

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

CHARLES SCOTT,	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	No. 04-3951
	:	
MORTGAGE ELECTRONIC REGISTRATION	:	
SYSTEMS, INC., et al.,	:	
	:	
Defendants	:	

Diamond J.

August 27, 2004

I. Introduction

Plaintiff Charles Scott, acting pro se, seeks a Temporary Restraining Order or a Preliminary Injunction enjoining all proceedings in state court, including ejectment. Because this Court does not have jurisdiction to hear this matter, Plaintiff’s Motion is denied.

II. Factual Background

On January 18, 2002, Mortgage Electronic Systems, Inc. (“MERS”), filed a mortgage foreclosure action in the Philadelphia Common Pleas Court against Charles Scott for failure to pay the mortgage on his property. Hill v. Scott, No. 001729, Pa. Ct. C. P., Phila. Cty, Jan.2002 Term (January 18, 2002). On January 31, 2002, MERS filed an Affidavit of Return Service of the Complaint indicating that Scott was “not found.” Accordingly, on April, 10, 2002, MERS filed a Petition for Alternative Service, permitting service to be made on Scott by first class mail, certified return receipt requested and posting the mortgaged premises. Pa. R. C. P. 403. The Honorable Albert J. Snite granted the Petition on April 26, 2002, and on May 6, 2002, MERS

filed Affidavits of Service indicating that Scott had been served pursuant to the terms of Judge Snite's Order.

On June 13, 2002, MERS filed a Praecipe for Entry of Default Judgment along with a Writ of Execution. The property was sold to Thomas Hill at a Sheriff's Sale on September 10, 2002. Hill then filed an ejectment action against Scott on October 11, 2002. Scott contends that he received none of these pleadings, orders, or notices. MERS presented to this Court sworn affidavits of service, and certified mail receipts indicating that MERS served Scott with all papers in accordance with Judge Snite's Order. Mr. Scott contends that these documents are false and that "[t]he mortgage, the Sheriff, and Thomas Hill conspired and sold [his] property without any required notice at the court level and at the Sheriff Sale level." (Pl. Compl. ¶ A.) Scott contends that the first time that he learned on the state court proceedings was on October 30, 2002, offering to repurchase the property. Mr. Hill refused Mr. Scott's offer.

On November 14, 2002, Mr. Scott filed a Petition to Set Aside Sheriff's Sale, alleging that his due process rights under the 14th Amendment were violated because service of process was defective, that he did not have notice of the foreclosure proceedings, and that he had offered to buy back the property. The Honorable Esther Sylvester of the Philadelphia Common Pleas Court issued an Order denying the Petition to Set Aside Sheriff's Sale on January 22, 2003. See January 22, 2003, Order of Sylvester, J., denying Petition to Set Aside Sheriff's Sale.

In response, on April 24, 2003, Scott filed a Petition to Open Judgment in the Philadelphia Common Pleas Court. On May 15, 2003, MERS filed a Response to this petition, and on June 10, 2003, Mr. Scott filed another Motion to Set Aside Sheriff's Sale. On July 14, 2003, Judge Sylvester granted Mr. Scott's Petition to Open Default Judgment. See July 14,

2003, Order of Sylvester, J., granting Petition to Open Default Judgment. MERS successfully sought reconsideration of Judge Sylvester's order. On September 3, 2003, Judge Sylvester granted reconsideration and reinstated the default judgment against Mr. Scott. See September 3, 2003, Order of Sylvester, J., granting Motion for Reconsideration. Mr. Scott claims that he never received notice of the Motion for Reconsideration and only discovered that it had been granted when he was served with Thomas Hill's Motion for Summary Judgment in a separate suit for ejectment that Hill had filed in December 2003.

On February 3, 2004, Mr. Scott filed a Motion to Strike the September 3, 2003 Order in the foreclosure action. The Motion to Strike was denied on April 23, 2004. See September 3, 2003, Order of Sylvester, J., denying Motion to Strike. On February 25, 2004, the Honorable Annette Rizzo of Philadelphia Common Pleas Court granted Mr. Hill's Motion for Summary Judgment in the ejectment action. See February 25, 2004, Order of Rizzo, J., granting Motion for Summary Judgment.

Mr. Scott then appealed both these decisions - - (1) granting MERS's Motion for Reconsideration and (2) granting Hill's Motion for Summary Judgment - - by filing a Notice of Appeal to the Pennsylvania Superior Court on May 24, 2004. The basis of Scott's appeal is whether his due process rights under the 14th Amendment were violated because service of process was defective before the Sheriff's Foreclosure Sale and before MERS's Motion for Reconsideration was granted.

Scott has also attempted to stay ejectment by filing a Motion to Stay the Writ of Possession. Judge Rizzo denied Scott's motion on June 18, 2004. See June 18, 2004, Order of Rizzo, J., denying Motion to Stay Ejectment. Mr. Scott sought a stay in the Superior Court,

which on July 29, 2004, stayed execution of the Writ of Possession for 30 days. See Hill v. Scott, No 1070, EDA 2004 (Pa. Sup. Ct. 2004). This stay expires on August 28, 2004.

On August 20, 2004, Mr. Scott filed a Complaint in this Court, raising the same 14th Amendment contentions presently on appeal in the Superior Court: that the failure to properly serve him with the pleadings and notices described above violates his due process rights. See 42 U.S.C §1983 (2004). He also asks this Court for injunctive relief to stay the Sheriff from executing the Writ of Possession. Because Mr. Scott has pled that the Sheriff did not intend to act on the Writ until September 30, 2004, he did not seek an immediate hearing on his request for injunctive relief. On August 26, 2004, however, Mr. Scott acknowledged that he was in error, that the Sheriff;s Office intended to act on August 30, 2004, and that he wanted an immediate hearing. The Court granted that request, conducting a hearing that same day, August 26, 2004.

At the hearing, Mr. Scott indicated that he was represented by counsel in the state court proceedings, but had elected to represent himself before this Court. After hearing from Mr. Scott and counsel for the defendants, the Court continued that matter until the morning of August 27, 2004, so Mr. Scott could consult with his lawyer. Mr. Scott indicated that he might choose to be represented by counsel at the August 27th proceedings.

III. Discussion

Mr. Scott asks this Court to enjoin pending state court litigation in which he has raised the same due process claims he pleads this Court to consider. This Court is without jurisdiction to consider Mr. Scott's request for injunctive relief. See Younger v. Harris, 401 U.S. 37, 27 L.Ed. 2d 669, 91 S.Ct. 746 (1971).

The Younger abstention doctrine is intended to minimize federal court interference with ongoing state court proceedings. Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423, 431, 102 S.Ct. 2515, 2521, 73 L. Ed. 2d 116 (1982); Gwynedd Properties, Inc. v. Lower Gwynedd Township, 970 F.2d 1195, 1200 (3d Cir. 1992). This Court is bound to abstain where: “(1) there are on going state proceedings involving the would-be federal plaintiffs that are judicial in nature, (2) the state proceedings implicate important state interests, and (3) the state proceedings afford an adequate opportunity to raise the federal claims.” Middlesex County, 457 U.S. at 432; Gwynedd Properties, 970 F.2d at 1200.

This is precisely the situation that exists here. First, there are prior pending state court proceedings that directly relate to the dispute Mr. Scott has brought to this Court. Second, Pennsylvania has an important interest in resolving ejectment and foreclosure disputes. Prindable v. Ass'n of Apt. Owners of 2987 Kalakaua, 304 F. Supp. 2d 1245, 1262 (D. Haw. 2003) (finding foreclosure and ejectment proceedings important state interests under the Younger doctrine). Third, Mr. Scott not only has an adequate opportunity to raise his due process claims in state court, he has in fact done so repeatedly. Those claims are presently in the Pennsylvania Superior Court. They are the basis of the stay the Superior Court granted on July 29, 2004. Mr. Scott has acknowledged that he is free to ask the Superior Court to continue that stay or to seek a stay - - again, on the due process grounds he advances here - - before the Pennsylvania Superior Court.

In these circumstances, Younger and its progeny obligate this Court to abstain; therefore, Mr. Scott's Motion for Preliminary Injunction and/or Temporary Restraining Order is denied.

An appropriate Order follows.

Date

Paul S. Diamond, J.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SCOTT,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	NO. 04-CV-3951
MORTGAGE ELECTRONIC	:	
REGISTRATION SYSTEMS, INC. et al,	:	
Defendant.	:	

Order

AND NOW, this 27th day of August, 2004, upon consideration of Plaintiff's Motion for Preliminary Injunction and/or Temporary Restraining Order and any response, it is ORDERED and DECREED that the Motion is DENIED.

BY THE COURT:

Date

Paul S. Diamond, J.