

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

Stephen G. Conklin :
Plaintiff : 1:10-CV-2501
v. : (Hon. Robert D. Mariani)
Kristine M. Anthou, et. al. :
Defendants :
:

FILED
HARRISBURG, PA

DEC 13 2011

MARY E. ANDREA, CLERK
Per  Deputy Clerk

MOTION FOR SUMMARY ENTRY OF
PRELIMINARY INJUNCTIVE RELIEF

NOW COMES, Stephen G. Conklin, Plaintiff in the above-captioned case, who moves upon this Court to Summarily enter Preliminary Injunctive Relief on the verified Motion of Plaintiff, and direct an answer thereto, and schedule further hearings on the precise nature of the relief to be fashioned, and in support thereof, avers as follows:

1. It is undisputed that Plaintiff never had a hearing of any nature in any of the 3 cases in which he was sued as a defendant in the Court of Common Pleas of York County.
2. It is undisputed that Plaintiff stands to be separated from his property without having ever had a hearing.
3. Plaintiff at all times asserted his right to a hearing at each and every opportunity through the courts of the Commonwealth of Pennsylvania. The sum and substance of every issue appealed by

Plaintiff through the state courts was that judgment was improperly entered against him without giving him a hearing.

4. As set forth in *Hovey v. Elliott*, 167 U.S. 407, 414-19 (1897):

The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have inherent power to deny all right to defend an action and to render decrees without any hearing whatever is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends.

The principle stated in this terse language lies at the foundation of all well-ordered systems of jurisprudence. Wherever one is assailed in his person or his property, there he may defend, for the liability and the right are inseparable. This is a principle of natural justice, recognized as such by the common intelligence and conscience of all nations. A sentence of a court pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal.

5. The United States Supreme Court instructs plaintiff that any judgment separating him from his property, whether of the York courts or this Court, is a non-judicial act and is entitled to no respect whatever in any tribunal. Plaintiff accordingly makes no provision for the judgments of the York County Courts, as they are not judicial acts. This Court cannot either. This create a very untenable state of affairs if the defendants amass their forces again

when it comes time for them to determine that they will forcibly remove plaintiff from his property “by any means necessary”.

6. The principle that such acts are entitled to no respect in any tribunal vitiates any and all defenses being asserted by defendants under principles of *res judicata*, abstention, or any other jurisdictional basis for one simple reason – plaintiff has not been subject to a judicial act that is entitled to respect in any forum, and Plaintiff does not afford any of it any respect, and never will because the highest Court in the land has instructed him very clearly, and affirms and validates Plaintiff’s course in every respect.
7. Plaintiff was a *defendant* in the civil actions below seeking to separate him from his property. Plaintiff made verified denials of the allegations in the complaint against him in the state court, and made demands for proof of the allegations of the plaintiff in that case. Plaintiff was never afforded discovery and never had a hearing, and his property now stands to be taken from him. Plaintiff has no obligation under any law to establish a right to a hearing – that is a plaintiff’s burden to do when placed in issue. Upon denial of the allegations against him, the right to a hearing is

absolute, absent default or admission. Plaintiff demands his hearing.

8. The defendants' assertion that it is *they* who are being harmed and injured because they are taking plaintiff's property knowing that no hearing has ever been provided, and attempting to cast that as plaintiff's fault is sanctionable absurdity. The fact that the attorney for the state courts joined in the motion to have Plaintiff and his family thrown out of their property knowing that they have never been given a judicial hearing just shows that we are dealing with rogue courts who are knowingly and intentionally trampling my federal constitutional rights, without regard for life or limb. As the *Hovey* Court said, they are nothing but instruments of wrong and oppression, stripped of all of their judicial attributes.
9. This Court has an absolutely clear basis upon which to act, and there is absolutely no question whatsoever that it has jurisdiction to act in this specific case to grant the specific relief being specifically requested by plaintiff. The basis upon which this Court has jurisdiction is as follows:

Section 1983 was originally § 1 of the Civil Rights Act of 1871. 17 Stat. 13. It was "modeled" on § 2 of the Civil Rights Act of 1866, 14 Stat. 27, and was enacted for the express purpose of

"enforc[ing] the Provisions of the Fourteenth Amendment." 17 Stat. 13. The predecessor of § 1983 was thus an important part of the basic alteration in our federal system wrought in the Reconstruction era through federal legislation and constitutional amendment. As a result of the new structure of law that emerged in the post-Civil War era—and especially of the Fourteenth Amendment, which was its centerpiece—the role of the Federal Government as a guarantor of basic federal rights against state power was clearly established. Monroe v. Pape, 365 U.S. 167; McNees v. Board of Education, 373 U.S. 668; Shelley v. Kraemer, 334 U.S. 1; Zwickler v. Koota, 389 U.S. 241, 245-49; H. Flack, *The Adoption of the Fourteenth Amendment* (1908); J. tenBroek, *The Anti-Slavery Origins of the Fourteenth Amendment* (1951). Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation.

