UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 24-2867

RICHARD J. SILVERBERG,
Appellant

v.

DUPONT DE NEMOURS INC.; DOW, INC.; CORTEVA, INC.; INTERNATIONAL FLAVORS & FRAGRANCES, INC.; AVANTOR, INC.; et al.

No. 25-1642

RICHARD J. SILVERBERG,
Appellant

v.

DUPONT DE NEMOURS INC.; DOW INC.; CORTEVA INC.; INTERNATIONAL FLAVORS & FRAGRANCES; AVANTOR INC.; et al.

Appeal from the U.S. District Court, E.D. Pa.
Judge Barclay Surrick,
Nos. 2:23-cv-01868 & 2:24-cv-00924

Before: MATEY, FREEMAN, and CHUNG, *Circuit Judges*
Submitted: March 19, 2026; Decided: August 18, 2026

NONPRECEDENTIAL OPINION*

FREEMAN, *Circuit Judge*. In two civil cases—District Court Nos. 23-cv-01868 ("*Silverberg III*") and 2:24-cv-00924 ("*Silverberg IV*")—Richard J. Silverberg asserts that a host of parties violated more than a dozen federal and state laws. The District Court denied some of Silverberg's motions and dismissed both cases. For the reasons discussed

*This is not an opinion of the full Court and, under 3d Cir. IOP 5.7, is not binding precedent.

below, we will MODIFY the dismissal orders and AFFIRM them as modified. We also will AFFIRM the other orders on appeal.

I

In his complaints for relief, Silverberg alleges a long-ranging scheme to dissuade him from publishing a book detailing malfeasance by the City of Philadelphia (the "City"), City officials, and numerous private entities and individuals.

A[1]

Silverberg's claims relate to three groups of underlying legal matters: (1) Silverberg's legal representation of Mark Jackson (the "*Jackson* actions"), (2) the City's pursuit of unpaid taxes from Silverberg (the "tax cases"), and (3) Pennsylvania attorney disciplinary proceedings against Silverberg (the "attorney disciplinary proceedings").

The *Jackson* actions. Silverberg represented Jackson in a lawsuit against Rohm & Haas Company filed in 1999 in Pennsylvania courts. When Jackson did not prevail in state court, Silverberg represented Jackson in three federal actions against Rohm & Haas and several other defendants. The federal actions accused the defendants of malfeasance in the state-court litigation. Jackson did not succeed in the federal suits, but Silverberg alleges that those suits triggered a series of fraudulent transactions between the defendants in the current cases.

[1] We recite the facts as alleged in the complaint in the light most favorable to Silverberg. *See Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008).

In 2016, Silverberg sent an email to defense counsel in the *Jackson* actions. As relevant here, he wrote the following:

> It seems like a good time to let you and others know that I will soon be completing my book concerning the *Jackson* odyssey. As I expected, this project has generated great interest since the cases are a window into a complex and disturbing aspect of corporate America, the conduct of corporate officials and corporate counsel, and our broken justice system. While the book examines the underlying conduct it also explores the business judgment, legal and strategic decisions, individual actions, and judicial proceedings that cumulatively led to and killed-off multiple causes of action.

App. 74 (citation modified).[2]

Silverberg alleges that the *Jackson* defendants' receipt of this notice about his forthcoming book caused those parties to conspire to stop the book's publication. To do so, they commenced what Silverberg calls a "proxy war." App. 17. That is, they bribed the City to enforce a tax judgment that was entered against Silverberg in 2008.

<u>The tax cases.</u> In 2008, the City sued Silverberg and his law firm for unpaid taxes, and a state court entered a default judgment against Silverberg and his firm. The City served writs of attachment to Silverberg's banks in 2008 and entered a suggestion of nonpayment in 2013.

The City resumed its collection efforts in 2017, just months after Silverberg told the *Jackson* defendants about his forthcoming book. Silverberg unsuccessfully moved to stop enforcement of the judgment. Then, in 2019, the City sued Silverberg under the

[2] "App." citations refer to the appendix in Appeal No. 24-2867 (the *Silverberg III* appeal) unless otherwise noted.

Pennsylvania Uniform Fraudulent Transfer Act ("PUFTA"), alleging he fraudulently transferred assets in 2011 to avoid paying the tax judgment. A state court entered another default judgment against Silverberg in the PUFTA case.

Silverberg and attorneys for the City sought to negotiate a resolution to both judgments. When those efforts failed, the City served writs of attachment against Silverberg's bank accounts and sought to foreclose upon a property that Silverberg owned in Philadelphia. Silverberg contends that the City's refusal of his settlement offers in the tax cases shows that the City's enforcement efforts are aimed at harassing him, not collecting his outstanding tax liabilities.

