

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

ROCK CHURCH OF EASTON,	:	No. 15-cv-05318
CHURCH REDEVELOPMENT	:	
CORPORATION,	:	
Plaintiffs	:	
	:	
v.	:	
	:	
CITY OF EASTON;	:	
BUREAU OF CODES AND	:	
INSPECTIONS,	:	
Defendants.	:	

**DEFENDANTS’ BRIEF IN OPPOSITION TO PLAINTIFFS’ MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTIVE
RELIEF**

Defendants, City of Easton (hereinafter “Easton”) and Bureau of Codes and Inspections¹ (hereinafter “Bureau”)(Easton and Bureau collectively referred to as “Defendants”) by and through its attorneys, Norris McLaughlin and Marcus, PA files the within Brief in Opposition to Plaintiffs, Rock Church of Easton (hereinafter “Rock Church”) and Church Redevelopment Corporation’s (hereinafter “CRC”)(Rock Church and CRC are collectively referred to as “Plaintiffs”) Motion for a Temporary Restraining Order and Preliminary Injunctive relief.

I. PROCEDURAL HISTORY

On or about September 24, 2015, Plaintiffs filed an “Emergency Motion for Temporary Restraining Order”. In conjunction with Plaintiffs’ filing of the Emergency Motion, they also filed an Affidavit in Support of the Emergency Motion. As of the time of this filing, Plaintiffs have not filed a Complaint with this Honorable Court.

¹ The Bureau of Codes and Inspections is not a proper party subject to suit. Courts have long recognized that sub-units or departments of local governments are not distinct entities subject to suit. *Shilling v. Brush*, 2005 WL 2100707, *3 (M.D. Pa. August 26, 2005).

As this Opposition indicates, Plaintiffs' Motion fails as a matter of law and must be dismissed.

II. FACTS

As Plaintiffs have not set forth any significant facts in its Motion, nor have they filed a Complaint, Defendants shall base its factual recitation on Plaintiff's Affidavit and matters of public record. While Plaintiffs have included a multitude of scattershot allegations, Defendants will only address the factual averments which are pertinent to the Motion pending before this Honorable Court.

According to Plaintiffs, on or about December 3, 1993, Easton issued a demolition permit for a building located at 509-511 Northampton Street, Easton, Pennsylvania. Affidavit ¶ 1. The demolition was of a building which was allegedly adjoined to Plaintiffs' property located at 505-507 Northampton Street, Easton, Pennsylvania (the "Premises").² *Id.* Plaintiffs contend that after the demolition occurred, part of the wall remained standing against the west wall of the Premises. Affidavit ¶ 7.

Plaintiffs' allege that on March 11, 1994, Easton sent CRC a notice demanding that it repair and stabilize the Premises. Affidavit ¶ 9. A Memorandum dated March 14, 1994, confirms that the wall of the Premises was "pulling away" from the structure and that corrective action needed to be taken "at the next possible moment." Exhibit C to Affidavit. According to Plaintiffs, Easton has repeatedly, and continuously, requested that Plaintiffs repair the dangerous condition. Affidavit ¶ 12. Plaintiffs further acknowledge that since March 11, 1994, Easton has remained steadfast in its position that Plaintiffs are the responsible party for repairing the Premises. Affidavit ¶ 13.

² According to Northampton County property records, CRC is the sole owner of 505-507 Northampton Street.

Notwithstanding the contentions in the Motion filed with this Honorable Court, according to Plaintiffs' affidavit, they have taken responsibility for attempting to repair the Premises. Affidavit ¶ 24. Plaintiffs, however, have failed and/or refused to actually repair the Premises. Id.

As a result of the issues with the Premises, Easton provided CRC with a Notice of Structures Code Violations on July 29, 2015. See Exhibit J to Affidavit. Contrary to the allegations of the Plaintiffs, the issues with the Premises are not merely limited to the deteriorating wall. As is apparent from the Notice, there are nineteen (19) different violations at issue which include the structural issues with the wall, as well as issues concerning sanitation, storage, and insects and rats. Id. The Notice further informed CRC that the list was not all inclusive and that it had thirty (30) days to rectify any issues or face prosecution. Id.

As a result of Plaintiffs failure to cure the deficiencies, Easton filed multiple citations against Plaintiffs. See Exhibits A and B to Opposition.³ Contrary to Plaintiffs' contentions, the citations were filed on September 9, 2015 and September 23, 2015. Id. Further, contrary to Plaintiffs' contentions, a hearing on all of the citations is scheduled for October 28, 2015. Id. As indicated above, the citations are not merely limited to the wall, but larger issues that concern the severely dilapidated status of the Premises as well as premises located at 501-503 Northampton Street.

