

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALEKSANDRA CICHOWSKI and
CEZARY CICHOWSKI,

OPINION AND ORDER

Plaintiffs,

05-C-262-C

v.

FRED D. HOLLENBECK; TOM CASEY;
SAUK COUNTY; DONNA MUELLER;
CARRIE WASTLICK; GENE WIEGAND; DEBBIE KING (FRISCH);
BRANT BAILEY; CURAN HOLLENBECK AND ORTON, S.C.;
WAYNE MAFFEI; JENKS CROSS MERCER and MAFFEI LAW
FIRM; M&I BANK; DAVE GUTTER; MARK L. KRUEGER;
THE BANK OF MAUSTON; ROBERT FAIT;
TOM SCHMIDT; KELLY HONNOLD; and
SCOT SCHMIDT,

Defendants.

This matter is before the court on the following motions: (1) motions to dismiss filed by defendants M&I Bank, Dave Gitter, Wayne Maffei and the law firm of Cross, Jenks, Mercer and Maffei on June 20, 2005¹; (2) motion to dismiss filed by defendant Mark

¹On June 20, defendants M&I Bank, Dave Gitter, Debra King, Wayne Maffei and the law firm of Cross, Jenks, Mercer and Maffei (and Debra King, who subsequently was dismissed from this lawsuit) filed a motion to dismiss plaintiff's original complaint (Dkt. #10). On August 4, 2005, after this court required plaintiffs to amend their complaint to comply with Fed. R. Civ. P. 8, these same defendants plus another defendant who was subsequently dismissed filed a supplemental motion to dismiss directed to the allegations in

Krueger on June 28, 2005²; (3) motion to dismiss filed by defendants Fred D. Hollenbeck, Thomas Casey, Debbie King (Frisch), Robert Fait, Tom Schmidt, Kelly Honnold, Scott Schmidt, Curran, Hollenbeck & Orton, S.C. and Bank of Mauston on August 9, 2005.

Plaintiffs contend that all of the defendants whose motions to dismiss are presently before the court conspired to commit fraud with the goal of extinguishing a lien that plaintiffs allegedly held against certain property. Also, plaintiffs contend that defendant Krueger conspired with Judge Reynolds to deprive plaintiffs of their constitutional right to due process in state court. Finally, plaintiffs contend that defendants Bank of Mauston, Fait, Tom Schmidt and Scott Schmidt violated plaintiff Aleksandra Cichowski's constitutional rights under the Fourth and Fourteenth Amendments when they arrested her and initiated criminal action against her.

For the sole purpose of deciding this motion, I accept as true the allegations in the complaint. Also, I have taken judicial notice of certain court documents, including an amended complaint filed in a civil matter in Sauk County circuit court involving plaintiffs

the amended complaint (Dkt. #30). I am considering the two motions together in this order as to those defendants who remain parties to this action.

²On June 28, 2005, defendants Mark Krueger, William Greenhalgh, Greenhalgh & Krueger, S.C., Adela Lucarz and Joseph Lucarz filed a motion to dismiss (Dkt. #13). On August 15, 2005, I dismissed defendants William Greenhalgh and Greenhalgh & Krueger, S.C. from this action for plaintiffs' failure to show they had properly served them and I dismissed defendants Adela Lucarz and Joseph Lucarz upon plaintiffs' request (Dkt. #42). Therefore, I am considering this motion with respect to defendant Krueger only.

and several defendants in the present lawsuit. Also, I am considering certain decisions of the Sauk County court. Generally, a court cannot consider documents outside the pleadings in deciding a motion to dismiss under Fed. R. Civ. P. 12(b)(6); such documents do not become fair game unless they are attached to or at least referred to in the complaint. Tierney v. Vahle, 304 F.3d 734, 738 (7th Cir. 2002). However, there is an exception to this rule: a court may consider “documents contained in the public record” without converting the motion into one for summary judgment. Menominee Indian Tribe of Wisconsin v. Thompson, 161 F.3d 449, 456 (7th Cir. 1998). The court documents from the circuit court case are matters of public record and therefore I can appropriately take judicial notice of them in the present matter.

ALLEGATIONS OF FACT

Plaintiff Aleksandra Cichowski is a resident of Onalaska, Wisconsin. Plaintiff Cezary Cichowski is a resident of Wisconsin Dells, Wisconsin.