<u>The attorney disciplinary proceedings.</u> In 2022, the Pennsylvania office that handles attorney discipline ("ODC")[3] notified Silverberg that he was the subject of attorney misconduct complaints relating to the tax cases. ODC later served Silverberg with a formal petition for discipline, and it informed Silverberg that the complaints came from one of the judges who presided over the tax cases (Judge Anders) and one of the City's attorneys in the tax cases. The attorney disciplinary proceedings were ongoing when *Silverberg IV* was litigated in the District Court.

B

These appeals concern Silverberg's third and fourth lawsuits challenging the City's actions related to the tax cases. Five years ago, we affirmed the dismissal of the first

[3] "ODC" is the Disciplinary Board of the Supreme Court of Pennsylvania's Office of Disciplinary Counsel.

lawsuit ("*Silverberg I*") because the complaint violated the *Rooker-Feldman* doctrine. *Silverberg v. City of Philadelphia*, 847 F. App'x 152, 156 (3d Cir. 2021) (non-precedential). On the day we issued our opinion in *Silverberg I*, Silverberg voluntarily dismissed his second lawsuit ("*Silverberg II*").

In *Silverberg III* and *Silverberg IV*, Silverberg again challenges the City's actions, asserting that they were part of a vast conspiracy that he labels the "proxy war." The amended complaint in *Silverberg III* is over 100 pages long; names 24 defendants (plus 15 John Does); and asserts violations of 42 U.S.C. § 1983, RICO, and state common law.

The amended complaint in *Silverberg IV* incorporates the *Silverberg III* amended complaint by reference. It names all the defendants in *Silverberg III*, plus two judges who presided over the tax cases (Judges Anders and Roberts), ODC, and ODC's counsel. It essentially asserts the same causes of action as *Silverberg III*, but it adds allegations that the attorney disciplinary proceedings are a continuation of the "proxy war."

The District Court dismissed the *Silverberg III* amended complaint with prejudice in a September 2024 order. In the opinion that followed, it stated that the *Rooker-Feldman* doctrine precludes the exercise of subject matter jurisdiction over Silverberg's claims. It recognized that dismissals for lack of subject matter jurisdiction are normally without prejudice, but it opined that Silverberg's conduct warranted a with-prejudice dismissal. It noted that Silverberg had filed four lawsuits,[4] all seeking to reverse or nullify the state court

[4] Silverberg filed *Silverberg IV* in March 2024, while *Silverberg III* was pending in the District Court.

judgments in the tax cases, and Silverberg was not deterred by this Court's decision in the *Silverberg I* appeal. It also noted that Silverberg's multiple injunction motions, motions for partial summary judgment, and requests for default have caused many defendants to expend significant resources. After dismissing the amended complaint, the District Court issued an October 2024 order dismissing Silverberg's extant motion for partial summary judgment.

In Appeal No. 24-2867, Silverberg appeals the September 2024 order dismissing the *Silverberg III* complaint and the October 2024 order dismissing the motion for partial summary judgment. He also appeals an August 2023 order in which the District Court denied his prior partial-summary-judgment motion without prejudice, deeming the motion premature because it was filed before the defendants' deadline to respond to the original complaint.

The District Court dismissed the *Silverberg IV* amended complaint with prejudice in a March 2025 order. In the opinion that followed, it held that (1) the *Rooker-Feldman* doctrine precludes the exercise of subject matter jurisdiction over Silverberg's claims challenging the judgments in the tax cases, (2) judicial immunity bars the claims against the state court judges, (3) Eleventh Amendment immunity and quasi-judicial immunity bar the claims against the ODC Defendants, and (4) *Younger* abstention bars interference in the disciplinary proceedings. The District Court also opined that dismissal with prejudice was warranted for the reasons it stated in its *Silverberg III* opinion.

In Appeal No. 25-1642, Silverberg appeals the March 2025 dismissal order in *Silverberg IV*.

