IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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ALEKSANDRA CICHOWSKI and
CEZARY CICHOWSKI,

ORDER

Plaintiffs,

05-C-262-C

v.

FRED D. HOLLENBECK and TOM CASEY
and CURAN HOLLENBECK AND ORTON, S.C.;
THE BANK OF MAUSTON;
ROBERT FAIT, President, Bank of Mauston;
TOM SCHMIDT, Bank of Mauston;
KELLY HONNOLD, Bank of Mauston;
SCOT SCHMIDT and SAUK COUNTY, WISCONSIN;
DONNA MUELLER, Clerk of Court of Sauk County;
CARRIE, Civil Litigation Clerk;
PAGGY, Financial Clerk;
HONORABLE JUDGE GUY REYOLDS and
HONORABLE JUDGE EVENSON, Sauk County;
GENE WIEGEND, County Coordinator, Baraboo;
BRANDT BAILEY, Baraboo;
WAYNE MAFFEL and
CROSS, JENKS, MERCER AND MAFFEI, Baraboo;
M & I BANK and DAVE GITTER, Bank President;
KETTY W. BAUER and DEBRA KING, Appleton;
MARK L. KRUEGER and WILLIAM GREENHALGH
and GREENHALGH AND KRUEGER, S.C., Baraboo;
ADELA LUCARZ and JOSEPH LUCARZ, Baraboo; and
TRUDI DELAIN and MADISON FREELANCE REPORTERS,
Madison,

Defendants.

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Plaintiffs Aleksandra and Cezary Cichowski have filed this civil action against five lawyers, three law firms, a county and a county coordinator, two judges, three circuit court employees, a freelance reporting company, two banks, seven bank employees, and four private individuals, in a pleading that does not comply with Fed. R. Civ. P. 8(a)(2) and (e). These rules require that allegations in a complaint be "short and plain" or "simple, concise and direct." Plaintiffs' allegations are not short and plain. Plaintiffs seem to be alleging a conspiracy of some sort, but their description of the alleged conspiratorial acts is difficult to follow or understand.

In order to bring a civil conspiracy claim in federal court against individuals, the plaintiffs must allege that the individuals deprived plaintiffs of a right secured by the Constitution or laws of the United States while the individuals were acting under color of state law, see, e.g., Donald v. Polk County, 836 F.2d 376, 379 (7th Cir. 1988), or "engaged in a conspiracy with one or more parties acting under the color of state law" to deprive the plaintiffs of a constitutional right. Moore v. Marketplace Restaurant, Inc., 754 F.2d 1336, 1352 (7th Cir. 1985); Dennis v. Sparks, 449 U.S. 24, 27-28 (1980) (an otherwise private person acts "under color of" state law when engaged in a conspiracy with state officials to deprive another of federal rights). Plaintiffs may be attempting to contend that the non-governmental entities they name in the complaint were involved in a conspiracy with state actors. However, to establish a claim of civil conspiracy, plaintiffs must show "a combination

of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties `to inflict a wrong against or injury upon another,' and `an overt act that results in damage.'" Hampton v. Hanrahan, 600 F.2d 600, 621 (7th Cir. 1979), rev'd in part on other grounds, 446 U.S. 754 (1980).

It is completely unclear from the allegations of plaintiffs' complaint how each of the individual plaintiffs named as defendants were "willful participant[s] in joint action with the State or its agents." Dennis, 449 U.S. at 27; Malak v. Associated Physicians, Inc., 784 F.2d at 281 (private defendant acts under color of state law for purpose of § 1983 when he is willful participant in joint action with state or its agent). In order to "establish a conspiracy, plaintiffs must demonstrate that the state officials and the private parties somehow reached an understanding to deny [plaintiffs their] constitutional rights." Moore, 754 F.2d at 1352. Mere assertions that the private defendants became an integral part of a state court proceeding is not enough to show state action. A complaint does not allege a conspiracy when it contains "vague and conclusionary allegations . . . without showing any `overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy.'" Hansen v. Ahlgrimm, 520 F.2d 768, 770 (7th Cir. 1975) (quoting Dieu v. Norton, 411 F.2d 761, 763 (1969)).

