

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

DONALD WATKINS, SR. and DONALD WATKINS, JR. : **CIVIL ACTION**
:
 v. : **NO. 06-CV-1219**
:
THE PHILADELPHIA HOUSING DEVELOPMENT :
CORPORATION, et al. :

MEMORANDUM AND ORDER

Kauffman, J.

November 3 , 2006

Donald Watkins, Sr. and Donald Watkins, Jr. (together, “Plaintiffs”) bring this action against the Philadelphia Housing Development Corporation (“PHDC”), Anthony C. McIntosh, Angela Tillman, and Manuel Costas (together, “Defendants”) for violations of 42 U.S.C. § 1983 (Counts One, Two, and Three) and for title to real property (Count Four). Now before the Court is Defendants’ Motion to Dismiss pursuant to Fed. R. Civ. P. 12. Also before the Court is Plaintiffs’ Cross Motion to Amend the Amended Complaint. For the reasons that follow, Defendants’ Motion to Dismiss will be granted and Plaintiffs’ Motion for Leave to Amend will be denied.

I. Background

Accepting the allegations of the Amended Complaint as true, the facts pertinent to these motions are as follows. This case concerns a property dispute between PHDC and Plaintiffs over a small vacant lot at 869 North 20th Street, Philadelphia, Pennsylvania (“Lot 869”). PHDC, a governmental non-profit organization dedicated to developing and rehabilitating housing options for low and moderate income citizens of the City of Philadelphia, owns properties throughout Philadelphia. In August of 1980, Plaintiff Donald Watkins Sr. purchased 871 North 20th Street,

the property adjoining Lot 869, from PHDC.¹

While Plaintiffs' deed does not include Lot 869, from the time they purchased the house next door, Plaintiffs' family used the lot for a variety of purposes. In the summer of 2005, PHDC began attempting to sell Lot 869. After they were informed of PHDC's intention to sell the property, Plaintiffs requested the opportunity to purchase it. The lot was offered to Plaintiffs, but not at an acceptable price. After Plaintiffs' refusal to purchase Lot 869 at the quoted price, PHDC proceeded to move forward with the sale of the property. Subsequently, on March 21 2006, Plaintiffs brought this pro se action, seeking an award of title to Lot 869 based on adverse possession, an injunction preventing PHDC's sale of the property, and damages for the violation of numerous constitutional rights.

II. Defendants' Motion to Dismiss

A. Legal Standard

When deciding a motion to dismiss, the Court may look only to the facts alleged in the complaint and its attachments. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiffs. Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiffs. Ransom v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988).

¹ Plaintiff Watkins, Sr., by indenture dated November 2, 2005, transferred 45% of his interest in 871 N. 20th St. to his son and Co-Plaintiff, Watkins, Jr.

A. Count One

In Count One, Plaintiffs assert that Defendants violated their freedom of speech. Plaintiffs allege that once they became aware of PHDC's attempts to exercise control over Lot 869 and sell it, they sent "numerous letters of complaint" to PHDC and Plaintiffs' City Council representative. According to Plaintiffs, because PHDC continued its attempts to sell Lot 869 after Plaintiffs sent their letters, PHDC "retaliated" against them for their exercise of speech, in violation of the First Amendment.

In order to allege a violation of free speech due to retaliatory action by government officials, a plaintiff must demonstrate that there was a causal connection between the exercise of his constitutional rights and the adverse action taken against him. See Rauser v. Horn, 241 F.3d 330, 333 (3d Cir. 2001). Here, Plaintiffs, while using the word "retaliation," allege only that the PHDC ignored their letters of complaint, which were written after the PHDC moved to assert control over Lot 869. PHDC's decision not to entertain the complaints raised by Plaintiffs clearly was not retaliatory and does not constitute a violation of their First Amendment rights. Accordingly, Count One will be dismissed without prejudice.

B. Counts Two and Three

In Counts Two and Three, Plaintiffs assert violations of their 14th Amendment rights to equal protection and the deprivation of property without due process. Plaintiffs' factual allegations, however, amount to nothing more than a recital of the routine and lawful steps taken by PHDC, the title holder of the property, to assert its control over the land and prepare it for

sale.² While Plaintiffs invoke several constitutional provisions, their alleged facts at best establish that PHDC's efforts to sell the land were improper because Plaintiffs' adverse possession of the land makes them the rightful owners of the property. Plaintiffs cannot rest this argument on the 14th Amendment. Instead, as they do in Count IV, they must rely on 42 Pa.C.S. § 5530(a)(1), which provides a state law cause of action to quiet PHDC's title. Accordingly, Counts II and III will be dismissed without prejudice.

E. Count Four

In Count Four, Plaintiffs seek title to Lot 869 through Pennsylvania's adverse possession statute. 42 Pa.C.S. § 5530. Because the federal claims asserted by Plaintiffs cannot survive Defendants' Motion to Dismiss, this remaining state law claim should be brought in state court. See Markowitz v. Northeast Land Co., 906 F.2d 100, 106 (3d Cir. 1990) (“[T]he rule within this Circuit is that once all claims with an independent basis for federal jurisdiction have been dismissed the case no longer belongs in federal court.”). Accordingly, Count IV will be dismissed without prejudice.

III. Motion for Leave to File an Amended Complaint

Plaintiffs seek leave to amend their complaint a second time to include facts to substantiate their claims that the individual defendants acted under the color of state law. See Pls.' Resp. at 11. The Federal Rules of Civil Procedure provide that leave to amend a pleading shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). Leave to amend will be denied only when it is apparent from the record that “(1) the moving party has demonstrated

² Plaintiffs do not dispute that PHDC is the record holder of title to the property. See Amended Complaint at 6. Indeed, Plaintiffs have attempted to purchase the property from PHDC on multiple occasions.

undue delay, bad faith or dilatory motives, (2) the amendment would be futile, or (3) the amendment would prejudice the other party.” Hill v. City of Scranton, 411 F.3d 118, 134 (3d Cir. 2005).

In light of the Court’s analysis of Plaintiffs’ constitutional causes of action, the proposed amendments to the complaint would be futile. Plaintiffs’ federal claims fail as a matter of law, regardless of whether the individual defendants acted under the color of state law. Accordingly, Plaintiffs’ Motion to Amend will be denied.

IV. CONCLUSION

For the foregoing reasons, the Court will grant Defendants’ Motion to Dismiss and will deny Plaintiffs’ Motion to Amend. An appropriate Order follows.

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	:	

ORDER

AND NOW, this 3rd day of November, 2006, upon consideration of Defendants' Motion to Dismiss the Amended Complaint (docket no. 11) and Plaintiffs' Opposition thereto and Cross-Motion for Leave to File a Second Amended Complaint (docket no. 20), and for the reasons stated in the accompanying Memorandum, it is **ORDERED** that:

- (1) Defendants' Motion to Dismiss is **GRANTED**.
- (2) Counts One, Two, Three, and Four of the complaint are **DISMISSED** without prejudice.
- (3) Plaintiffs' Cross Motion for Leave to Amend the Amended Complaint is **DENIED**.

BY THE COURT:

S/ BRUCE W. KAUFFMAN
BRUCE W. KAUFFMAN, J.