II[5]

With some modifications, we will affirm all orders on appeal. First, the District Court was correct to dismiss the partial-summary-judgment motion in *Silverberg III* as premature. *Doe v. Abington Friends Sch.*, 480 F.3d 252, 257 (3d Cir. 2007) ("If discovery is incomplete in any way material to a pending summary judgment motion, a district court is justified in not granting the motion").[6] And the amended complaints in *Silverberg III* and *Silverberg IV* were properly dismissed, although some claims must be dismissed without prejudice for lack of subject matter jurisdiction.[7]

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[5] The District Court had jurisdiction under 28 U.S.C. § 1331 and § 1367. We have jurisdiction under 28 U.S.C. § 1291. We exercise plenary review of a district court's dismissal orders and its application of the *Rooker-Feldman* and *Younger* abstention doctrines. *United States v. Safehouse*, 146 F.4th 315, 319 (3d Cir. 2025) (dismissal orders); *Lazaridis v. Wehmer*, 591 F.3d 666, 670 (3d Cir. 2010) (*Rooker-Feldman* and *Younger* abstention). We "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips*, 515 F.3d at 233 (citation modified); *see also Petruska v. Gannon Univ.*, 462 F.3d 294, 299 n.1 (3d Cir. 2006) (noting that the same standard applies to a facial Rule 12(b)(1) dismissal or a Rule 12(b)(6) dismissal for failure to state a claim). We may affirm a district court's judgment on any basis supported by the record. *Lazaridis*, 591 F.3d at 670.

[6] Additionally, the second partial-summary-judgment motion became moot when the amended complaint was dismissed.

[7] Silverberg argues that the District Court misconstrued the claims that it dismissed under the *Rooker-Feldman* doctrine. *See Allen v. DeBello*, 861 F.3d 433, 438 (3d Cir. 2017) (recounting that the *Rooker-Feldman* doctrine prohibits district courts from exercising subject matter jurisdiction if "(1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgments; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff [invites] the district court to review and reject the state judgments." (quoting *Great W. Mining & Min. Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010)). He urges us to construe his claims such that the District Court had subject matter jurisdiction. We have done so to the extent possible. As discussed below, those claims were properly dismissed on the merits, with prejudice.

A

The ODC Defendants and the judges were properly dismissed, primarily on immunity grounds.

As an arm of the Pennsylvania Supreme Court, ODC has Eleventh Amendment immunity from suit. *See Capogrosso v. Sup. Ct. of New Jersey*, 588 F.3d 180, 185 (3d Cir. 2009). ODC's employees also have Eleventh Amendment immunity from suits for damages brought against them in their official capacities, and they have quasi-judicial immunity from individual-capacity suits for injunctive or declaratory relief. *Id.*

All of Silverberg's allegations regarding Judge Roberts and most of his allegations regarding Judge Anders pertain to judicial actions those judges took in the tax cases. The judges have absolute immunity from suit for those actions. *See Azubuko v. Royal*, 443 F.3d 302, 303–04 (3d Cir. 2006). Even assuming Judge Anders acted outside of his judicial capacity when he lodged a complaint with ODC, Silverberg failed to state a claim against Judge Anders for the reasons discussed below in our discussion of other defendants. *See infra* Section II.C.

B

Silverberg's allegations are too conclusory to state a claim against several defendants.[8] *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). He alleges, upon information

[8] This conclusion applies to the following Defendants: Dupont de Nemours, Inc.; Dow, Inc.; Corteva, Inc.; International Flavors & Fragrances; Avantor, Inc; Liberty Mutual Group. Inc.; William Penn Foundation; Ballard Spahr LLP; Edward Breen; Rajiv Gupta; Andreas Fibig; David H. Long; Timothy Buckley; Andrew Liveris; Janet Haas, MD; and all John Doe defendants associated with the entities on this list.

and belief, that his email to the *Jackson* defendants about his forthcoming book caused numerous individuals and their associated entities to engage in a "proxy war" against him. He also alleges that the City's subsequent actions in the tax cases are the fruits of the proxy war. But he fails to allege any facts connecting a tranche of defendants with the City's actions in the tax cases. As a result, his allegations do not "raise a reasonable expectation that discovery will reveal evidence of illegal agreement" involving those defendants. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007); *see also Great W. Mining & Min. Co.*, 615 F.3d at 179.

C

All claims against the remaining defendants in *Silverberg III* and *Silverberg IV* were properly dismissed for failure to state a claim or because the District Court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine.[9]

RICO Claims. To plead a civil RICO claim, a complaint must plausibly allege at least two predicate acts of racketeering activity. *See* 18 U.S.C. § 1961(1), (5). Here, Silverberg alleges four predicate acts: (1) extortion under 18 U.S.C. § 1951, (2) witness tampering under 18 U.S.C. § 1512, (3) obstruction of justice under 18 U.S.C. § 1503, and

[9] The remaining defendants are as follows: (1) the City, its employees, and the private parties associated with the City's enforcement of the tax judgments (the "City Defendants")—*i.e.*, the City, Gellert Scali Busenkell & Brown, LLC; Gary Seitz; James Kenney; Marcel S. Pratt; Diana Cortes; Marrissa O'Connell; and Brian Cullin; (2) the Vanguard Group, Inc.; (3) the ODC and its employees (the "ODC Defendants")—*i.e.*, the ODC, Thomas J. Farrell, and Richard Hernandez; Judges Joshua Roberts and Daniel Anders; and all John Doe defendants associated with the entities on this list.

