

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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SB BUILDING ASSOCIATES, L.P., et al.,	:	
	:	Civil Action No. 07-4127 (AET)
Plaintiffs,	:	
	:	
v.	:	<u>MEMORANDUM & ORDER</u>
	:	
BOROUGH OF MILLTOWN, et al.,	:	
	:	
Defendants.	:	
_____	:	

THOMPSON, U.S.D.J.

INTRODUCTION

This matter comes before the Court upon the Motion for Judgment on the Pleadings [17] by the Borough of Milltown (“Borough”), the Mayor and Council of Milltown, and the Milltown Ford Avenue Redevelopment Agency (“Redevelopment Agency”) (collectively “Defendants”); the Motion for Partial Summary Judgment [19] by SB Building Associates, L.P., SB Milltown Industrial Realty Holdings, LLC, and Alsol Corporation (collectively “Plaintiffs”); and, Defendants’ Cross Motion for Partial Summary Judgment [26]. The Court has decided these motions based upon the submissions of the parties, without oral argument, pursuant to Fed. R. Civ. P. 78. For the reasons stated below, Defendants’ Motion for Judgment on the Pleadings is granted, and Plaintiffs’ Motion for Summary Judgment is denied as moot, as is Defendants’ Cross Motion for Summary Judgment. Pursuant to 28 U.S.C. § 1367(c), this Court declines to exercise its supplemental jurisdiction over any of Plaintiffs’ state law claims.

BACKGROUND

A. Factual Background

In February 2001, the Borough Planning Board (“Planning Board”) initiated an investigation to determine if property belonging to Plaintiffs was in “an area in need of redevelopment.”¹ In May 2001, the Planning Board adopted a resolution recommending Plaintiffs’ property (“Ford Avenue Site”) as an area in need of redevelopment. Four months later, the Borough created the Redevelopment Agency. In March 2002, the Borough adopted a redevelopment plan which included the Ford Avenue Site as an area in need of redevelopment. In August 2002, the Borough issued a request for proposals to redevelop the Ford Avenue site and, in May 2004, entered into an agreement with Boraie Development, LLC (“Boraie”), to redevelop the Ford Avenue Site. In August 2004, the Borough adopted a revised redevelopment plan (“Redevelopment Plan”) as the zoning ordinance applicable to the Ford Avenue Site.

The Redevelopment Plan gave broad authority to Boraie. Among their powers, Boraie was authorized to acquire the Ford Avenue Site, either voluntarily or through the state’s eminent domain powers. Boraie was also given the exclusive right to redevelop the Ford Avenue Site. In September 2006, in its capacity as the designated redeveloper, Boraie applied for site plan and subdivision approval for the Ford Avenue Site. The Planning Board declared the application complete. After disseminating public notice of the application and a schedule of hearings, and after distributing handwritten notices to those within proximity of the Ford Avenue Site, public hearings commenced. Also at that time, authorities applied for a wetlands letter of interpretation (“LOI”) from the New Jersey Department of Environmental Protection (“NJDEP”) regarding the

¹ An area in need of redevelopment is an area deemed to be blighted as defined by New Jersey Redevelopment Laws. N.J.S.A 40:55-21.1.

Ford Avenue Site. The LOI authorizes representatives of the Redevelopment Agency and the NJDEP to enter onto the Ford Avenue Site for the purpose of ascertaining wetlands boundaries and marking them with flags, stakes or other physical markers. Defendants continued their redevelopment efforts and have indicated an intent to complete the redevelopment process. Plaintiffs, though filing suit in this Court and in the courts of New Jersey, have not filed alternate plans with the Borough or exercised their property rights in a manner that expressed dissent with the Borough's redevelopment proceedings or the Redevelopment Plan.