Defendant M&I Bank is a banking institution in Appleton, Wisconsin.

Defendant Dave Gitter is the president of M&I Bank for the Appleton region.

Defendant Cross, Jenks, Mercer and Maffei is a law firm located in Baraboo, Wisconsin.

Defendant Wayne Maffei is a partner of the firm of Cross, Jenks, Mercer and Maffei.

Defendant Mark Krueger is a lawyer with the law firm of Greenhalgh and Krueger, S.C., located in Baraboo, Wisconsin.

Defendant Curran, Hollenbeck & Orton S.C. is a law firm located in Mauston, Wisconsin.

Defendant Thomas Casey is a lawyer with Curran, Hollenbeck & Orton S.C.

Defendant Fred D. Hollenbeck is a lawyer and a partner of the firm of Curran, Hollenbeck & Orton S.C.

Defendant Debbie King (Frisch) is an employee of Curran, Hollenbeck & Orton S.C.

Defendant Bank of Mauston is a banking institution located in Mauston, Wisconsin.

Defendant Robert Fait is the president of the Bank of Mauston.

Defendant Thomas Schmidt is a director of the Bank of Mauston.

Defendant Kelly Honnold is director of marketing at the Bank of Mauston.

Defendant Scott Schmidt is a former employee of the Bank of Mauston. He resides in Mauston, Wisconsin.

_____Plaintiff Cezary Cichowski is a contractor who performed certain construction work for Joseph Lucarz. Lucarz failed to pay plaintiff Cezary Cichowski for all or a portion of the work. Plaintiff Cezary Cichowski obtained a contractor's lien on Lucarz's property for the amount of money Lucarz owed him.

Certain individuals, some of whom are defendants in this lawsuit, wanted to help

Lucarz protect his property against plaintiff Cezary Cichowski's lien. These individuals conspired to place a new mortgage on Lucarz's property and to trick plaintiff Cezary Cichowski into releasing his lien. There were several individuals, entities and at least three lawyers involved in the conspiracy, including defendant Krueger, who represented Lucarz, and defendant Casey, who represented defendant M&I Bank.

The conspirators wanted to extinguish plaintiffs' lien on Lucarz's property and to obtain a new mortgage loan for Lucarz that would not reflect the existence of plaintiffs' lien. The conspirators decided that Lucarz should obtain the new mortgage from M&I Bank. Even though Lucarz lied in his financial statements, making no reference to the lien that plaintiff Cezary Cichowski held against his property, defendant M&I Bank was still reluctant to grant him a mortgage.

Defendant Hollenbeck and his secretary, defendant Debbie King (Frisch), filled out a mortgage loan form on M&I Bank stationery on behalf of Lucarz. Defendants Krueger, Hollenbeck and Casey, together with defendants Scott Schmidt and Honnold, persuaded defendants Wiegand and Bailey, who were employees at the registry of deeds, to switch certain documents on file without anyone else's knowledge, thereby insuring that the new mortgage on file did not reflect the existence of plaintiffs' lien on Lucarz's property. Defendant Scott Schmidt erased information on certain pages of the old mortgage documents to make it look as though nothing was switched at the registry of deeds. Later,

when plaintiffs requested the original mortgage documents from the registry of deeds, the registry did not provide the original documents, because they had been destroyed. Also, Defendant Krueger intimidated plaintiffs into signing a lien release and he hid documents that would prove plaintiff Cezary Cichowski had done construction work for Lucarz and was therefore entitled to a lien on Lucarz's property. Defendant Krueger's goal was to sue plaintiffs and prove that plaintiff Cezary Cichowski was not a contractor at all and had never had a legitimate lien on Lucarz's property. The Bank of Mauston destroyed some documents and falsified others in order to hide the fact that plaintiff Cezary Cichowski was a general contractor who had worked for Lucarz. Defendant Honnold falsified signatures on some of these documents and defendant Fait created a false ledger, all with the purpose of pretending they were unaware of Cezary Cichowski's work as a contractor and of an original mortgage and lien on Lucarz's property. Defendants who were employed by the Bank of Mauston repeatedly contradicted themselves in depositions and later, in court, regarding their knowledge of old mortgages on Lucarz's property.