³ Exhibit "A" are copies of the docket entries of the summary proceedings filed against Plaintiffs in Magisterial District Court No. 03-2-05. Exhibit "B" are copies of the citations.

Instead of rectifying the issues with the Premises, or properly defending themselves before the state court, Plaintiffs have now brought this frivolous action before this Honorable Court.

III. ISSUE

A. WHETHER THIS HONORABLE COURT LACKS JURISDICTION OVER PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION?

Suggested Answer: Yes.

B. WHETHER THIS HONORABLE COURT SHOULD ABSTAIN FROM EXERCISING JURISDICTION OVER PLAINTIFFS' MOTION WHERE RESOLUTION WOULD OFFEND PRINCIPLES OF COMITY BY INTERFERING WITH AN ONGOING STATE CRIMINAL PROCEEDING?

Suggested Answer: Yes.

C. WHETHER PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION SHIOULD BE DISMISSED WHERE PLAINTIFFS CANNOT ESTABLISH IMMEDIATE AND IRREPARABLE HARM?

Suggested Answer: Yes.

IV. STANDARD OF REVIEW

Under Rule 65 of the Federal Rules of Civil Procedure, a party may move this Court for a temporary restraining order and a preliminary injunction. Fed. R.C.P. 65(a)(b). A temporary restraining order may be granted without written or oral notice to the adverse party where: (1) immediate and irreparable injury will result to the applicant before the adverse party can be heard in opposition and (2) the applicant's attorney certifies the efforts, if any, which have been made to give the adverse party notice and the reason supporting the claim that notice should not be required. Fed. R.C.P. 65(b).

To obtain a preliminary injunction, a party must demonstrate: (1) a likelihood of success on the merits of the underlying petition; (2) that irreparable harm would occur if the injunction were not granted; (3) that the potential harm to the moving party outweighs the harm to the opposing party if the injunction is not granted; and (4) that the granting of the injunction would serve the public interest. *U.S. v. Bell*, 414 F.3d 474, 477 (3d Cir. 2005); *Douglas v. Ashcroft*, 374 F.3d 230, 233 (3d Cir. 2004); *Vector Sec. Inc. v. Stewart*, 88 F. Supp.2d 395, 398 (E.D. Pa. 2000). It is Plaintiffs' burden to establish every element in their favor. *Geneva College v. Secretary United States Dept. of Health & Human Services*, 778 F.3d 422, 435 n.9 (3d Cir. 2015).

Preliminary injunctions serve as a temporary remedy in order to preserve the status quo pending a full hearing on the merits of a matter. *ACS Enterprises, Inc. v. Comcast Cablevision*, 857 F. Supp. 1105, 1108 (E.D. Pa. 1994), aff'd, 60 F.3d 813 (3d Cir. 1995). The decision whether to grant preliminary injunctive relief rests within the discretion of the district court. *P.C. Yonkers, Inc. v. Celebrations the Party and Seasonal Superstore, LLC*, 428 F.3d 504, 508 (3d Cir. 2005).

V. ARGUMENT

A. This Honorable Court Lacks Jurisdiction as Plaintiffs' Have Failed to File a Complaint

This Honorable Court must dismiss Plaintiffs' Motion as they have failed to file a Complaint thereby depriving the Court of jurisdiction.

Prior to considering the merits of a motion, a federal court must first determine if it has jurisdiction over a matter. See *Greene v. Philadelphia Housing Authority*, 789 F.Supp.2d 582, 584 (E.D. Pa. 2011)(citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)). As this Court stated in *Greene*:

Rule 3 of the Federal Rules of Civil Procedure states that “[a] civil action is commenced by filing a complaint with the court...In the absence of a complaint requesting particular relief, and setting out the basis for jurisdiction, the Court lacks the jurisdiction to either grant a temporary restraining order (“TRO”) or a preliminary injunction.

Greene, 789 F.Supp.2d at 584-85 (internal citations omitted).

Here, as in *Greene*, Plaintiffs have failed to file a Complaint with this Honorable Court. Plaintiffs have merely filed a Motion for Temporary Restraining Order and/or a Preliminary Injunction and an “Affidavit” in support of the Motion. Plaintiffs’ filings, or lack thereof, have deprived this Honorable Court of jurisdiction over this matter.

Based upon the foregoing, Plaintiffs’ Motion must be dismissed.

B. This Honorable Court Must Abstain From Hearing the Motion

Assuming, *arguendo*, that this Honorable Court does not dismiss Plaintiffs’ Motion based upon lack of jurisdiction, it should abstain from hearing the matter in deference to ongoing state court criminal proceedings.