B. Procedural Background

Plaintiffs have initiated three separate proceedings. The first lawsuit ("First Lawsuit") was filed in the Superior Court of New Jersey, Law Division, Middlesex County, on November 30, 2006. Plaintiffs sued to block the Borough's attempts to proceed with the redevelopment of the Ford Avenue Site. In June 2007, Defendants prevailed on summary judgment. The court concluded Plaintiffs were aware of Defendants' municipal redevelopment proceedings and therefore not entitled to the injunctive relief they requested. The court also found that the Borough had followed the relevant statutory procedures in the different facets of the redevelopment process—namely, designation of the property as in need of redevelopment, adoption of a redevelopment plan, creation of an overseeing agency, and assignment of a redeveloper. The court in the First Lawsuit determined that Plaintiffs were time-barred from challenging the steps undertaken by the Borough.

Following the court's grant of summary judgment in the First Lawsuit, on April 30, 2008, Plaintiffs began a second course of litigation ("Second Lawsuit"), also in the Superior Court of New Jersey, Law Division, Middlesex County. Plaintiffs contend Defendants' assessment that

the Ford Avenue Site is in an area in need of redevelopment was outdated and an invalid basis upon which to commence future condemnation proceedings. In the Second Lawsuit, which is still pending, Plaintiffs contend that Defendants must reinitiate the redevelopment process in order to effectuate a lawful, proper redevelopment. In neither the First Lawsuit nor the Second Lawsuit do Plaintiffs explicitly allege any taking of their property.

On October 12, 2007, Plaintiffs filed an amended complaint in the instant matter (“Third Lawsuit”) which sets forth five claims for relief. Plaintiffs’ suit in this Court reargues the merits of the First Lawsuit, this time through the prism of their federal constitutional rights. Specifically, Plaintiffs contend the redevelopment process operated to deprive Plaintiffs of the exclusive right to enjoy and use their property without just compensation. This, Plaintiffs argue, violated their rights under the Fifth and Fourteenth Amendments and violated their substantive due process. Accordingly, Plaintiffs file pursuant to 42 U.S.C. § 1983. Lastly, Plaintiffs contend Defendants’ actions were unlawful under state law, namely the New Jersey Local Redevelopment and Housing Law (“NJLRHL”) N.J.S.A. 40:55-21.1.

On October 23, 2008, in this Court, the Borough filed a Motion for Judgment on the Pleadings [17]. On October 24, 2008, the Redevelopment Agency joined the instant motion [18]. That same day, Plaintiffs filed a Motion for Partial Summary Judgment [19] on Counts 1 and 4 of their complaint. On November 18, 2008, Defendants filed a Cross Motion for Partial Summary Judgment [26] also on Counts 1 and 4 of the complaint. For the reasons stated below, Defendants’ Motion for Judgment on the Pleadings [17] is granted. Accordingly, Plaintiffs’ Motion for Partial Summary Judgment [19] is denied as moot, as is Defendants’ Cross-Motion for Partial Summary Judgment [28].

DISCUSSION

Defendants move this Court for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). Defendants contend that, because Plaintiffs have not yet suffered a taking, Plaintiffs' claim is not ripe for adjudication in a federal court. Defendants also argue that, because there is no federal claim ripe for adjudication, the Court should decline to exercise its supplemental jurisdiction over any of Plaintiffs' remaining state law claims and the matter should be dismissed.

In their response to the instant motion, Plaintiffs assert they need not explicitly plead a taking and in any event, the totality of the redevelopment process amounted to an actionable taking for which they have not been justly compensated, as prescribed by the Fifth Amendment. Furthermore, Plaintiffs contend that the Borough's failure to compensate them for the taking amounts to a violation of their substantive due process, and that their claims are ripe for resolution.

A. Judgment on the Pleadings

Judgment on the pleadings is appropriate if, after the parties' respective submissions, the moving party is entitled to judgment as matter of law. Fed. R. Civ. P. 12(c). Review of the motion is plenary and judgment will not be granted unless the movant clearly establishes that there are no material issues of fact. See Sikirica v. Nationwide Ins. Co., 416 F.3d 214, 219-20 (3d Cir. 2005). The court is obliged to consider the arguments of the parties and view the facts in the light most favorable to the non-moving party. Id.

B. Ripeness

Ripeness is a threshold issue and strikes at the heart of this Court's ability to render a

decision in the matter. See Phila. Fed'n of Teachers, v. Ridge, 150 F.3d 319, 322-23 (3d Cir. 1988). To ascertain the ripeness of a takings claim, the Court employs a two-prong test. Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985). This two-step analysis requires finality of the government's actions and an exhaustion of state remedies by the plaintiff. Id. at 185-86, 194. Plaintiffs must satisfy both elements of the framework in order to establish ripeness.

1. Finality

First, a claim must satisfy the finality requirement, namely that the “[Redevelopment Agency] has reached a final decision regarding the application of the regulations to the property at issue.” Id. at 186. A property owner can demonstrate finality of a government agency's decision in different ways. The Supreme Court has indicated that clarity as to a government agency's decisions regarding a given property is not demonstrated solely by an exhaustion of administrative remedies. Id. at 192. For example, plaintiffs can demonstrate finality of the government's plans by filing plans incongruous to a redevelopment agency's plans for a property in question. In such an instance, a plaintiff can demonstrate finality.

2. Exhaustion of Just Compensation Remedies

Williamson also requires that a plaintiff in a takings case seek compensation under state law before initiating a federal claim. Id. at 194. A plaintiff's claim is not ripe for review in federal court until the plaintiff has been denied compensation under the state framework. Id. It is only when a property owner has been denied compensation by the governmental agency for his property does a takings claim ripen. After all, “[t]he Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation.” Id. (citations omitted).

Furthermore, compensation need not be made in advance of or contemporaneous with the taking. “[A]ll that is required is that a ‘reasonable, certain and adequate provision for obtaining compensation’ exist at the time of the taking.” Id. (citations and quotations omitted).

C. Plaintiffs’ Takings Claim Ripeness Analysis

Plaintiffs’ pleadings present conflicting arguments. In their complaint, Plaintiffs do not explicitly allege a taking of their property. In their opposition to the instant motion, however, Plaintiffs imply one may have occurred. Plaintiffs contend that the actions of the Borough and Redevelopment Agency caused their tenants to refrain from renewing their commercial leases and have deterred prospective tenants from entering into leases. In their response to the instant motion, Plaintiffs reposition their argument to explain that the totality of Defendants’ actions amount to a taking, despite the fact that a physical taking has not yet occurred. These arguments alone do not demonstrate ripeness under Williamson because they cannot satisfy both prongs of the test.

To be successful, Plaintiffs must demonstrate that the Redevelopment Agency has reached a final decision about developing Plaintiffs’ property. This first prong of the Williamson test is satisfied by the Borough’s own admission to redevelop the property in question. Plaintiffs, therefore, have no difficulty satisfying the first prong in Williamson.

However, Plaintiffs must also satisfy the second prong of the Williamson framework requiring the exhaustion of just compensation procedures under state law, which Plaintiffs have not done. New Jersey has outlined an appropriate procedure for claimants to follow when a governmental agency commences an eminent domain proceeding but does not render compensation. In re Jersey Central Power & Light Co., 166 N.J. Super. 540, 544, 400 A.2d 128

(App. Div. 1979). All that is required in this state to seek redress for a property taken by eminent domain is a mandamus action to compel compensation. Id. Here, construing the facts in a light most favorable to the Plaintiffs, including construing the facts to constitute a taking, Plaintiffs' claim must be dismissed because they have neglected to follow the state's procedure.

Plaintiffs next contend that, because the redevelopment process has caused certain tenants to refrain from renewing their leases, they have suffered a deprivation of a property interest, which in effect amounts to a taking. A taking is not established merely by showing that the Plaintiffs were denied the ability to exploit a property interest that they believed was available. John E. Long, Inc. v. Borough of Ringwood, 61 F. Supp.2d 273, 287 (D.N.J. 1998), aff'd, 213 F.3d 628 (3d Cir. 2000). Because Plaintiffs have not yet demonstrated their claim is ripe for adjudication, Defendants' Motion for Judgment on the Pleadings will be granted.