In January 2002, Lucarz sued plaintiffs in the Sauk County circuit court, alleging that plaintiffs did not have an enforceable lien against his property. Defendant Krueger asked the circuit court to extinguish plaintiffs' lien over Lucarz's property, even though Krueger knew that the documents he would use to prove that plaintiffs did not have a valid lien were fraudulent. Even though defendant Krueger knew this lawsuit was frivolous he thought he

could win it because he was an experienced attorney and plaintiffs did not speak English well. Judge Reynolds of the Sauk County circuit court presided over the case (2002CV0031). During the trial, defendant Krueger behaved inappropriately, calling plaintiffs liars in open court and speaking with Judge Reynolds in the judge's chambers outside plaintiffs' presence. Defendant Krueger conspired with other lawyers and with the judge to intimidate plaintiffs and prevent them from presenting certain witnesses at trial.

During trial of case 2002CV0031, Judge Reynolds ordered plaintiffs to pay certain witness fees in the amount of approximately \$100 to the Bank of Mauston. Plaintiffs timely paid the fee to the bank, but defendant Hollenbeck, who was the attorney for the bank, returned plaintiffs' check. Defendant Hollenbeck then lied to the court, stating that he had never received the payment from plaintiffs, and filed a motion asking the court to hold plaintiffs in contempt of court. After plaintiffs provided proof that they had indeed made the payment, defendant Hollenbeck admitted that he had received the check and returned it to plaintiffs. Judge Reynolds then ordered plaintiffs to pay the fine again, which plaintiffs did on the spot. Defendant Hollenbeck took these actions to intimidate plaintiffs.

During the course of the circuit court trial, plaintiff Aleksandra Cichowski went to the Bank of Mauston to serve a subpoena on defendant Fait. When she arrived at the bank she was arrested by the police for no apparent reason. Defendant Fait tried to frame Aleksandra Cichowski in a bank robbery. Later, defendant Casey helped defendant Fait

submit falsified evidence during Fait's deposition.

In 2003, when plaintiffs learned of the conspiracy to create a fraudulent new mortgage for Lucarz, they filed a lawsuit in the circuit court for Sauk County, naming multiple defendants who are also defendants in the present lawsuit. Judge Evenson of the Sauk County circuit court presided over the case (2003CV0338). In their complaint in the circuit court matter, plaintiffs alleged that defendants had conspired to extinguish plaintiffs' lien on Lucarz's property by obtaining a fraudulent mortgage loan from M&I Bank.

During the proceedings in case 2003CV0338, defendant Hollenbeck and his partners made several unlawful attempts to get the matter dismissed. For example, they tried to initiate various illegal lawsuits against plaintiffs to make it look like plaintiffs' claims in case 2003CV0338 were invalid.

After plaintiffs initiated the lawsuit in Sauk County, defendant Gitter became involved in the conspiracy to commit fraud and rob plaintiffs of their lien on Lucarz's property by giving defendant Maffei authorization to accept service for Debra King and by pretending that King was an employee of defendant M&I Bank even though she was not. Judge Evenson issued an order dismissing Debra King and M&I Bank for insufficiency of service of process. Also, Judge Evenson dismissed the remaining defendants in the lawsuit on the ground that plaintiffs had failed to state a claim upon which relief could be granted. Plaintiffs appealed the circuit court's dismissal of all defendants. The Wisconsin Court of

Appeals affirmed the decisions of the trial court to dismiss all defendants. Plaintiffs appealed to the Supreme Court of Wisconsin, which denied their petition for review on May 11, 2005.

DISCUSSION

A. Conspiracy to Commit Fraud

Plaintiffs allege that the following defendants conspired to commit fraud in order to obtain a new mortgage loan for Lucarz and extinguish plaintiff's lien on Lucarz's property: Mark Krueger, Fred D. Hollenbeck, Debbie King (Frisch), Thomas Casey, Robert Fait, Tom Schmidt, Kelly Honnold, Scott Schmidt, Curran, Hollenbeck & Orton, S.C., The Bank of Mauston, M&I Bank, Dave Gitter, Wayne Maffei and Cross, Jenks, Mercer and Maffei. These defendants will be collectively referred to in this Part A as "defendants."