It is clear from the legislative debates surrounding passage of § 1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment "against State action, . . . whether that action be executive, legislative, or *judicial*." Ex parte Virginia, 100 U.S. 339, 346 (emphasis supplied). Proponents of the legislation noted that state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights.

As Representative Lowe stated, the "records of the [state] tribunals are searched in vain for evidence of effective redress [of federally secured rights] What less than this [the Civil Rights Act of 1871] will afford an adequate remedy? The Federal Government cannot serve a writ of mandamus upon State Executives or upon State courts to compel them to protect the rights, privileges and immunities of citizens The case has arisen . . . when the Federal Government must resort to its own agencies to carry its own authority into execution. Hence this bill throws open the doors of the United States courts to

those whose rights under the Constitution are denied or impaired." Cong. Globe, 42d Cong., 1st Sess., 374-376 (1871). This view was echoed by Senator Osborn: "If the State courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate We are driven by existing facts to provide for the several states in the South what they have been unable to fully provide for themselves; *i. e.*, the full and complete administration of justice in the courts. And the courts with reference to which we legislate must be the United States courts." *Id.*, at 653. And Representative Perry concluded: "Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices [A]ll the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared detection. Among the most dangerous things an injured party can do is to appeal to justice." *Id.*, at App. 78.

Those who opposed the Act of 1871 clearly recognized that the proponents were extending federal power in an attempt to remedy the state courts' failure to secure federal rights. The debate was not about whether the predecessor of § 1983 extended to actions of state courts, but whether this innovation was necessary or desirable.

This legislative history makes evident that Congress clearly conceived that it was altering the relationship between the States and the Nation with respect to the protection of federally created rights; it was concerned that state instrumentalities could not protect those rights; it realized that state officers might, in fact, be antipathetic to the vindication of those rights; and it believed that these failings extended to the state courts.

10. The foregoing clearly establishes, without question or reservation, that this Court has jurisdiction to entertain the specific relief requested by the Plaintiff. The failure to

exercise that jurisdiction to restrain the lawless acts of the defendants will only make this Court an instrument of wrong and oppression as well.

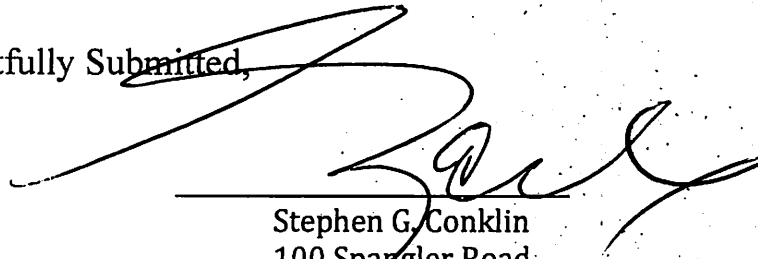
11. Insofar as there are no disputed facts as to jurisdiction or to the fact that plaintiff has never been provided with a hearing in the Court of Common Pleas of York County, this Court must summarily grant relief on Plaintiff's right to preliminary injunctive relief, i.e., that the defendants are hereby preliminary restrained from making any further efforts to separate plaintiff and his property. Plaintiff demands a further hearing and related proceedings to determine the precise nature of the further equitable relief to which he is entitled, as to be fashioned by this Court.

12. Plaintiff demands the right to be heard on this and on all issues that he has properly and repeatedly placed into the record of this Court and the York County Courts. Plaintiff specifically requests that this court enter an Order, in the nature of a Rule to Show Cause, directing defendants to respond to this Motion, and the specific points of fact and raised herein, on the issues properly framed by the Plaintiff.

13. Plaintiff has filed concurrent with this motion, a Motion to Modify and Extend the Temporary Restraining Order, that Plaintiff hereby incorporates by reference as if set forth in its entirety, herein.