D. Substantive Due Process

For Plaintiffs' substantive due process claims under 42 U.S.C. § 1983 to succeed, they must demonstrate that a government authority infringed a property interest encompassed by the Fourteenth Amendment. Acierno v. Cloutier, 40 F.3d 597, 600, 614 (3d Cir. 1994). After all, "Section 1983 is not a source of substantive rights, but provides a remedy against state officials for violations of constitutional rights." Sameric Corp. of Del., Inc. v. City of Phila., 142 F.3d 582, 590 (3d Cir. 1998) (citations omitted). "To establish a substantive due process claim, a plaintiff must prove that it was deprived of a protected property interest by arbitrary or capricious government action." Id. Government conduct is arbitrary and capricious where it is not related to a legitimate government interest. Id. at 595.

Here, Plaintiffs cannot prevail on a substantive due process cause of action for their

taking claim because a taking has not yet occurred. Plaintiffs have not articulated an actionable taking but rather only suffered, at best, an interference with their property rights. As the Supreme Court has stated, the “[Fifth] Amendment is designed not to limit the governmental interference with property rights *per se*, but rather to secure compensation in the event of otherwise proper interference amounting to a taking.” First Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 315 (1987).

Furthermore, with respect to the propriety of the Borough’s conduct, the state court in the First Lawsuit found that the redevelopment process adopted by the Borough followed statutorily prescribed procedures. Plaintiffs filed suit not only in this Court but also in the New Jersey State Courts. Defendants in the First Lawsuit were granted summary judgment with a finding that Defendants had carefully followed the requirements of state law governing redevelopment. In the absence of an actionable substantive due process cause of action, this Court declines to review the wisdom of a state court ruling regarding a state law proceeding because that would undermine the Rooker-Feldman doctrine. See generally Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). For these reasons, Plaintiffs cannot survive the instant motion on substantive due process grounds and Defendants’ Motion for Judgment on the Pleadings will be granted.

E. 28 U.S.C. §1367(c)

“The district courts may decline to exercise supplemental jurisdiction over a claim . . . if the district court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. §1367(c). Though the power to exercise supplemental jurisdiction is discretionary, “[t]he general approach is for a district court to . . . hold that supplemental jurisdiction should not be exercised

when there is no longer any basis for original jurisdiction.” Edlin Ltd. v. City of Jersey City, 2008 U.S. Dist. LEXIS 41118 at *24 (citations omitted). Because this Court has dismissed all questions of federal law as pled by Plaintiff, and in the absence of diversity jurisdiction, this Court declines to exercise supplemental jurisdiction over any of Plaintiffs’ remaining state law claims, pursuant to 28 U.S.C. §1367 (c).

F. Plaintiffs’ Motion for Summary Judgment and Defendants’ Cross Motion

Because this Court finds Plaintiffs’ claims not yet ripe for adjudication, Defendants’ Motion for Judgment on the Pleadings will be granted. Doing so renders moot both Plaintiffs’ Motion for Summary Judgment and Defendants’ Cross Motion. Therefore both will be denied.

CONCLUSION

IT IS on this 29th day of January, 2009,

ORDERED that Defendants’ Motion for Judgment on the Pleadings [17] is GRANTED; and it is further

ORDERED that Plaintiffs’ Motion for Partial Summary Judgment [19] is DENIED as moot; and it is further

ORDERED that Defendants’ Cross Motion for Partial Summary Judgment [26] is DENIED as moot; and it is further

ORDERED that this case is remanded to the New Jersey State Courts for adjudication on Plaintiff’s remaining state law claims; and it is further

ORDERED that this case is CLOSED.

s/ Anne E. Thompson
ANNE E. THOMPSON, U.S.D.J.