Federal courts are courts of limited jurisdiction. Bender v. Williamsport Area School Dist., 475 U.S. 534, 541 (1986); Abercrombie v. Office of Comptroller of Currency, 833 F.2d 672, 674 (7th Cir. 1987). Accordingly, "judges must consider jurisdiction as the first order of business." Sherman v. Community Consol. Sch. Dist. 21 of Whelling Twp., 980 F.2d 437, 440 (7th Cir. 1992). See also Wisconsin Knife Works v. National Metal Crafters, 781 F.2d 1280, 1282 (7th Cir. 1986) (federal court should always ensure that federal jurisdiction has been properly alleged).

Generally, a federal court has jurisdiction to hear a case in three instances: (1) when the complaint raises a federal question, 28 U.S.C. § 1331; (2) when the parties are citizens of different states and the amount in controversy is greater than \$75,000, 28 U.S.C. § 1332; and (3) when a state law claim is part of the same case or controversy as a federal law claim that may be considered under § 1331, 28 U.S.C. § 1367.

The claim that defendants conspired to commit fraud is a state law claim. Only claims of conspiracies to effect deprivations of federal civil or constitutional rights may be brought in federal court under the court's federal question jurisdiction and in such cases, the conspiracy must either involve state actors, Hampton v. Hanrahan, 600 F.2d 600, 622-23 (7th Cir. 1979), or be motivated by a racial or otherwise class-based discriminatory animus. Griffin v. Breckenridge, 403 U.S. 88 (1971); Hampton, 600 F.2d at 623; Munson v. Friske, 754 F.2d 683, 694 (7th Cir. 1985).

Plaintiffs have not alleged that any of the moving defendants were acting under color of state law at the time that they allegedly conspired to commit fraud and nothing in the record suggests that they are state actors. Some of the defendants are lawyers, but it is well established that lawyers in private practice do not act under color of state law for § 1983 purposes. See, e.g., French v. Corrigan, 432 F.2d 1211, 1214-15 (7th Cir. 1970). A lawyer is not a state actor within the meaning of § 1983 merely because he is considered an officer of the court. Polk County v. Dobson, 454 U.S. 312, 318 (1981). Nor does a lawyer acquire

the label “state actor” by instigating state court litigation. Hansen v. Ahlgrimm, 520 F.2d 768, 770 (7th Cir. 1975) (wife’s attorney not subject to suit under § 1983 merely because attorney obtained arrest warrant for failure to comply with divorce decree; lawyer’s utilization of judicial procedure is not state action). Also, plaintiffs have not alleged that defendants participated in a conspiracy to commit a fraud in order to harm plaintiffs because of their race or class. Because plaintiffs’ claim of conspiracy to commit fraud is a state law claim, this court does not have jurisdiction to hear it under 28 U.S.C. § 1331.

This court also lacks jurisdiction over plaintiffs’ state law claim against defendants under 28 U.S.C. § 1332, because plaintiffs have not shown that they and the defendants are citizens of different states.

The only other way this court might have jurisdiction over plaintiffs’ state law claim would be under 28 U.S.C. § 1367, which authorizes federal courts to hear a state law claim pursuant to § 1367 when the state law claim is part of the same case or controversy as a federal law claim that may be considered under § 1331. Plaintiffs have asserted four potential federal law claims in this lawsuit.

First, plaintiffs named Judges Reynolds and Evenson as defendants and alleged that these defendants had violated plaintiffs’ constitutional rights under the First, Fourth, Seventh and Fourteenth Amendments during the course of circuit court proceedings in cases 2002CV0031 and 2003CV0338. Subsequently, I dismissed plaintiffs’ claims against these

defendants because federal courts are barred from reviewing the actions of state courts under the Rooker-Feldman doctrine.

Second, plaintiffs have raised a potential federal law claim against defendant Krueger, alleging that he conspired with Judge Reynolds to deprive plaintiffs of their constitutional right to due process. However, as will be discussed in Part B of this opinion, this claim will be dismissed.

Third, plaintiffs have raised a potential federal law claim against defendants Bank of Mauston, Robert Fait, and Tom Schmidt, alleging that they violated plaintiff Aleksandra Cichowski's constitutional rights under the Fourth and Fourteenth Amendments when they illegally arrested her and initiated criminal action against her. As will be discussed in Part C of this opinion, this claim, too, must be dismissed.

Last, plaintiffs have raised a potential federal law claim against certain Sauk County employees, alleging that they violated plaintiffs' right to equal protection under the Fourteenth Amendment when they refused to file certain documents in the circuit court clerk's office and when they refused to provide plaintiffs with copies of certain documents from the registry of deeds. The Sauk County defendants filed a motion to dismiss plaintiffs' Fourteenth Amendment claim and I will address their motion in a separate opinion. However, even if plaintiffs' federal law claim against the Sauk County employees is not dismissed, it does not provide grounds for exercising supplemental jurisdiction over

plaintiffs' state law claim of conspiracy to commit fraud. Supplemental jurisdiction requires a common nucleus of operative facts such that the state and federal claims would ordinarily be tried in one proceeding. Mine Workers v. Gibbs, 383 U.S. 715 (1966). The potential federal claim against the Sauk County defendants has a much narrower scope than the state law claim of conspiracy to commit fraud because it concerns only a few isolated actions by four County employees and does not involve any facts regarding the fourteen other defendants alleged to have conspired against plaintiffs.

Because all of plaintiffs' federal law claims in this lawsuit are either being dismissed or, in the case of the potential federal law claim against the Sauk County defendants, is not sufficiently similar to the state law claim, I decline to exercise supplemental jurisdiction over plaintiffs' state law claim against defendants. Accordingly, defendants' motions to dismiss plaintiffs' state law claim that they conspired to commit fraud will be granted.

B. Conspiracy to Violate Due Process

Plaintiffs allege that defendant Krueger participated in a conspiracy with Judge Reynolds to violate plaintiffs' constitutional due process rights. In particular, plaintiffs contend that defendant Krueger and Judge Reynolds conspired to prevent plaintiffs from presenting certain witnesses and evidence to support their position in circuit court case 2002CV0031. Also, plaintiffs contend that defendant Krueger and Judge Reynolds held a

private conference in the judge's chambers outside plaintiffs' presence.

As discussed above, claims of conspiracies to effect deprivations of constitutional rights may be brought in federal court when the conspirators are state actors, Hampton, 600 F.2d at 622-23, or where the conspiracy has a race or class-based discriminatory purpose. Defendant Krueger is not a state actor. However, in some circumstances, private actors who collaborate with a state official to deny an individual his constitutional rights may be said to be acting under color of state law. Starnes v. Capital Cities Media, Inc., 39 F.3d 1394, 1397 (7th Cir. 1994); see also Kimes v. Stone, 84 F.3d 1121, 1126 (9th Cir. 1996). In order to make such a claim, a plaintiff must allege that the "public and private actors share a common and unconstitutional goal." Starnes, 39 F.3d at 1397 (citing Cunningham v. Southlake Center for Mental Health, 924 F.2d 106, 107 (7th Cir. 1991)). A plaintiff must demonstrate that "the state officials and the private party somehow reached an understanding to deny the plaintiffs their constitutional rights." House v. Belford, 956 F.2d 711, 721 (7th Cir. 1992) (citing Moore v. Marketplace Restaurant, Inc., 754 F.2d 1336, 1352 (7th Cir. 1985)).

Plaintiffs contend that defendant Krueger and Judge Reynolds collaborated to deprived plaintiffs of their right to due process. However, a civil conspiracy entails an agreement between two or more parties 'to inflict a wrong against or injury upon another,' and 'an overt act that results in damage.'" Hampton, 600 F.2d at 621 (citing Rotermund

v. United States Steel Corp., 474 F.2d 1139 (8th Cir. 1973)). Plaintiffs' claim against defendant Krueger fails because, contrary to what plaintiffs believe, Krueger's alleged acts did not result in constitutional damage to plaintiffs.

Even if plaintiffs could successfully prove that Judge Reynolds and defendant Krueger conspired to violate the rules of procedure in the course of the circuit court action, those violations would not amount to a deprivation of constitutional due process. Because plaintiffs could challenge defendant Krueger's and Judge Reynolds's alleged misdeeds in circuit court case 2002CV0031 by taking an appeal to a Wisconsin state appellate court, they cannot establish that the state has deprived them of due process. Guenther v. Holmgreen, 738 F.2d 879, 882 (7th Cir. 1984) ("a victim of a property or liberty deprivation who has recourse to an adequate state remedy has not been denied 'due process of law'"); see also Hood v. City of Chicago, 927 F.2d 312, 314 (7th Cir. 1991) (plaintiff not deprived of liberty without due process of law where state provides adequate tort law remedies). Because plaintiffs fail to state a claim of a violation of their right to due process, they fail also to state a claim of a conspiracy between defendant Krueger and Judge Reynolds to deprive them of a constitutional right. Accordingly, plaintiffs' federal law claim against defendant Krueger will be dismissed.

C. Unlawful Arrest and Prosecution

In their complaint, plaintiffs describe Aleksandra Cichowski's allegedly unlawful arrest and prosecution as follows:

Aleksandra Cichowski's rights guaranteed to her under the 4th amendment of the Constitution of The United States were violated when she was arrested for delivering the subpoena to the president of the Bank of Mauston Mr. Robert Fait, who tried to frame Aleksandra in the Bank Robbery. Police failed to investigate, and in fact police was fully aware that there was a complaint filed by Cichowski regarding the Bank of Mauston. This did not preclude the police from arresting Aleksandra Cichowski for no apparent reasons, other than being present in the Bank.

Despite the requests to the president [of the bank] and his attorney Mr. Hollenbeck tapes were never released to Cichowski and case was dropped, records expunged. However it costs Aleksandra half a year coming to court and fighting for expunging records. The Bank of Mauston violated the 14th amendment to the Constitution of United States "Equal protection of the laws" when Robert Fait and Tom Schmidt falsely initiated criminal action against Cichowski in order to prevent Bank's employees from testifying during the trial and for the purpose of hiding their forgeries and other criminal violation done by the Bank of Mauston employees; Mr. Fait, Kelly Honnold and Scott Schmidt. This is not an equal protection when a person from lower socioeconomic status with an accent can not file a complain anywhere in the United States because their complaint are not investigated, by the police or any other government institution, FBI, Financing Institution, White Collar Crime, Attorney General, yet there is proof for the forgeries that when done by Cichowskis they would be sent to jail.

At the end of the complaint, plaintiffs request relief

against The Bank of Mauston, Robert Fait and Tom Schmidt for illegally initiating criminal action against Aleksandra Cichowski and illegal arrest as well as hiding evidence never disclosing a tape from the bank August 10, 2004 8am to 1:00pm.

I understand plaintiffs to be asserting two claims against the Bank of Mauston, Robert Fait and Tom Schmidt. First, plaintiffs appear to contend that defendants Bank of Mauston, Robert Fait and Tom Schmidt violated plaintiff Aleksandra Cichowski's right to be free from unlawful arrests under the Fourth Amendment. Although Fait and Schmidt are not state actors and neither is the bank, private actors who collaborate with a state official to deny an individual his constitutional rights may be said to be acting under color of state law. Starnes, 39 F.3d at 1397. It is possible to infer from plaintiffs' allegations that Fait collaborated with the police to effect Aleksandra Cichowski's arrest when he suggested to the police that Aleksandra Cichowski was involved in a bank robbery.

Although plaintiffs could have explained in greater detail the actions of Fait and of the state official to support an argument that they reached an agreement to violate plaintiff Aleksandra Cichowski's Fourth Amendment rights, I must give liberal construction to their complaint. At this early stage of the proceedings I conclude that plaintiffs' allegations are sufficient to state a claim against defendant Fait. Plaintiffs should be aware that if they want to hold defendant Fait found liable for violating plaintiff Aleksandra Cichowski's Fourth Amendment rights, they will have to prove that Fait and a state official had a "meeting of the minds" and reached an agreement to deprive her of her rights. Sparkman v. McFarlin, 601 F.2d 261, 264 (7th Cir. 1979).

In their request for relief plaintiffs also name defendants Tom Schmidt and the Bank

of Mauston as having violated the Fourth Amendment. However, plaintiffs did not allege any facts suggesting how defendant Schmidt may have been involved in Aleksandra Cichowski's allegedly unlawful arrest. Therefore, I will dismiss plaintiffs' claim against defendant Tom Schmidt. As for defendant Bank of Mauston, a bank is an entity that can be held liable only through the principles of agency law. I will not dismiss plaintiffs' claim against the bank at this point, but plaintiffs should be aware that the bank will be found liable only if plaintiffs prove first defendant Fait's liability and then prove that the bank shares his liability.