In pleading a conspiracy, a plaintiff must identify the parties, the conspiracy's general

purpose and its approximate date, so that the defendants have notice of what they are charged with. Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002). In this case, it is impossible to tell what plaintiffs believe the general purpose of the alleged conspiracy is. Moreover, it is impossible to tell what role each individual defendant might have played or agreed to play in relation to the acts that are alleged to have been taken in furtherance of the conspiracy and what the nature of each defendant's agreement was with the alleged state actor co-conspirators. Under these circumstances, a court is not required to permit the plaintiffs to proceed on the claim. Walker, 288 F.3d at 1007-08, citing Ryan v. Mary Immaculate Queen Center, 188 F.3d 857 (7th Cir. 1999) (conspiracy allegation insufficient when "not enough to enable [defendant] to prepare his defense or for district court to determine whether the claim is within the ballpark of possibly valid conspiracy claims").

Claims of conspiracies to effect deprivations of civil or constitutional rights may also be brought in federal court under 42 U.S.C. §1985(3). However, § 1985(3) requires proof of a racial or otherwise class-based discriminatory animus behind the conspirators' actions. Griffin v. Breckenridge, 403 U.S. 88 (1971); Munson v. Friske, 754 F.2d 683, 694 (7th Cir. 1985). Plaintiffs do not appear to be alleging that defendants deprived them of a right secured by state or federal law because of their race or their membership in a protected class.

Because plaintiffs' allegations are too disorganized to allow the defendants to understand with any certainty what actions or inactions they are accused of taking and for

what purpose, I will dismiss plaintiffs' complaint without prejudice to their filing an amended complaint no later than May 31, 2005. In refiling their complaint, plaintiffs should be aware of the following.

First, they cannot seek money damages from judges acting in their judicial capacity, because judges are immune from such actions. Stump v. Sparkman, 435 U.S. 349, 355-56, reh'g denied, 436 U.S. 951 (1978). Judges cannot be sued even if the actions they took were in error, were undertaken maliciously, or exceeded their authority. They are subject to liability only when they have acted in the "clear absence of all jurisdiction." Stump, 435 U.S. at 356-57 (quoting Bradley v. Fisher, 13 Wall. 335, 351 (1872)).

Second, if plaintiffs are attempting to assert that the conspiratorial acts of several other named defendants amounted to their participation in judicial proceedings involving plaintiffs, those persons will be entitled to immediate dismissal from this action because they, too, are entitled to absolute immunity for their acts relating to those proceedings. Briscoe v. LaHue, 460 U.S. 325, 332 (1983) (witnesses absolutely immune from damages for their testimonial statements in judicial proceedings "even if the witness knew the statements were false and made them with malice"); Yaselli v. Goff, 12 F.2d 396, 401- 402 (2d Cir. 1926), summarily aff'd, 275 U.S. 503 (1927) (prosecutors and other lawyers absolutely immune from damages liability for making false or defamatory statements in judicial proceedings (at least so long as statements were related to proceeding) and for

eliciting false and defamatory testimony from witnesses). This immunity extends to "any hearing before a tribunal which performs a judicial function." W. Prosser, Law of Torts § 94, pp. 826-827 (1941).

Finally, plaintiffs should be aware that a municipality such as Sauk County can be liable under § 1983 only for actions taken by officials pursuant to the municipality's formal or informal policy or custom. Pembaur v. City of Cincinnati, 475 U.S. 469 (1986); Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978). A county cannot be sued simply on the theory that it is liable whenever its employees are responsible for constitutional deprivations. Monell, 436 U.S. at 691.

ORDER

IT IS ORDERED that plaintiffs' original complaint is DISMISSED without prejudice. Plaintiffs may have until May 31, 2005, in which to file an amended pleading that complies with Fed. R. Civ. P. 8. If, by May 31, 2005, plaintiffs fail to submit an amended pleading

that complies with the requirements of Fed. R. Civ. P. 8, then their case will be dismissed with prejudice.

Entered this 18th day of May, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge