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United States District Court, M.D. Pennsylvania.

Anthony HALCHAK, et al., Plaintiffs
v.
DORRANCE TOWNSHIP BOARD OF SUPERVISORS, et al., Defendants

Civil No. 3:18-CV-1285
|
Signed 08/30/2019

Attorneys and Law Firms

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REPORT AND RECOMMENDATION

Martin C. Carlson, United States Magistrate Judge

I. Introduction, Factual, and Procedural Background

***1** Parties engaged in local land use disputes often invite federal courts to intervene in their controversies. Yet, such invitations, while frequently made, are rarely embraced by the courts. Rather, the federal courts have repeatedly:

> emphasize[d] ... our reluctance to substitute our judgment for that of local decision-makers, particularly in matters of such local concern as land-use planning, absent a local decision void of a "plausible rational basis." Pace, 808 F.2d at 1035. We decline to federalize routine land-use decisions. Rather, the validity of land-use decisions by local agencies ordinarily should be decided under state law in state courts.

Sameric Corp. of Delaware v. City of Philadelphia, 142 F.3d 582, 596 (3d Cir. 1998). Thus, decisional case law in federal court studiously "avoid[s] converting federal courts into super zoning tribunals." Eichenlaub v. Twp. of Indiana, 385 F.3d 274, 285 (3d Cir. 2004).

We are reminded of these familiar principles as we turn to the instant case, which comes before us for consideration of two motions to dismiss filed by the defendants. This litigation involves a longstanding local land use dispute between Anthony and Kelly Halchak, who have for the past ten years sought an occupancy permit to operate a used car business on a parcel of land which they own, and Dorrance Township, Alan Snelson, the township zoning officer, as well as Code Inspections, Inc., a private firm hired by the township to provide code inspection and enforcement services for the township, and one of its employees, Ken Fenstermacher. (Doc. 2-1.) This longstanding local land use dispute simmered between the parties for five years before the plaintiffs filed this lawsuit in state court seeking statutory and mandamus relief under state law in 2015. (Doc. 1-1.)

The parties then engaged in protracted state litigation of this essentially local land use case, and conducted extensive proceedings in state court over the following three years. (Doc. 1.)[1] As part of this state court litigation, it is reported that the defendants sought to have these state law claims dismissed due to the alleged failure of the plaintiffs to fully exhaust their state administrative

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remedies prior to filing this action in the Court of Common Pleas. In particular, the defendants argued that, under state law, the plaintiffs were required to pursue an administrative appeal to a board of appeals pursuant to 34 Pa.C.S. § 403.121 before seeking relief in state court. The defendants advanced this defense grounded upon state law even though the township had not assembled a board of appeals at the time that they sought to dismiss this case. In February of 2017, the state court declined this invitation but continued to actively entertain this case, providing the Halchaks with a forum for the litigation of their concerns. One month later, in March of 2017, the township empaneled a board of appeals; however, at no time did the plaintiffs seek to pursue the administrative appeal authorized under state law. Instead, the Halchaks pursued the alternate legal path that was available to them under state law—litigation in the Court of Common Pleas.

***2** In the course of this ongoing litigation, in December of 2017, the plaintiffs sought leave of the state court to file an amended complaint. (Doc. 2-1.) While this amended complaint did not alter the fundamental character of this lawsuit as a local land use dispute, the amended complaint contained several passing references to alleged conduct by the defendants which the plaintiffs asserted violated their procedural due process rights, both under state law and the United States Constitution. The federal procedural due process claim made by the plaintiffs was advanced in a fleeting manner, without any factual detail, and had a certain curious quality to it since it has been held that "Pennsylvania's scheme for judicial review of administrative land use decisions has previously passed constitutional muster." Sixth Angel Shepherd Rescue Inc. v. West, 790 F. Supp. 2d 339, 358 (E.D. Pa. 2011), aff'd, 477 F. App'x 903 (3d Cir. 2012) (collecting cases). Thus, the very fact that the plaintiffs had recourse to state court through the lawsuit they were pursuing in the Court of Common Pleas seemed, on its face, to rebut the federal procedural due process claim which they incorporated in their amended complaint.

Notwithstanding this fact, in May and June of 2018, the state court judge approved the filing of this amended complaint which, for the first time raised federal procedural due process claims, albeit in an elliptical fashion. The defendants then removed what had been a longstanding local land use case to federal court based upon these federal due process violations alleged in the amended complaint. (Doc. 1.) Having removed the case to federal court, the defendants then moved to dismiss the plaintiffs' amended complaint, arguing, *inter alia*, that this federal procedural due process claim failed as a matter of law. (Docs. 2 and 7.) These motions to dismiss are fully briefed and are therefore ripe for resolution.

Upon consideration of these motions, given the deferential procedural due process standards that apply in this field, we find that Pennsylvania law provided the plaintiffs with both administrative and judicial avenues to appeal the land use decisions made by the defendants. Further, we note that the plaintiffs failed to exercise their administrative appeals, but actively utilized their state judicial remedies in this case. On these facts, and recognizing that "Pennsylvania's scheme for judicial review of administrative land use decisions has previously passed constitutional muster," Sixth Angel Shepherd Rescue Inc. v. West, 790 F. Supp. 2d 339, 358 (E.D. Pa. 2011), aff'd, 477 F. App'x 903 (3d Cir. 2012) (collecting cases), we conclude that this federal procedural due process claim fails as a matter of law and should be dismissed. We further find that, with the dismissal of the sole federal constitutional claim set forth in this case, we should decline to exercise pendent jurisdiction over the various state law claims advanced by the parties. Those claims should accordingly be remanded to the Court of Common Pleas for consideration by that court, the most appropriate forum for the resolution of such essentially local land use claims.

II. Discussion

A. Motion to Dismiss-Standard of Review

A motion to dismiss tests the legal sufficiency of a complaint. It is proper for the court to dismiss a complaint in accordance with Rule 12(b)(6) of the Federal Rules of Civil Procedure only if the complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). With respect to this benchmark standard for legal sufficiency of a complaint, the United States Court of Appeals for the Third Circuit has aptly noted the evolving standards governing pleading practice in federal court, stating that:

> Standards of pleading have been in

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> the forefront of jurisprudence in recent years. Beginning with the Supreme Court's opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) continuing with our opinion in Phillips [v. County of Allegheny, 515 F.3d 224, 230 (3d Cir. 2008)] and culminating recently with the Supreme Court's decision in Ashcroft v. Iqbal, —— U.S. ——, 129 S. Ct. 1937 (2009), pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss.

***3** Fowler v. UPMC Shadyside, 578 F.3d 203, 209-10 (3d Cir. 2009).

In considering whether a complaint fails to state a claim upon which relief may be granted, the court must accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. Jordan v. Fox Rothschild, O'Brien & Frankel, Inc., 20 F.3d 1250, 1261 (3d Cir. 1994). However, a court "need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss." Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Additionally, a court need not "assume that a ... plaintiff can prove facts that the ... plaintiff has not alleged." Associated Gen. Contractors of Cal. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983). As the Supreme Court held in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), in order to state a valid cause of action, a plaintiff must provide some factual grounds for relief which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of actions will not do." Id. at 555. "Factual allegations must be enough to raise a right to relief above the speculative level." Id.

In keeping with the principles of Twombly, the Supreme Court has underscored that a trial court must assess whether a complaint states facts upon which relief can be granted when ruling on a motion to dismiss. In Ashcroft v. Iqbal, 556 U.S. 662 (2009), the Supreme Court held that, when considering a motion to dismiss, a court should "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." Id. at 679. According to the Supreme Court, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 678. Rather, in conducting a review of the adequacy of a complaint, the Supreme Court has advised trial courts that they must:

> [B]egin by identifying pleadings that because they are no more than conclusions are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Id. at 679.

Thus, following Twombly and Iqbal, a well-pleaded complaint must contain more than mere legal labels and conclusions; it must recite factual allegations sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation. As the United States Court of Appeals for the Third Circuit has stated:

> [A]fter Iqbal, when presented with a motion to dismiss for failure to state a claim, district courts should conduct a two-part analysis. First, the factual and legal elements of a claim should be separated. The District Court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. Second, a District Court must then determine whether the facts alleged in the complaint are

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> sufficient to show that the plaintiff has a "plausible claim for relief." In other words, a complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to "show" such an entitlement with its facts.

***4** Fowler, 578 F.3d at 210-11.
As the court of appeals has observed:

> The Supreme Court in Twombly set forth the "plausibility" standard for overcoming a motion to dismiss and refined this approach in Iqbal. The plausibility standard requires the complaint to allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570, 127 S. Ct. 1955. A complaint satisfies the plausibility standard when the factual pleadings "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129 S. Ct. at 1949 (citing Twombly, 550 U.S. at 556, 127 S. Ct. 1955). This standard requires showing "more than a sheer possibility that a defendant has acted unlawfully." Id. A complaint which pleads facts "merely consistent with" a defendant's liability, [ ] "stops short of the line between possibility and plausibility of 'entitlement of relief.' "

Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220-21 (3d Cir. 2011), cert. denied, 132 S. Ct. 1861, 182 L. Ed. 2d 644 (U.S. 2012).

In practice, consideration of the legal sufficiency of a complaint entails a three-step analysis:

> First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim." Iqbal, 129 S. Ct. at 1947. Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth." Id. at 1950. Finally, "where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief." Id.

Santiago v. Warminster Twp., 629 F.3d 121, 130 (3d Cir. 2010).

In considering a motion to dismiss, the court generally relies on the complaint, attached exhibits, and matters of public record. Sands v. McCormick, 502 F.3d 263, 268 (3d Cir. 2007). The court may also consider "undisputedly authentic document[s] that a defendant attached as an exhibit to a motion to dismiss if the plaintiff's claims are based on the [attached] documents." Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993). Moreover, "documents whose contents are alleged in the complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered." Pryor v. Nat'l Collegiate Athletic Ass'n, 288 F.3d 548, 560 (3d Cir. 2002); see also, U.S. Express Lines, Ltd. v. Higgins, 281 F.3d 382, 388 (3d Cir. 2002) (holding that "[a]lthough a district court may not consider matters extraneous to the pleadings, a document integral to or explicitly relied upon in the complaint may be considered without converting the motion to dismiss in one for summary judgment"). However, the court may not rely on other parts of the record in determining a motion to dismiss, or when determining whether a proposed amended complaint is futile because it fails to state a claim upon which relief may be granted. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994).

B. Legal Standards Governing Federal Procedural Due Process Claims In Local Land Use Disputes

***5** As we have noted, we are often cautioned to "avoid[ ] converting federal courts into super zoning tribunals." Eichenlaub v. Twp. of Indiana, 385 F.3d 274, 285 (3d Cir. 2004). This caution stems from a basic and fundamental "reluctance to substitute our judgment for that of local decision-makers, particularly in matters of such local concern as land-use planning, absent a local decision void of a 'plausible rational basis.' " Pace, 808 F.2d at 1035. "We decline to federalize routine land-use decisions. Rather, the validity of land-use decisions by local agencies ordinarily should be decided under state law in state courts." Sameric Corp. of Delaware v. City of Philadelphia, 142 F.3d 582, 596 (3d Cir. 1998).

This caution extends to consideration of federal procedural due process claims that arise out of what are essentially local zoning and land use disputes. In this factual setting, the considerations which lead us to avoid "converting federal courts into super zoning tribunals[,]" Eichenlaub v. Twp. of Indiana, 385 F.3d 274, 285 (3d Cir. 2004), also prescribe a limited role for the federal courts when

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assessing claims that a property owner has been denied federal procedural due process protections. On this score, the governing legal standards for federal procedural due process claims are both exacting and well-settled. As we have noted:

> The Fourteenth Amendment prohibits a state from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. In order to make out a claim for a violation of procedural due process, a plaintiff must allege three elements: (1) that the defendant was acting under color of state law; (2) that the defendant deprived him of a property interest; and (3) the state procedures for challenging the deprivation did not satisfy the requirements of procedural due process. Midnight Sessions, Ltd. v. City of Phila., 945 F.2d 667, 680 (3d Cir. 1991) (overruled on other grounds by United Artists Theatre Circuit v. Twp. of Warrington, 316 F.3d 392 (2003); see also, Parratt v. Taylor, 451 U.S. 527, 536-37 (1981). When a state "affords a full judicial mechanism with which to challenge the administrative decision" at issue, it provides adequate procedural due process, irrespective of whether the plaintiffs avail themselves of that process. DeBlasio v. Zoning Bd. of Adjustment, 53 F.3d 592, 597 (3d Cir. 1995) (overruled on other grounds by United Artists, 316 F.3d 392; see also, Midnight Sessions, 945 F.2d at 681 ("The availability of a full judicial mechanism to challenge the administrative decision to deny an application, even an application that was wrongly decided, preclude[s] a determination that the decision was made pursuant to a constitutionally defective procedure.").