Next, I understand plaintiffs to allege that defendants Bank of Mauston, Robert Fait and Tom Schmidt violated plaintiff Aleksandra Cichowski's right to equal protection under the Fourteenth Amendment when they initiated criminal action against her. Again, because these defendants are not state actors, they could be held liable for engaging in malicious prosecution only if plaintiffs can prove that they acted in concert with state actors to deprive plaintiffs of a constitutional right. I need not analyze the interactions of the defendants and possible state actors in this instance, however, because regardless whether such a meeting of the minds occurred, plaintiffs' claim of malicious prosecution would fail. Plaintiffs have not alleged facts from which an inference may be drawn that plaintiff Aleksandra Cichowski was deprived of her Fourteenth Amendment right to equal protection.

Although it is not entirely clear, plaintiffs' contention appears to be that defendants

engaged in the malicious prosecution of Aleksandra Cichowski because she was a person a low socioeconomic status who was not a native English speaker. The equal protection clause of the Fourteenth Amendment guarantees that “all persons similarly situated should be treated alike.” City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, 439 (1985). For plaintiffs to establish a claim of equal protection violation they would have to allege that defendants gave differential treatment to persons who were similarly situated to Aleksandra Cichowski but who were not of low socioeconomic status and who were native English speakers. That is, plaintiffs would have to allege facts suggesting that defendants did not maliciously prosecute other native English-speaking individuals of greater socioeconomic status who were similarly situated to plaintiff Aleksandra Cichowski in all other respects and who went to the Bank of Mauston to serve subpoenas on its employees. Plaintiffs have not come close to suggesting that this was the case. Accordingly, plaintiffs have failed to establish a claim that defendants violated Aleksandra Cichowski’s constitutional right to equal protection. I will dismiss this claim against defendants Bank of Mauston, Robert Fait and Tom Schmidt.

ORDER

IT IS ORDERED that

1. Defendants Gitter, Maffei, M&I Bank and Cross, Jenks, Mercer and Maffei's motion to dismiss is GRANTED and defendants Gitter, Maffei, M&I Bank and Cross, Jenks, Mercer and Maffei are dismissed from this action.

2. Defendant Krueger's motion to dismiss is GRANTED and defendant Krueger is dismissed from this action.

3. Defendants Fred D. Hollenbeck, Thomas Casey, Robert Fait, Tom Schmidt, Kelly Honnold, Scott Schmidt, Curran, Hollenbeck & Orton, S.C. and Bank of Mauston's motion to dismiss is GRANTED as to plaintiffs' claim that they engaged in a conspiracy to commit fraud and defendants Fred D. Hollenbeck, Thomas Casey, Tom Schmidt, Kelly Honnold, Scott Schmidt and Curran, Hollenbeck & Orton, S.C. are dismissed from this action.

4. Defendants Robert Fait, Tom Schmidt and Bank of Mauston's motion to dismiss plaintiffs' claim that they violated Aleksandra Cichowski's Fourth Amendment rights is DENIED as to Robert Fait and Bank of Mauston and GRANTED as to Tom Schmidt.

5. Defendants Robert Fait, Tom Schmidt and Bank of Mauston's motion to dismiss plaintiffs' claim that they violated Aleksandra Cichowski's Fourteenth Amendment rights is GRANTED.

This order disposes of the following motions: (a) defendants Gitter, Maffei, M&I

Bank and Cross, Jenks, Mercer and Maffei's June 20, 2005, motion to dismiss (Dkt. #10); (b) defendants Gitter, Maffei, M&I Bank and Cross, Jenks, Mercer and Maffei's August 4, 2005, renewed motion to dismiss (Dkt. #30); (c) defendant Krueger's June 28, 2005, motion to dismiss (Dkt. #13); and (d) defendants Fred D. Hollenbeck, Thomas Casey, Robert Fait, Tom Schmidt, Kelly Honnold, Scott Schmidt, Curran, Hollenbeck & Orton, S.C. and Bank of Mauston's August 9, 2005, motion to dismiss (Dkt. #39).

Entered this 22nd day of November, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge