

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

GNANA M. CHINNIAH, <u>et al.</u>	:	
Plaintiffs	:	No. 1:15-cv-02240
	:	
v.	:	(Judge Kane)
	:	
EAST PENNSBORO TOWNSHIP, <u>et al.</u>	:	
Defendants	:	

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Before the Court is Magistrate Judge Mehalchick’s August 14, 2017 Report and Recommendation (Doc. No. 118), recommending that the Court grant Defendants’ four motions to dismiss Plaintiffs’ amended complaint, dismiss Plaintiffs’ federal civil rights claims with prejudice, dismiss Plaintiffs’ state law claims without prejudice, and close the above-captioned case. Plaintiffs did not file objections to the Report and Recommendation within the fourteen (14) day period prescribed by Local Rule 72.3. Instead, on August 24, 2017, Plaintiffs filed a motion to stay these proceedings (Doc. No. 119), which included an alternate request for an extension of time to file objections to the pending Report and Recommendation.

By Order dated September 14, 2017 (Doc. No. 123), this Court denied Plaintiffs’ motion to stay, but granted Plaintiffs fourteen (14) days, until September 28, 2017, to file any objections to Magistrate Judge Mehalchick’s Report and Recommendation. Rather than file objections to the Report and Recommendation, on September 27, 2017, Plaintiffs filed a notice of appeal of this Court’s September 14, 2017 Order denying Plaintiffs’ motion to stay. Plaintiffs’ appeal of the Court’s September 14, 2017 Order does not divest the Court of jurisdiction over the pending Report and Recommendation. Bensalem Twp. v. Intl. Surplus Lines Ins. Co., 38 F.3d 1303,

1315 (3d Cir. 1994) (quoting Mondrow v. Fountain House, 867 F.3d 798, 799 (3d Cir. 1989) (holding that a “premature notice of appeal does not divest the district court of jurisdiction”). Subject to limited exceptions not applicable here, an appeal can only be taken from a final order of a district court. See 28 U.S.C. § 1291.¹ Accordingly, Plaintiffs’ notice of appeal is procedurally defective and a legal nullity, and thus, this Court retains jurisdiction over this action for purposes of the pending Report and Recommendation on the Defendants’ motion to dismiss.

ACCORDINGLY, on this 29th day of September 2017, upon independent review of the record and the applicable law, **IT IS ORDERED THAT:**

1. The Court **ADOPTS** the Report and Recommendation (Doc. No. 118), of Magistrate Judge Mehalchick;
2. Defendants’ motions to dismiss (Doc. Nos. 94, 96, 97, 99), are **GRANTED**;
3. All federal law claims asserted in Plaintiffs’ second amended complaint are **DISMISSED WITH PREJUDICE** for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6);
4. All remaining state law claims asserted in Plaintiffs’ second amended complaint are **DISMISSED WITHOUT PREJUDICE** to Plaintiffs’ ability to refile those claims in state court; and
5. The Clerk of Court is directed to **CLOSE** this case.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania

¹ The Court notes that Plaintiffs previously filed three premature appeals in this matter (Doc. Nos. 91, 112, 116), all of which were dismissed for lack of jurisdiction. (See Doc. Nos. 111, 117, Chinniah et al. v. East Pennsboro Twp., et al., No. 17-1582 (3d Cir. Apr. 13, 2017).)