

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

THOMAS HAEFNER, JR. and	:	
YVETTE HAEFNER, H/W	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	NO. 04-2290
	:	
CITY OF PHILADELPHIA, et al	:	
Defendants.	:	

MEMORANDUM - ORDER

GREEN, J.

March 4, 2005

This civil action has been assigned to my calendar as related to civil action 03-CV-4495, another suit by the Plaintiffs herein against the City of Philadelphia and its employees. The complaint filed herein is thirty-five pages in length and is supplemented by numerous documents and court records incorporated into the complaint by reference. As was stated in In re Rockefeller Center Properties Inc., 311 F.3d 198 (3d. Cir. 2002).

“ A motion to dismiss pursuant to Rule 12(b)(6) may be granted only if, accepting all well pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief...[A] ‘document integral to or explicitly relied upon in the complaint’ may be considered ‘without converting the motion to dismiss into one for summary judgment.’”

The complaint contains eleven counts, eight based upon causes of action alleged to arise

under Pennsylvania law, and the final three counts IX, X, and XI are premised upon causes of action based upon alleged constitutional violations and brought pursuant to 42 U.S.C. § 1983. Defendants moved to dismiss all of the counts on a number of grounds including a contention that all of the counts are part of the earlier civil action or were required to be brought as part of said action. After a careful review of the entire record and with knowledge of the scope of the earlier action, I will deny the motion to dismiss on this ground; however, any counts of this action that survive will be consolidated into the earlier action and be governed by orders entered or to be entered relating to the earlier action. Authorization will be given to Plaintiffs to restate any such claims in a consolidated complaint.

On consideration of the complaint filed together with all exhibits attached thereto, I conclude that the allegations contained in counts I through VIII premised upon state law are nothing more than a mis-characterization of the proceedings on which they are based. The counts of the complaint charging Defendants with wrongful use or abuse of civil proceedings will be dismissed. The pleading filed clearly discloses that the state court action brought by the City of Philadelphia Defendants, an action in equity to require Plaintiffs herein to comply with various city building codes, did not terminate in Plaintiffs' favor. Indeed, the city Defendants were granted the relief sought by a judge of a court of competent jurisdiction. It is beyond dispute, because the record of the state court proceedings discloses the following:

1. A complaint in equity duly filed.
2. A hearing on said complaint of which the Haefners were notified and appeared represented by counsel.
3. At the time of hearing, Plaintiffs had not yet brought the property into full compliance.

4. The trial court ordered a further hearing on compliance to give the Haefners an opportunity to complete necessary repairs.
5. The court imposed a conditional fine of five thousand dollars (\$5,000) against the Haefners. Said conditional fine to be vacated upon compliance with code requirements.
6. Thereafter counsel for the city forwarded a proposed order to the court. The Haefners through counsel objected to the proposed order. The court signed the order as proposed and did not reconsider the matter until the continued hearing date when evidence of compliance was produced. Without objection from the city the court vacated the conditional fine.
7. The city agreed to discontinue the equity action and the court signed the order to discontinue.

I cannot read the complaint, which incorporates the above matter, as disclosing a termination in favor of the Haefners, a necessary element of the wrongful use cause of action. Accordingly, count I of the complaint charging wrongful use of civil process must be dismissed.

As to counts II, III, and IV charging abuse of process, the pleading filed will not support the abuse of process claims. The complaint clearly reveals the city discontinued the action when compliance with the code and the court order was achieved. Thus, Defendants did not abuse process by continuing the equity action to primarily accomplish a purpose for which the equity proceeding was not designed. Indeed the record establishes that upon compliance by the Haefners, the City Solicitor moved to discontinue the action and pursuant thereto on the thirty first day of July 2002, the presiding judge signed an order that the matter “shall be marked discontinued and ended without prejudice.”

Counts V, VI and VII charge various Defendants with Intentional Infliction of Emotional Distress. Central to this charge is the allegation that the use and abuse of the equity proceeding inflicted emotional distress upon the Haefners. Since the charges of wrongful use and abuse of process are not substantiated, there is no basis for the charges of intentional infliction of emotional distress. Indeed, a careful reading of Pennsylvania law supports my prediction that even if the equity action was brought with a secondary motive, Pennsylvania law would not provide a cause of action. Accordingly, counts V, VI and VII will be dismissed.

Finally, count VIII charges the Defendants Gaston and Solvibile with civil conspiracy. Once again central to this cause of action is the allegation that they started and continued a baseless enforcement action. Since the equity court did not find the enforcement action invalid, I predict that the highest court of Pennsylvania would not find lawful proceedings before a court of competent jurisdiction a basis for the charge in count VIII. Accordingly, count VIII will be dismissed. An appropriate order follows.

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ORDER

And now this 4th day of March 2005, after consideration of the Amended Complaint filed herein, the Motion to Dismiss and the response thereto **IT IS ORDERED**:

1. Counts I, II, III, IV, V, VI, VII, VIII are **DISMISSED** with prejudice.
2. That the motion to dismiss counts IX, X, and XI is **DENIED** provided, however, that said counts be consolidated with the counts of the complaint filed in civil action 03-CV-4495, and said counts are incorporated by reference into civil action 03-CV-4495. Counsel for Plaintiffs may file in 03-CV-4495 a consolidated complaint within twenty (20) days of the date

of this order. Counsel for Defendants shall file an answer to counts IX, X, and XI of the Amended Complaint.

3. The Clerk is directed to close this civil action.

BY THE COURT:

S/Clifford Scott Green

CLIFFORD SCOTT GREEN, S.J.