WHEREFORE, in consideration of the foregoing, Plaintiff respectfully requests that this Court Summarily enter Preliminary Injunctive Relief on the verified Motion of Plaintiff, and direct an answer thereto, and schedule further hearings on the precise nature of the relief to be fashioned by this Court, and for any and all additional relief that this Court may deem just and proper

Respectfully Submitted,

A large, stylized handwritten signature in black ink, appearing to read 'S. Conklin', is written over a horizontal line. The signature is fluid and cursive.

Stephen G. Conklin
100 Spangler Road
Lewisberry, Pa. 17339
(717) 460-5450

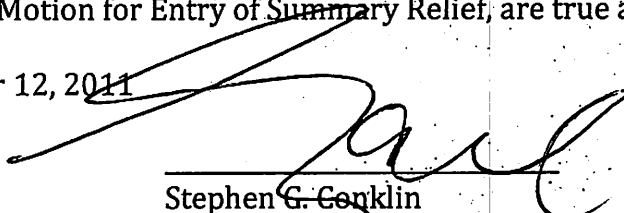
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Defendants :

DECLARATION OF PLAINTIFF

I, Stephen G. Conklin, Plaintiff in the above-captioned matter, do hereby declare, under penalty of pursuant to 28 U.S.C. § 1746, that the foregoing statements contained in Plaintiff's Motion for Entry of Summary Relief, are true and correct.

Executed on: December 12, 2011



Stephen G. Conklin
100 Spangler Road
Lewisberry, Pa. 17339
(717) 460-5450

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CERTIFICATE OF CONCURRENCE/NONCONCURRENCE

In accordance with the Rules of the Middle District, I, Stephen G. Conklin, Plaintiff in the above-captioned matter do hereby verify that I contacted each of the four (4) attorneys who have entered their appearances on behalf of various Defendants, with the following results:

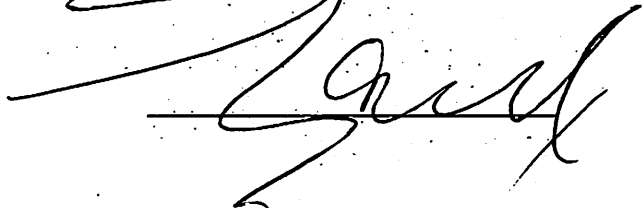
Geri Romanello St. Joseph (on behalf of the Judicial Defendants). As of 1:57pm Plaintiff left of voice message apprising her of this Motion.

Michael Flannelly (on behalf of Defendants, York County Sheriff's Office, Sheriff Richard P. Keuerleber and Deputy John Doe) As of 1:59 pm, Plaintiff left a voice message, apprising him of this Motion.

Edwin A.D. Schwartz (on behalf of Defendant Lawrence T. Himes, Jr.) As of 1:55 pm, Mr. Schwartz does not concur.

John B. Joyce (on behalf of Defendants JPMorgan Chase, EMC Mortgage Corporation, and Grenen & Birsic, et. al. As of 2:01 pm, Plaintiff left a voice message, apprising him of this Motion.

December 12, 2011



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CERTIFICATE OF SERVICE

I, Stephen G. Conklin, do hereby certify this 12th day of December, 2011, that I caused to be served, true and correct copies of Plaintiff's Motion for Summary Relief, by first class, U.S. Mail, postage prepaid upon the following parties:

Edwin A. D. Schwartz, Esq.
Marshall Dennehey Warner
Colman & Goggin
4200 Crums Mill Rd., Suite B,
Harrisburg, Pa. 17112

Michael W. Flannelly, Esq.
Solicitor for York County
28 East Market St., 2nd Fl.
York, Pa. 17401

Geri Romanello St. Joseph, Esq.
Administrative Office of Pa. Courts
1515 Market St., Suite 1414
Philadelphia, Pa. 19102

John Joyce, Esq.
Grenen & Birsic, P.C.
One Gateway Center, 9th Fl.
Pittsburgh, Pa. 15222

By: 

Stephen G. Conklin
100 Spangler Road
Lewisberry, Pa. 17339
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ORDER

AND NOW, to wit, this ____ day of December, 2011, in
consideration of Plaintiff's Motion for Entry of Summary Relief, it is hereby
ORDERED, Plaintiff's request is hereby GRANTED.

This Court, having Summarily entered Preliminary Injunctive Relief
on the verified Motion of Plaintiff, now directs the Defendants to provide an
answer thereto, on or before _____; and it is further
ORDERED that this Court shall further schedule hearings on the precise
nature of the relief to be fashioned by this Court, as follows:

BY THE COURT:

J.