In *Younger v. Harris*, 401 U.S. 37 (1971), the Supreme Court of the United States “held that principles of federalism and comity require district courts to abstain from enjoining pending state criminal proceedings absent extraordinary circumstances.” *Port Authority Police Benevolent Ass’n v. Port Authority of New York and New Jersey Police Dept.*, 973 F.2d 169, 173 (3d Cir. 1992). Under, *Younger*, “[w]hen there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution.” *Sprint Communications, Inc. v. Jacobs*, 134 S.Ct. 584, 588 (2013).

A Court should review three specific factors when determining whether to abstain from hearing a matter. Namely, (1) there must be pending or ongoing state proceedings which are judicial in nature; (2) the state proceedings must implicate important state

interests; and (3) the state proceedings must afford an adequate opportunity to raise any constitutional issues.” *O’Neill v. City of Philadelphia*, 32 F.3d 785, 789 (3d Cir. 1994)(citing *Middlesex County Ethics Committee v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982)). If those conditions are satisfied “the prospect of undue interference with state proceedings counsels against federal relief” and the federal suit must be dismissed. *Sprint*, 134 S.Ct. at 588.

Here, it is beyond dispute that there are ongoing criminal proceedings and that the first factor set forth above is satisfied. The first condition requires that state proceedings be both ongoing and judicial in nature. Here, there are currently eighteen (18) separate criminal citations for property violations pending against each Plaintiff. At this time, the hearings on those citations are scheduled for October 28, 2015. Accordingly, it is apparent that the proceedings are ongoing and judicial in nature.

It is well-settled that, “[f]or *Younger* purposes, the State’s trial-and-appeals process is treated as a unitary system, and for a federal court to disrupt its integrity by intervening in midprocess would demonstrate a lack of respect for the State as sovereign.” *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 369, 109 S.Ct. 2506, 2519 (1989). Thus, “a necessary concomitant of *Younger* is that a party [wishing to contest in federal court the judgment of a state judicial tribunal] must exhaust his state appellate remedies before seeking relief in the District Court.” *Id.*

The second condition requires that the pending state proceedings involve important state interests. Courts look not to the state's interest in the outcome of the case, but rather to the “importance of the generic proceedings to the state.” *New Orleans Public Service, Inc.*, 491 U.S. at 364-65. An important state interest is often implicated

“when a state seeks to vindicate its own policies as a party to a pending state proceeding.” *Anthony v. Council*, 316 F.3d 412, 421-22 (3d Cir. 2003); *see also Moore v. Sims*, 442 U.S. 415 (1979) (finding important state interest when state instituted a child abuse proceeding); *Trainor v. Hernandez*, 431 U.S. 434 (1977)(finding important state interest when state sought to use prejudgment attachment procedures to collect money allegedly owed to it); *Huffman v. Pursue*, 420 U.S. 592 (1975)(finding that state sought to vindicate an important state interest when it attempted to close down a movie theater through a nuisance suit).

It is readily apparent that there is an important state issue set forth herein. Easton has filed several criminal citations against Plaintiffs for a violation of its ordinances pertaining to the maintenance of property located within the City. The foregoing issues are not only for ascetic purposes, but also for safety issues pertaining to the Premises and the individuals who reside, work and visit in Easton. Based upon the foregoing, there is a compelling state interest in the ongoing state court proceeding. *See O’Neill v. City of Philadelphia*, 32 F.3d 785 (3d Cir. 1994)(enforcement of city parking enforcement laws important state interest); *Reddick v. Cumberland Cnty. Prison*, 2011 WL 5864006, at *4 (M.D. Pa. Nov. 1, 2011), *report and recommendation adopted*, 2011 WL 5864409 (M.D. Pa. Nov. 22, 2011)(the state proceedings implicated important state interests, since the matter involves state criminal law enforcement, an issue of paramount importance to the state)(citing *Lui v. Commission on Adult Entertainment Establishments*, 369 F.3d 319 (3d Cir. 2004) and *Zahl v. Harper*, 282 F.3d 204 (3d Cir. 2002)).

The third factor is also met for *Younger* abstention. The third condition is that abstention is only appropriate if the state proceedings provide an adequate opportunity to

adjudicate the constitutional issues raised in federal court. Here, Plaintiffs have an adequate opportunity to raise their constitutional claims in state court. Plaintiffs can make their constitutional claim before the Magistrate Judge, the Court of Common Pleas, and to the Commonwealth Court, if necessary. See *Commonwealth v. Waltz*, 749 A.2d 1058, 1060 (Pa. Cmwlth. 2000)(outlining procedures to raise constitutional challenges to summary citations). As all three prongs of *Younger* have been met, this Honorable Court must abstain from hearing this matter.

Plaintiffs' Motion must also be dismissed as the Anti-Injunction Act denies the Court the authority to issue an injunction pertaining to the state court proceeding.

