

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

BARBARA JOHNSON, et al.,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
ISIAH SADLER, et al.,	:	No. 04-1366
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

April 7, 2004

On March 29, 2004, Plaintiffs Barbara and Allan Johnson moved to proceed in forma pauperis and filed two separate actions against their landlords, Defendants Isiah and Leonia Sadler, alleging, inter alia, constitutional violations arising from an alias writ of possession obtained against them for failure to pay rent. After reviewing Plaintiffs' complaints, exhibits, and numerous other filings, which essentially assert that Defendants obtained a defective alias writ of possession and fraudulently raised Plaintiffs' rent, the Court consolidated the two actions. (*Johnson v. Sadler*, 04-cv-1366, Order dated April 6, 2004.)

In their first action, Plaintiffs bring claims for constitutional violations, alleging that Defendants "illegally" obtained an alias writ of possession. Specifically, Plaintiffs allege that the alias writ of possession "attempts to illegally bar federal adjudications in re Default Judgments against Defendants PUC and PECO a.k.a. Exelon Corporation in 01-5571 USDC." (Compl. (Docket No. 04-1366.) at 1.) In their second action, entitled "Complaint in Condemnation pursuant to Federal Rule of Civil Procedure 71A," Plaintiffs assert their alleged right to condemn the property at issue under the power of eminent domain. (Compl. (Docket No. 04-1367) at 1.) As part of the second action, Plaintiffs also filed, inter alia, an emergency petition for a preliminary injunction. For

the reasons set forth below, I grant Plaintiffs' motion to proceed in forma pauperis and pursuant 28 U.S.C. § 1915(e)(2)(B), dismiss Plaintiffs' claims as frivolous. In addition, I deny Plaintiffs' emergency petition for a preliminary injunction.

After a court makes a determination that a plaintiff is eligible for pauper status pursuant to 28 U.S.C. § 1915, the court must then "screen" the complaint to determine whether the plaintiff's complaint is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. § 1915(e)(2)(B). Under § 1915(e)(2)(B), a complaint is "frivolous" where "it lacks an arguable basis either in law or in fact" and "embraces not only inarguable legal conclusions but also fanciful factual allegations." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

In the present case, the factual allegations and legal conclusions described in Plaintiffs' multiple filings are virtually unintelligible. Plaintiffs assert that default judgments were obtained in their previous case against PUC and PECO, *Johnson v. PECO*, E.D. Pa. Civ. A. No. 01-5571, which entitles them to some legal right in this case under the Rooker-Feldman doctrine and the doctrines of res judicata and collateral estoppel. Contrary to Plaintiffs' contention, however, review of this prior action reveals that no such default judgments were obtained. In fact, the previous case was dismissed as frivolous under § 1915(e)(2)(B). *Johnson v. PECO*, E.D. Pa. Civ. A. No. 01-5571, Order dated July 16, 2002 (Dalzell, J.).

In addition, even granting Plaintiffs' filings the most liberal construction, *Higgins v. Beyer*, 293 F.3d 683, 688 (3d Cir. 2002), the gravamen of Plaintiffs' claims is a dispute with their landlords over a rent increase and a subsequent alias writ of possession obtained by the landlords after Plaintiffs failed to pay their rent. Such landlord-tenant disputes are not within the jurisdiction of this

Court.

Furthermore, although Plaintiffs assert violations of their Fifth, Ninth, and Fourteenth Amendment rights, in order to bring an action for constitutional violations under 42 U.S.C. § 1983, a plaintiff must allege that a person acting under color of state law deprived him of his constitutional rights. *Kost v. Kozakiewicz*, 1 F.3d 176, 185 (3d Cir. 1993). Defendants, however, are private parties. In order to properly state a claim against a private party under § 1983, Plaintiffs must allege that: (1) Defendants have acted together with or have obtained significant aid from state officials; or (2) Defendants' conduct is, by its nature, chargeable to the state. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 930 (1982).

In this case, Plaintiffs have failed to allege any facts that would subject a private landlord to liability under § 1983. Plaintiffs merely allege that the landlord filed a complaint against them in state court that “is defective on its face” because “notice was properly served based [sic] a 10 day rather than a 30 day Notice as the law requires. Therefore, Service of Process was not made.” (Compl. (Docket No. 04-1366) at 2-3.) However, even assuming that this service of process was improper, “[a]n improper use or abuse by a private party of an otherwise valid state procedure is not cognizable under § 1983.” *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 792 F. Supp. 393, 395 (E.D. Pa. 1992) (citing *Lugar*, 457 U.S. at 941), *aff'd in part and vacated in part*, 20 F.3d 1250 (3d Cir. 1994); *see also Chicarelli v. Plymouth Garden Apartments*, 551 F. Supp. 532, 537 (E.D. Pa. 1982) (holding that substantive misuse of Pennsylvania confession of judgment procedures is not basis for § 1983 liability). While state procedures permitting private parties to file complaints and confess judgment involve acquiescence by the state, such private conduct is not attributable to the state and cannot be considered state action. *Jordan*, 792 F. Supp at 395 & n.5 (holding that if this

conduct were state action, “presumably a private litigant who induced a clerk of court ex parte to enter inappropriately a default judgment, e.g. where proof of service had been falsified, would be subject to § 1983 liability” (*citing Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 164 (1978)); *see also Chicarelli*, 551 F. Supp. at 538 (holding that private misuse of state procedure did not “constitute state action, even though it involved substantial use of the state’s enforcement machinery” (quotations omitted). Thus, to be liable under § 1983, “a private defendant must invoke a state procedure that is itself unconstitutional, with significant aid from state officials.” *Jordan*, 792 F. Supp. at 395 (*citing Lugar*, 457 U.S. at 937). As Plaintiffs merely allege private misuse of a state procedure and do not allege any state action, any claims for constitutional violations under § 1983 are not cognizable.

Similarly, Plaintiffs’ “complaint in condemnation” pursuant to Federal Rule of Civil Procedure 71A lacks any arguable basis in law. Rule 71A outlines the procedures for actions involving the Government’s exercise of its eminent domain power. FED. R. CIV. P. 71A. As private citizens, Plaintiffs cannot exercise the power of eminent domain to condemn the property at issue. Therefore, Rule 71A provides no basis for Plaintiffs’ claims.

In conclusion, as Plaintiffs’ filings lack arguable basis in law or fact, I dismiss their claims as frivolous under § 1915(e)(2)(B). Finally, because I dismiss all of Plaintiffs’ claims as frivolous, Plaintiffs’ emergency petition for a preliminary injunction is also denied. *Gerardi v. Pelullo*, 16 F.3d 1363, 1373 (3d Cir. 1994) (holding that in deciding motion for preliminary injunction, district court must first determine whether movant has shown reasonable probability of success on the merits). An appropriate Order follows.

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ORDER

AND NOW, this 7th day of **April, 2004**, upon consideration of Plaintiffs' filings and motions to proceed in forma pauperis, it is hereby **ORDERED** that:

1. Pursuant to 28 U.S.C. § 1915, Plaintiffs' Motions to Proceed In Forma Pauperis (Document No. 1) is **GRANTED**.
2. Plaintiffs' claims are **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B).
3. Plaintiffs' Emergency Petition for Preliminary Injunction is **DENIED**.
4. The Clerk of Court is directed to close the case for statistical purposes.

BY THE COURT:

Berle M. Schiller, J.