(4) mail and wire fraud under 18 U.S.C. §§ 1341 and 1343. But the facts he alleges do not support these predicate acts.

The City Defendants' efforts to collect the judgments in the tax cases do not constitute extortion "under color of official right" because those money judgments were due to the City. *See* 18 U.S.C. § 1951; *United States v. Manzo*, 636 F.3d 56, 62–65 (3d Cir. 2011) (interpreting extortion "under color of official right" in § 1951 to require a taking of something not due to the official).[10] And the facts do not support a violation of the witness tampering statute because Silverberg does not allege that any defendant (1) influenced or obstructed the presentation of witness testimony or evidence in the tax cases, *see* 18 U.S.C. § 1512(b), (d); or (2) impaired any record or document in the tax cases, *see id.* § 1512(c); *Fischer v. United States*, 603 U.S. 480, 498 (2024) (construing both 18 U.S.C. § 1512(c)(1) and (c)(2) to apply to the "impair[ment]" of "records, documents, objects" or other items "used in [an official] proceeding").

Obstruction of justice applies to the obstruction of federal court proceedings, not state court proceedings like the tax cases. *See* 18 U.S.C. § 1503(a). And Silverberg does not allege mail or wire fraud because a scheme to dissuade him "from moving forward with his anticipated book," App. 170, is not a scheme to defraud him of money or property. *See* 18 U.S.C. §§ 1341 and 1343; *accord United States v. Pierce*, 224 F.3d 158, 165 (2d Cir.

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[10] Any argument that the City was not entitled to collect on the judgments in the tax cases would require this Court to review and reject the existing judgments, which is barred by *Rooker-Feldman*. *See Merritts v. Richards*, 62 F.4th 764, 777–78 (3d Cir. 2023).

2000) ("A scheme to deceive, however dishonest the methods employed, is not a scheme to defraud in the absence of a property right for the scheme to interfere with.").[11]

Because Silverberg's RICO claims fail, so too does his derivative claim for RICO conspiracy. *See Lightning Lube, Inc. v. Witco Corp.*, 4 F.3d 1153, 1191 (3d Cir. 1993).

Constitutional Claims. Silverberg's constitutional claims under 42 U.S.C. § 1983 also fail.

In his First Amendment claims, Silverberg alleges that the City Defendants conspired to enforce the judgments in the tax cases with the aim of (1) deterring him from revealing defendants' wrongful acts in a book, and (2) retaliating against him for filing *Silverberg I* and *Silverberg II*. But he has not alleged that the City Defendants knew of his threat to publish a book. *See Ambrose v. Twp. of Robinson*, 303 F.3d 488, 493 (3d Cir. 2002) ("It is only intuitive that for protected conduct to be a substantial or motiv[at]ing factor in a decision, the decisionmakers must be aware of the protected conduct."). That leaves the assertion that the City Defendants retaliated against him for filing *Silverberg I* and *Silverberg II*. Silverberg asks us to infer retaliation from the City's settlement offer in the tax cases, which included a condition that Silverberg release his claims against the City in *Silverberg I* and *Silverberg II*. But that condition is not evidence of retaliatory motive. *See Lauren W. ex rel. Jean W. v. DeFlaminis*, 480 F.3d 259, 269 (3d Cir. 2007) (rejecting

[11] To the extent that Silverberg alleges a fraud to deprive him of the money he owed in the tax cases, the District Court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine.

an argument that "when parties are in a dispute and are discussing its resolution, one side, in advancing its position is negotiating, and the other is retaliating").

Silverberg also claims that the enforcement of the judgment in the tax cases violated his Due Process rights. He does not specify whether this is a substantive or procedural due process claim, but it fails under either theory. The City Defendants' actions do not "shock the conscience" as required for a substantive due process claim. *Kane v. Barger*, 902 F.3d 185, 192 (3d Cir. 2018). And Silverberg does not allege that he was denied the procedural protections required in tax enforcement actions. *See Berne Corp. v. Gov't of the Virgin Islands*, 570 F.3d 130, 138 (3d Cir. 2009).

State Law Claims. Silverberg's state law claims fare no better.