The Anti-Injunction Act provides as follows:

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C.A. § 2283. The Anti-Injunction Act denies a District Court the authority to issue injunctions against criminal proceedings unless the proceedings come within narrowly specified exceptions. *Rizzo v. Goode*, 423 U.S. 362, 380 (1976). “Even though an action brought under [Section] 1983...is within those exceptions...the underlying notions of federalism which Congress has recognized in dealing with the relationships between federal and state courts still have weight.” Id. As such, where an injunction against a criminal proceeding is sought under Section 1983⁴, the “principles of equity, comity, and federalism must nonetheless restrain a federal court.” Id. (citing *Mitchum v. Foster*, 407 U.S. 225, 243 (1972)); See also *Miller v. Skumanick*, 605 F. Supp. 2d 634, 642 (M.D. Pa. 2009) *aff'd sub nom. Miller v. Mitchell*, 598 F.3d 139 (3d Cir. 2010);

⁴ Due to the failure of Plaintiffs to file a Complaint it is not entirely clear that Plaintiffs are raising a claim under 42 U.S.C. § 1983.

Binsack v. Lackawanna County District Attorney's Office, 2009 WL 424715 (M.D. Pa. Feb. 19, 2009).

The aforesaid principles of “equity, comity, and federalism” were discussed at length in the Supreme Court case of *Younger*. As set forth in Section V(B), *supra*, all of the elements for *Younger* abstention are prevalent in this case. Because the principals of equity, comity, and federalism are present in this case, the Court should restrain itself from hearing Plaintiffs’ Motion.

Based upon the foregoing, Plaintiffs’ Motion must be dismissed.

C. Plaintiffs’ Cannot Establish Immediate and Irreparable Injury

Assuming, *arguendo*, that this Honorable Court does not dismiss this matter for the reasons set forth in Sections V(A), (B), and (C) *supra*, this matter must still be dismissed because Plaintiffs cannot establish immediate and irreparable injury.⁵

In order to obtain either a temporary restraining order or a preliminary injunction, a plaintiff must prove immediate and irreparable injury if action is not taken by the Court. See Fed. R.C.P. 65(b) and *U.S. v. Bell*, 414 F.3d 474, 477 (3d Cir. 2005).

Here, despite Plaintiffs’ bald allegations to the contrary, there is no threat of immediate and irreparable injury to occur. At present, the citations at issue in this case have not even been heard by the magistrate judge and are not scheduled to be heard until October 28, 2015. Assuming Plaintiffs do not prevail at the time of the hearing, they are still provided with a de novo right to appeal such decisions. Plaintiffs can continue to appeal such determinations up to the Commonwealth Court and potentially beyond.

⁵ Defendants cannot address whether Plaintiffs have a likelihood of success on the merits until Plaintiffs file a Complaint setting forth their causes of action and a plausible claim for relief.

Currently, however, Plaintiffs have not suffered any “injury” nor is an injunction required to prevent such “injury.” Easton is permitted to cite Plaintiffs for violations of its municipal ordinances and Plaintiffs are permitted to present any defenses, including constitutional defenses, they believe are applicable at the time of the hearings. Plaintiffs’ mere disagreement with a citation issued does not permit them to attempt to stall such proceedings with the filing of an injunction in federal court. Additionally, to the extent Plaintiffs’ do suffer some type of “harm” it can be remedied with monetary relief. Further, to the extent Plaintiffs are arguing that the potential fines may impede their ability to continue to fulfill their religious mission, such an argument can be made to the state court as mitigation evidence at the time of sentencing.

Further, the balance of hardships in this case is clearly in favor of Defendants. In the event that this Honorable Court grants a preliminary injunction, Defendants will be prohibited from enforcing its municipal ordinances and Plaintiffs will be permitted to continue to maintain dilapidated and dangerous buildings within the City with no recourse available to the City.

On the other hand, any potential hardship that Plaintiffs would suffer is significantly less. As noted above, Plaintiffs are permitted to present any and all defenses, including any constitutional defenses, at the time of the state court proceedings. Therefore, it is clear that the balance of hardships weighs heavily in favor of denying injunctive relief.

Finally, the public interest would not clearly be served by the preliminary injunction. It is beyond dispute that the public interest is furthered by the enforcement of municipal laws and ordinances which protect the safety of the public. Plaintiffs’ request

for injunctive relief, conversely, would render Easton's ability to enforce its ordinances null and void. As such, it is apparent that the injunction would harm or jeopardize the public interest, and therefore, should be denied.

Based upon the foregoing, Plaintiffs' Motion must be dismissed.

VI. CONCLUSION

Based on the aforesaid, Defendants respectfully request that this Honorable Court deny Plaintiffs' Motion for a temporary restraining order and preliminary injunctive relief.

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