Sutton v. Chanceford Twp., No. 1:14-CV-1584, 2016 WL 7231702, at *10 (M.D. Pa. Dec. 14, 2016), aff'd, 763 F. App'x 1186 (3d Cir. 2019).

Further, with respect to the third, and final, essential element of a federal procedural due process claim—the question of whether the existing state procedure satisfies the rudiments of due process—we do not write upon a blank slate. Federal courts have frequently considered whether the administrative and legal remedies available under Pennsylvania law to persons aggrieved by local municipality land use decisions satisfy the requirements of procedural due process. Without exception, these courts have found that "Pennsylvania's scheme for judicial review of administrative land use decisions has ... passed constitutional muster." Sixth Angel Shepherd Rescue Inc. v. West, 790 F. Supp. 2d 339, 358 (E.D. Pa. 2011), aff'd, 477 F. App'x 903 (3d Cir. 2012) (citing Perano v. Twp. Of Tilden, 423 F. App'x 234, 237 (3d Cir. 2011)); see also, Bello v. Walker, 840 F.2d 1124, 1128 (3d Cir. 1988). As to such claims, it is often held that "[b]ecause Pennsylvania's state procedure for challenging an administrative zoning decision satisfies procedural due process, plaintiff fails to state a claim founded on a violation of procedural due process." Nicolette v. Caruso, 315 F. Supp. 2d 710, 721 (W.D. Pa. 2003).

***6** Further, when avenues of legal recourse are available to a party under state law:

> In order to state a claim for failure to provide due process, a plaintiff must have taken advantage of the processes that are available to him or her, unless those processes are unavailable or patently inadequate. "[A] state cannot be held to have violated due process requirements when it has made procedural protection available and the plaintiff has simply refused to avail himself of them." Dusanek v. Hannon, 677 F.2d 538, 543 (7th Cir. 1982); see also, Bohn v. County of Dakota, 772 F.2d 1433, 1441 (8th Cir. 1985). A due process violation "is not complete when the deprivation occurs; it is not complete unless and until the State fails to provide due process." Zinermon v. Burch, 494 U.S. 113, 126, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990). If there is a process on the books that appears to provide due process, the plaintiff cannot skip that process and use the federal courts as a means to get back what he wants. See McDaniels v. Flick, 59 F.3d 446, 460 (3d Cir. 1995); Dwyer v. Regan, 777 F.2d 825, 834–35 (2d Cir. 1985), modified on other grounds, 793 F.2d 457 (2d Cir. 1986); Riggins v. Board of Regents, 790 F.2d 707, 711–12 (8th Cir. 1986).

Alvin v. Suzuki, 227 F.3d 107, 116 (3d Cir. 2000).

Accordingly, relying upon this principle in the context of land use litigation, federal courts frequently reject procedural due process claims made by plaintiffs who have not fully availed themselves of their existing potential remedies under state law. See, e.g., Giuliani v. Springfield Twp., 238 F. Supp. 3d 670, 692 (E.D. Pa. 2017), aff'd, 726 F. App'x 118 (3d Cir. 2018); Sixth Angel Shepherd Rescue Inc. v. West, 790 F. Supp. 2d 339, 358 (E.D. Pa. 2011), aff'd, 477 F. App'x 903 (3d Cir. 2012). Therefore, when the "Plaintiffs did not avail themselves of the procedural protections available under Pennsylvania law, they cannot sustain a federal procedural due process claim." McLaughlin v. Forty Fort Borough, 64 F. Supp. 3d 631,

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647 (M.D. Pa. 2014). Similarly, when the record discloses that judicial remedies were available to the plaintiffs under state law, and the plaintiffs actually availed themselves of those remedies by pursuing state court litigation, a federal procedural due process claim typically fails as a matter of law. Sixth Angel Shepherd Rescue Inc. v. West, 790 F. Supp. 2d 339, 358 (E.D. Pa. 2011), aff'd, 477 F. App'x 903 (3d Cir. 2012) (denying procedural due process claim when the plaintiff "is currently pursuing its appeal of the ... Zoning Hearing Board's decision through Pennsylvania's court system").

It is against these legal guideposts that we assess the federal procedural due process claims advanced by the Halchaks, who were actively litigating this land use dispute in state court at the time that they amended their complaint to include a federal procedural due process claim.

C. The Plaintiffs' Federal Procedural Due Process Claim Fails as a Matter of Law

Judged against these standards of review, we find that the plaintiffs' federal procedural due process claim, which formed the sole basis for the removal of this lawsuit to federal court, fails as a matter of law. This claim fails because the plaintiffs simply have not shown that the third element of a procedural due process claim in this setting is satisfied in that they have not shown that the state procedures for challenging the local municipality land use decision did not satisfy the requirements of procedural due process.

***7** In fact, under state law, the Halchaks had at least two paths they could follow which would afford them procedural due process. Moreover, the record affirmatively reveals that, while the plaintiffs failed to pursue one legal avenue which was available to them—an administrative appeal—they actively exercised their due process rights through another avenue by seeking state court judicial review of these land use decisions.

At the outset, it is apparent that state law afforded the Halchaks procedural due process through the opportunity to pursue an administrative appeal of any land use decision to a board of appeals pursuant to 34 Pa.C.S. § 403.121. It is also uncontested that the Halchaks never availed themselves of their right to seek an administrative appeal, thus foregoing one form of procedural due process afforded to them under state law. While the plaintiffs insist that this path was not readily available to them because the township had not installed a local board of appeals at the time that they commenced this litigation in state court, this argument is unavailing. Indeed, where state law provides a statutory avenue for administrative appeal, the mere fact that a local municipality has not yet empaneled an appeals board is not dispositive, since a plaintiff "may not prove a due process violation based on speculation that the Borough would not have promptly empaneled an Appeals Board had he attempted to file an appeal." Spradlin v. Borough of Danville, 188 F. App'x 149, 151 (3d Cir. 2006). See also Manganaro v. Reap, 29 F. App'x 859, 861 (3d Cir. 2002) (holding that "appellant's claim that he need not have followed the procedures outlined [by defendants] because the Appeals Board was improperly empaneled is not supported by the authority he himself cites"). Accordingly, since the "Plaintiffs did not avail themselves of the procedural protections available under Pennsylvania law, they cannot sustain a federal procedural due process claim." McLaughlin v. Forty Fort Borough, 64 F. Supp. 3d 631, 647 (M.D. Pa. 2014).

In any event, the plaintiffs' exclusive focus upon the availability of this administrative appeal ignores a more fundamental issue which defeats this procedural due process claim. "When a state 'affords a full judicial mechanism with which to challenge the administrative decision' at issue, it provides adequate procedural due process." Sutton v. Chanceford Twp., No. 1:14-CV-1584, 2016 WL 7231702, at *10 (M.D. Pa. Dec. 14, 2016), aff'd, 763 F. App'x 1186 (3d Cir. 2019) (quoting DeBlasio v. Zoning Bd. of Adjustment, 53 F.3d 592, 597 (3d Cir. 1995)). Here, it is absolutely undisputed that the state provided a full judicial mechanism with which to challenge this administrative decision. In fact, the Halchaks actively utilized this state judicial mechanism for nearly three years prior to the removal of this case to federal court. Since "Pennsylvania's scheme for judicial review of administrative land use decisions has ... passed constitutional muster," Sixth Angel Shepherd Rescue Inc. v. West, 790 F. Supp. 2d 339, 358 (E.D. Pa. 2011), aff'd, 477 F. App'x 903 (3d Cir. 2012) (citing Perano v. Twp. Of Tilden, 423 F. App'x 234, 237 (3d Cir. 2011)); Bello v. Walker, 840 F.2d 1124, 1128 (3d Cir. 1988), the plaintiffs' actual use of these available judicial remedies rebuts any claim that they have been denied procedural due process by the state.

In an apparent effort to avoid this outcome, the plaintiffs insist that the state court's February 2017 ruling, which denied a request by the defendants under state law to dismiss the original complaint filed by the Halchaks for failure to exhaust available state remedies, constitutes the law of the case and bars any consideration by this court of whether the amended complaint, filed ten months after this state court ruling in December 2017, stated a federal constitutional claim.

***8** We disagree. In our view this argument misconstrues the law of the case doctrine. "Under the law of the case doctrine, once an issue is decided, it will not be relitigated in the same case, except in unusual circumstances. The purpose of this doctrine is to promote the 'judicial system's interest in finality and in efficient administration.' " Hayman Cash Register Co. v. Sarokin, 669 F.2d 162, 165 (3d Cir. 1981) (quoting Todd & Co., Inc. v. S.E.C., 637 F.2d 154, 156 (3d Cir. 1980)). The contours of this settled doctrine have been described by the United States Court of Appeals for the Third Circuit in the following terms:

> In Arizona v. California, 460 U.S. 605, 103 S. Ct. 1382, 75 L. Ed. 2d 318 (1983), the Supreme Court noted:
>
> > Unlike the more precise requirements of res judicata, law of the case is an amorphous concept. As most commonly defined, the doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.
>
> Id. at 618, 103 S. Ct. 1382.
>
> (citations omitted). The "[l]aw of the case rules have developed 'to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit.' "

In re Pharmacy Benefit Managers Antitrust Litigation, 582 F.3d 432, 439 (3d Cir. 2009) (reversing arbitration order in antitrust case on law-of-the-case grounds) (citations omitted). However, it is also clear that "[t]he ... doctrine does not restrict a court's power but rather governs its exercise of discretion." Id. (quoting Pub. Interest Research Group of N.J., Inc. v. Magnesium Elektron Inc., 123 F.3d 111, 116 (3d Cir. 1997)) (citations omitted). Therefore, in the exercise of our discretion, we are not bound by the law of the case when strict adherence to some prior ruling is inappropriate due to a material change in the law or the facts, or when such strict adherence would work a manifest injustice. Id.

In the instant case, the Kalchaks' reliance upon the law of the case doctrine to defeat these motions to dismiss is misplaced for several reasons. First, fairly construed, the state trial court's ruling only spoke to the question of whether state law required the plaintiffs to pursue an administrative appeal before filing suit in state court. Thus, this February 2017 state court ruling did not purport to address one of the issues which rests at the core of our federal procedural due process analysis—the question of whether state law provided for judicial review of this municipality land use decision. Moreover, the state court's ruling on this question of state law simply does not control our federal constitutional determination since "[a] violation of state law is not a denial of due process of law." Maple Properties, Inc. v. Twp. of Upper Providence, 151 F. App'x 174, 179 (3d Cir. 2005).

In addition, the factual background of this lawsuit in terms of claims asserted has shifted significantly since the state court ruled in February of 2017. At that time the state court was considering the plaintiffs' original complaint, which did not assert federal constitutional claims. Those claims were first proposed by the plaintiffs ten months after this state court ruling in December of 2017, and only became part of this litigation in May and June of 2018 when the state court granted the Kalchaks leave to amend their complaint.

This material change in the factual context of this lawsuit, in turn, changed the legal paradigm we must consider, at least with respect to the sole federal claim now asserted by the Halchaks—their procedural due process claim. Thus, prior to considering the instant motions to dismiss, no court has had occasion to examine the legal merits of the plaintiffs' federal procedural due process claims.

***9** Taken together, these factors leave us convinced that the law of the case doctrine is not a bar to a federal court now examining whether the plaintiffs' amended complaint states a viable federal procedural due claim. Having conducted this review, we find, as many other courts have in the past, that "Pennsylvania's scheme for judicial review of administrative land use decisions has ... passed constitutional muster." Sixth Angel Shepherd Rescue Inc. v. West, 790 F. Supp. 2d 339, 358 (E.D. Pa. 2011), aff'd, 477 F. App'x 903 (3d Cir. 2012) (citing Perano v. Twp. Of Tilden, 423 F. App'x 234, 237 (3d Cir. 2011)); Bello v. Walker, 840 F.2d 1124, 1128 (3d Cir. 1988). We also conclude that the plaintiffs failed to pursue one avenue for

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obtaining due process, an administrative appeal; a failure which would normally foreclose a federal procedural due process claim. McLaughlin v. Forty Fort Borough, 64 F. Supp. 3d 631, 647 (M.D. Pa. 2014). Moreover, it is also entirely undisputed that the plaintiffs have actually availed themselves of an alternate legal avenue for obtaining due process by actively seeking state court review of these local land use decisions. Therefore, where, as in this case, the plaintiffs actually obtain due process through the state courts, a federal procedural due process claim fails as a matter of law. Sixth Angel Shepherd Rescue Inc. v. West, 790 F. Supp. 2d 339, 358 (E.D. Pa. 2011), aff'd, 477 F. App'x 903 (3d Cir. 2012) (denying procedural due process claim when the plaintiff "is currently pursuing its appeal of the ... Zoning Hearing Board's decision through Pennsylvania's court system").

Accordingly, for the foregoing reasons, it is recommended that these motions to dismiss this federal procedural due process claim, the only federal claim asserted in this litigation, be granted. Consequently, all that remains in the case before us are a series of pendent state law claims.

D. The Plaintiffs' State Law Claims Should Be Dismissed Without Prejudice for Renewal in State Court

The resolution of this federal claim, in turn, suggests what course we should follow with respect to any pendent state law claims that remain in this litigation. As we have observed:

> [I]n a case such as this, where a federal due process property ... claim is dismissed ..., federal courts have often in the exercise of their discretion also dismissed any pendent, ancillary or supplemental state law claims which accompany that federal due process taking claim. Trustees of Marion Kingdom Hall of Jehovah's Witnesses v. City of Marion, 638 F. Supp. 2d 962, 980 (S.D. Ill. 2007). See also, Petroplex Int'l v. St. James Par., 158 F. Supp. 3d 537, 544 (E.D. La. 2016); Jackson v. Vill. of W. Springs, No. 14 C 3414, 2014 WL 5543844, at *5 (N.D. Ill. Nov. 3, 2014), aff'd, 612 Fed. App'x 842 (7th Cir. 2015). The rationale for declining to exercise supplemental jurisdiction over these state law claims is quite simple and compelling. Where the jurisdiction of the federal court was premised on alleged federal claims which are found to be subject to dismissal, the proper course generally is for "the court [to] decline to exercise supplemental jurisdiction over the plaintiff's state law claims. 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if-... the district court has dismissed all claims over which it has original jurisdiction."); United Mine Workers v. Gibbs, 383 U.S. 715, 726, 86 S. Ct. 1130, 16 L. Ed. 2d 218 (1966) (holding that when federal causes of action are dismissed, federal courts should not separately entertain pendent state claims)." Bronson v. White, No. 05-2150, 2007 WL 3033865, *13 (M.D. Pa. Oct. 15, 2007) (Caputo, J.) (adopting report and recommendation dismissing ancillary malpractice claim against dentist); see Ham v. Greer, 269 Fed. App'x 149, 151 (3d Cir. 2008) ("Because the District Court appropriately dismissed [the inmate's] Bivens claims, no independent basis for federal jurisdiction remains. In addition, the District Court did not abuse its discretion in declining to address the state law negligence claims. 28 U.S.C. § 1367(c)(3); see United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726, 86 S. Ct. 1130, 16 L. Ed. 2d 218 (1966); Tully v. Mott Supermkts., Inc., 540 F.2d 187, 196 (3d Cir. 1976).").

***10** Deiter v. City of Wilkes-Barre, No. 3:16-CV-132, 2016 WL 10394044, at *5 (M.D. Pa. Dec. 9, 2016), report and recommendation adopted, No. 3:16-CV-132, 2017 WL 4931688 (M.D. Pa. Oct. 31, 2017). In fact, in land use disputes, the court of appeals has expressly endorsed the view that if the court dismisses the federal claims at the pleadings stage of the litigation, in the proper exercise of its discretion it may also decline to retain jurisdiction over any pendent state law claims. Rogin v. Bensalem Twp., 616 F.2d 680, 697 (3d Cir. 1980). Following this course and declining to retain jurisdiction of state law land use questions is particularly appropriate in the instant case since it is well established that "the validity of land-use decisions by local agencies ordinarily should be decided under state law in state courts." Sameric Corp. of Delaware v. City of Philadelphia, 142 F.3d 582, 596 (3d Cir. 1998). Therefore, we recommend that the court, having resolved the sole federal constitutional issue before it, decline to address the many questions of state law which may be ably resolved through the state courts, and defer to the state courts to address these state law questions.

III. Recommendation

For the foregoing reasons it is RECOMMENDED that the defendants' motions to dismiss (Docs. 2 and 7) be GRANTED.

The parties are hereby placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations, or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses, or recommit the matter to the magistrate judge with instructions.

Submitted this 30th day of August, 2019.

All Citations

Slip Copy, 2019 WL 4794773

Footnotes

1 Indeed, the state court pleadings that were filed along with the Notice of Removal in this case aptly illustrate the protracted nature of these prior state legal proceedings, as they encompass more than 530 pages of state court filings and related documents. (Docs. 1-1, 1-2, 1-3, 1-4, 1-5, and 1-6.)

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