosnell, July 12, 2001, at 12. He asked the tenants the number of rooms in their apartment and "told them they would be receiving a letter telling them to send their

[rent] to the tax bureau." Id. at 12-13. Responses to Gosnell's questions were voluntary and were certainly not compelled under the auspices of state authority.

In Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1266 (3d Cir. 1994), the Third Circuit held that "[b]efore private persons can be considered state actors for 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 persons' request." 20 F.3d at 1266. In Jordan, attorneys entered a judgment by confession against an opposing party and then executed on that judgment with the aid of the sheriff. See id. at 1264-67. While the court found that the mere entry of the judgment alone could not transform private persons into state actors, the execution of judgment with the aid of the sheriff evoked the force of law to a sufficient extent to render private attorneys state actors. Id. at 1266. In making this distinction, the court drew a firm line between the potential for state action and actual state involvement. See Angelico v. Lehigh Valley Hosp., Inc., 184 F.3d 269, 278 (3d Cir. 1999).

According to the Jordan court:

a private individual who enlists the compulsive powers of the state to seize property by executing on a judgment without pre-deprivation notice or hearing acts under color of law and so may be held liable under section 1983 if his acts cause a state official to use the state's power of legal compulsion to deprive another of property.

Jordan, 20 F.3d at 1267 (emphasis added).

In the instant case, as in Jordan, there exists a clear distinction between the potential for state involvement and actual state involvement. Clearly, there are legal consequences that accompany the failure to pay real estate taxes which might ultimately result in a private individual enlisting the compulsive powers of the state. However, as the Third Circuit has held, a distinct difference exists between resorting to an available state procedure and the actual use of state officials to enforce that procedure. See Jordan, 20 F.3d at 1267. At the time of the complained-of action, one letter had been sent to the O'Hanlons notifying them of their tax delinquency and no legal process had begun. Moreover, the undisputed facts indicate that Hackett did not employ the compulsive powers of the state with regards to the Meadow Lane property. Rather, he enlisted the aid of Gosnell, a private individual, to survey the property and obtain information to help Hackett determine whether and when to invoke state action.

Gosnell, in turn, went to the Meadow Lane property alone, unaccompanied by a sheriff or city official. He did not brandish a badge or don a uniform that conveyed governmental authority, as he was a private individual acting on behalf of a private attorney. Nor did Gosnell enlist the compulsive powers of the state. He merely asked the tenants to volunteer the information he sought. If the tenants were uncooperative, as some were, Gosnell had no further recourse or means of compelling an answer.

“‘[A] private party is not converted into a state actor as long as the assistance of state officials remains merely a potential threat. It is only when, and if, such potential is realized that a private party may be converted into a state actor for purposes of satisfying the state action element of a § 1983 claim.’” Angelico, 184 F.3d at 278 (quoting Angelico v. Leigh Valley Hops., Inc., Civ. A. No. 2861, 1996 WL 524112, at *2 (E.D. Pa. Sept. 13, 1996)). Based on the uncontested facts concerning the events of November 1, 1998, the O’Hanlons have failed to demonstrate that Hackett is a state official, that he acted together with or obtained significant aid from state officials, or that his conduct is, by its nature, chargeable to the state. See Angelico, 184 F.3d at 277. Because the O’Hanlons have not demonstrated that Hackett was a state actor, the Court need not address the balance of the section 1983 analysis.⁵ See id. at 278 n.7. Accordingly, the Court grants Defendant Hackett’s Motion for Summary Judgment.

2. Gosnell

Since the Court has found that Hackett was not a state actor when he sent Gosnell to investigate the Meadow Lane property on November 1, 1998, the Court likewise finds that Gosnell was not a

⁵ Because the Court finds that Hackett’s actions did not constitute state action under the Fourteenth Amendment, “it is unnecessary to determine whether [Hackett’s] conduct was taken ‘under color of state law’ pursuant to the section 1983 inquiry.” Bodor v. Horsham Clinic, Inc., Civ. A. No. 94-7210, 1995 WL 424906, at *3 (E.D. Pa. July 19, 1995).

state actor. Gosnell was not an employee of the City of Chester or the Chester-Upland School District. See Dep. of Allen Gosnell, July 12, 2001, at 8-9. Rather, he was paid for the discrete tasks he performed for Hackett from Hackett's law firm. See id. The undisputed evidence of record indicates that on the afternoon in question, Gosnell did not act together with state officials, nor did he obtain significant aid therefrom. See Angelico, 184 F.3d at 277. Moreover, nothing about Gosnell's actions of approaching the tenants of 1000 Meadow Lane and asking them to volunteer information about their apartments can be fairly attributable to Gosnell wielding the compulsive power of the state.

Accordingly, the Court finds that Gosnell is not a state actor for the purposes of section 1983. As such, the Court need not address the balance of the section 1983 analysis. See id. at 278 n.7. Therefore, the Court grants Defendant Gosnell's Motion for Summary Judgment.

An appropriate Order follows.

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

MICHAEL O'HANLON, et al. : CIVIL ACTION
: :
v. : :
: :
CITY OF CHESTER, et al. : NO. 00-0664

MICHAEL O'HANLON, et al. : CIVIL ACTION
: :
v. : :
: :
ALBERT GOSNELL : NO. 00-5617

O R D E R

AND NOW, this 12th day of March, 2002, upon consideration of Defendant Leo A. Hackett's Motion for Summary Judgment (Docket No. 50), Plaintiffs' Answer to Hackett's Motion for Summary Judgment (Docket No. 56), Defendant Hackett's Reply Memorandum in Support of his Motion for Summary Judgment (Docket No. 59), Defendant Allen F. Gosnell's Motion for Summary Judgment (Docket No. 49), and Plaintiffs' Answer to Gosnell's Motion for Summary Judgment (Docket No. 55), IT IS HEREBY ORDERED that

(1) Defendant Leo A. Hackett's Motion for Summary Judgment (Docket No. 50) is **GRANTED**.

Plaintiffs' claims against Leo A. Hackett are hereby **DISMISSED WITH PREJUDICE**.

(2) Defendant Allen F. Gosnell's Motion for Summary Judgment (Docket No. 49) is **GRANTED**.

Plaintiffs' claims against Allen F. Gosnell are hereby **DISMISSED WITH PREJUDICE**.

BY THE COURT:

HERBERT J. HUTTON, J.