Silverberg's abuse-of-process claims fail because no allegations support that the tax cases were "so lacking in justification as to lose [their] legitimate function[s] as . . . reasonably justifiable litigation procedure[s]." *Gen. Refractories Co. v. Fireman's Fund Ins. Co.*, 337 F.3d 297, 308 (3d Cir. 2003).[12] And he fails to state a common law fraud claim because his generalized allegations do not comply with Rule 9(b)'s particularity requirement by, for instance, specifying which statements by which defendants are

[12] To the extent that Silverberg raises an abuse of process claim against his disciplinary proceedings, *Younger* abstention was warranted. *See Younger v. Harris*, 401 U.S. 37 (1971). The *Younger* doctrine prohibits federal courts from enjoining state court proceedings when: (1) the proceedings are "ongoing and judicial in nature," (2) "implicate important state interests," and (3) "afford an adequate opportunity to raise federal claims." *Borowski v. Kean Univ.*, 68 F.4th 844, 849 (3d Cir. 2023).

fraudulent or false. Fed. R. Civ. P. 9(b); *Frederico v. Home Depot*, 507 F.3d 188, 200–02 (3d Cir. 2007) (applying Rule 9(b) to a common law fraud claim).

The tortious interference claim cannot succeed because the City Defendants acted with "privilege or justification" when they sought to enforce a judgment by attaching his bank accounts and seeking to foreclose on his property. *See Acumed LLC v. Advanced Surgical Servs., Inc.*, 561 F.3d 199, 212–15 (3d Cir. 2009); Restatement (Second) of Torts § 767 cmts. b, c (A.L.I. 1979). The conversion claim fails for a similar reason: Silverberg cannot plausibly allege that the City Defendants acted "without legal justification" when they sought to enforce the tax judgments.[13] *See Universal Premium Acceptance Corp. v. York Bank & Tr. Co.*, 69 F.3d 695, 704 (3d Cir. 1995) (citation modified).

Nor can the collection of duly issued tax judgments constitute intentional infliction of emotional distress because those collection efforts were not "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." *Hoy v. Angelone*, 720 A.2d 745, 754 (Pa. 1998) (citation modified).

Lastly, because the state and federal claims over which the District Court had subject matter jurisdiction fail, his civil conspiracy claims also fail. *See Boyanowski v. Cap. Area Intermediate Unit*, 215 F.3d 396, 405–06 (3d Cir. 2000).

[13] To the extent that he sought to do so, the District Court lacked subject-matter jurisdiction under the *Rooker-Feldman* doctrine.

Challenges to Disciplinary Proceedings. Silverberg's defamation claim and his claim for intentional infliction of emotional distress with respect to the disciplinary proceedings are barred by the *Younger* abstention doctrine. *See Addiction Specialists, Inc. v. Twp. of Hampton*, 411 F.3d 399, 408–09 (3d Cir. 2005) (deeming a proceeding "ongoing" for *Younger* abstention purposes because it was pending when the plaintiff "filed [his] initial complaint in federal court"), *abrogated on other grounds by Spring Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013). In his appellate brief, Silverberg urges us to apply the "bad faith" exception to *Younger*. But he alleges instances of bad faith that do not appear in the *Silverberg IV* complaint. Because the record does not support the bad faith exception, *see Juidice v. Vail*, 430 U.S. 327, 338 (1977); *accord Klayman v. Porter*, 104 F.4th 298, 312 (D.C. Cir. 2024), the District Court properly abstained. Dismissal with prejudice was required. *Lui v. Comm'n, Adult Ent.*, 369 F.3d 319, 327 (3d Cir. 2004).

III

The District Court was correct to dismiss all claims in *Silverberg III* and *Silverberg IV*. For the most part, dismissal with prejudice was warranted. However, the dismissals should have been without prejudice where (1) the District Court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine or (2) dismissal was proper on Eleventh Amendment immunity grounds. *See Associated Builders & Contractors W. Pa. v. Cmty. Coll. of Allegheny Cnty.*, 81 F.4th 279, 291 (3d Cir. 2023); *Merritts*, 62 F.4th at 769. Thus, we will modify the District Court's dismissal orders to be without prejudice as to the claims we have resolved on either of those grounds.[14]

* * *

For the above reasons, in Appeal No. 24-2867 we will AFFIRM the District Court's August 2023 and October 2024 orders. We also will MODIFY the District Court's September 2024 to be a dismissal in part with prejudice and in part without prejudice, and we will AFFIRM that order AS MODIFIED.

In Appeal No. 25-1642, we will MODIFY the District Court's March 2025 order to be a dismissal in part with prejudice and in part without prejudice, and we will AFFIRM that order AS MODIFIED.

[14] All of Silverberg's pending motions are denied.