United States District Court
District of Connecticut

RICHARD GRASSO and MARGARET GRASSO, Plaintiffs,	:	
v.	:	Civil No. 3:00cv1726 (AWT)
GROTON LONG POINT ASSOCIATION, INC., ZONING BOARD OF APPEALS OF GROTON LONG POINT ASSOCIATION, INC., RAYMOND S. MUNN, W. GORDON LANGE and GERARD CARRIERA, Defendants.	:	

RULING ON MOTION TO DISMISS

The plaintiffs, Richard and Margaret Grasso, bring this action alleging that the defendants violated the plaintiffs' rights under the Fifth and Fourteenth Amendments to the United States Constitution. The defendants have moved to dismiss all of the plaintiffs' claims. For the reasons that follow, the defendants' motion to dismiss is being granted.

I. Factual Background

In 1992, plaintiffs Richard and Margaret Grasso ("the Grassos") built a stone revetment in accordance with a permit from defendant Groton Long Point Association ("GLPA") in order to protect their beachfront property from erosion. Over time, the action from storms and waves eroded the wall to such a degree that the Grassos decided to reinforce the revetment. In 1997, without obtaining another permit from the GLPA, the plaintiffs

constructed a concrete support, i.e. a retaining wall, behind the revetment. The plaintiffs allege that after the completion of construction, they applied to the GLPA for the necessary permit for the already-built retaining wall.

The GLPA held a hearing on the Grassos' application (the "1997 Application") in April 1998. Approximately one week later defendant Raymond Munn, the President of the GLPA, denied the Grassos' application. Munn gave several reasons for the denial of the Grassos' application for the already-built retaining wall; those reasons included the fact that the wall and its construction did not comply with certain Connecticut General Statutes and Zoning Regulations of the GLPA. See Ex. A to Defs.' Mem. in Supp. of Defs.' Mot. to Dismiss (hereinafter "Defs.' Ex. A") at 2. The Grassos appealed to defendant Zoning Board of Appeals of Groton Long Point Association, Inc. ("ZBA"). After hearings on the appeal, the ZBA upheld the GLPA's decision. The Grassos did not appeal the ZBA's decision to the Superior Court.

In February 1999, the Grassos filed a new application (the "1999 Application"), which was designed to correct the deficiencies claimed to be present in the 1997 Application. The zoning officer, defendant W. Gordon Lange, denied the 1999 Application on the ground that the Grassos had submitted no new information that would warrant a reconsideration of the decision denying the 1997 Application. Defs.' Ex. A at 3. The Grassos appealed the denial of the 1999 Application to the ZBA on May 18,

1999. On June 16, 1999, in a letter from defendant Gerard Carriera, the chairman of the ZBA, the ZBA denied the plaintiffs' appeal and refused to hold a hearing. The ZBA based that decision on its finding that the Grassos had submitted no new information requiring a reconsideration of the decision on the 1997 Application, since the appeal concerned the same retaining wall and the same location as the 1997 Application.

The Grassos appealed the ZBA's decision to the Superior Court. Grasso v. Zoning Bd. of App. of the Groton Long Point Ass'n, Inc., Conn. Super. Ct., CV-99-0551575 (withdrawn). The Grassos' January 21, 2000 Amended Complaint in that case claimed, inter alia, that the ZBA's refusal to grant the Grassos a hearing on their appeal of the GLPA's denial of the 1999 Application constituted a violation of due process and equal protection under the United States Constitution and under the Connecticut Constitution. Ex. B-1 to Defs.' Mem. in Supp. of Def.'s Mot. to Dismiss (hereinafter "Defs.' Ex. B-1") at 5. However, the Grassos, withdrew this appeal. The plaintiffs allege (Compl. ¶¶ 16, 17) that they filed a mandamus action in Superior Court seeking to force the ZBA to hold a hearing on the 1999 Application. Grasso v. Zoning Bd. of App. of Groton Long Point Ass'n, Inc., 27 Conn. L. Rptr. 270 (2000).

In the complaint attached to the Grassos' Application for Writ of Mandamus, the Grassos claimed again that the ZBA's refusal to hold a hearing on the merits of the plaintiffs' appeal

violated their rights to due process and equal protection under the United States Constitution and under the Connecticut Constitution. (Ex. B-2 to Def.'s Mem. in Supp. of Def.'s Mot. to Dismiss ¶ 16). After a trial on the merits, the Superior Court denied the Grassos' application for a writ of mandamus on the grounds that 1) the Grassos failed to provide any legal authority in support of their contention that they were entitled to a hearing on the question of whether the 1999 Application demonstrated changed circumstances sufficient to warrant a new hearing; 2) the Grassos were not entitled to a writ for a hearing on the merits; 3) the Grassos made no showing of an abuse of discretion on the part of the ZBA in refusing to hold a hearing on the appeal; and 4) the 1999 Application consisted of mere elaborations as opposed to new considerations. The Grassos have appealed the Superior Court's decision to the Connecticut Appellate Court, and that appeal is pending.

The Complaint alleges that the defendants have deprived the plaintiffs of: 1) their property without just compensation in violation of the Fifth Amendment to the United States Constitution; 2) due process of law in violation of the Fourteenth Amendment to the United States Constitution; and 3) equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution. (Compl. ¶¶ 21-23). The defendants have moved to dismiss the Grassos' action based on the Rooker-Feldman doctrine, the Younger abstention doctrine, and

the prior pending action doctrine, and because the plaintiffs have failed to state a claim under 42 U.S.C. §1983. The court is granting the defendants' motion to dismiss based on the Rooker-Feldman doctrine, and therefore does not reach the defendants' other arguments.

II. Legal Standard

"A challenge under the Rooker-Feldman doctrine is for lack of subject matter jurisdiction and may be raised at any time by either party or sua sponte by the court." Moccio v. New York State Office of Admin., 95 F.3d 195, 198 (2d Cir. 1996) (internal citations omitted). The standards for granting motions to dismiss under Fed. R. Civ. P. 12(b)(1) or 12(b)(6) are identical. See Jaghory v. New York State Dept. of Educ., 131 F.3d 326, 329 (2d Cir. 1997).

> Under these rules, the court must accept all factual allegations in the complaint as true and draw inferences from those allegations in the light most favorable to the plaintiff. The court may not dismiss a complaint unless it appears beyond doubt, even when the complaint is liberally construed, that the plaintiff can prove no set of facts which would entitle him to relief.

Id. (internal citations and quotation marks omitted).

III. Discussion

Under the Rooker-Feldman doctrine, "inferior federal courts

have no subject matter jurisdiction over cases that effectively seek review of judgments of state courts." Moccio, 95 F.3d at 197; see also, Hachamovitch v. DeBuono, 159 F.3d 687, 693 (2d Cir. 1998) (no lower federal court subject matter jurisdiction if exercise of jurisdiction would result in state court judgment's reversal or modification). Among federal courts "only the Supreme Court could entertain an appeal to reverse or modify a state court judgment." Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923).

In District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983), the "Court . . . held that to the extent that the plaintiff's claims were 'inextricably intertwined' with the state court's determinations, the federal district court did not have jurisdiction." Moccio, 95 F.3d at 198 (citations omitted). The Second Circuit observed in Moccio that "[s]ince Feldman, the Supreme Court has provided us with little guidance in determining which claims are 'inextricably intertwined' with a prior state court judgment and which are not." Id. (citation omitted). However, it did conclude that:

> If the precise claims raised in a state court proceeding are raised in the subsequent federal proceeding, Rooker-Feldman plainly will bar the action. On the other hand, we have held that where the claims were never presented in the state court proceedings and the plaintiff did not have an opportunity to present the claims in those proceedings, the claims are not "inextricably intertwined" and therefore not barred by Rooker-Feldman.

Id. at 198-99 (citation omitted). In Hachamovitch, the court noted that it was "disinclined at present to extend or amplify the Rooker-Feldman doctrine beyond the 'minimum' specified in Moccio . . . ." Hachamovitch, 159 F.3d at 696 (citation omitted). However, the present case does not require application of the Rooker-Feldman doctrine beyond the "'minimum' specified in Moccio . . . ." Id.

The defendants contend that since the plaintiffs raised their present constitutional claims in the first Superior Court action, Grasso, CV-99-0551575, which they subsequently withdrew, this court lacks subject matter jurisdiction. The Rooker-Feldman doctrine prevents district courts from obtaining jurisdiction over claims litigated in prior state court determinations. Here, however, the Grassos voluntarily withdrew the first state court action. Thus, the Superior Court made no determination in that initial case that could trigger application of the Rooker-Feldman doctrine to the present federal claims.

The defendants also contend that under the Rooker-Feldman doctrine, this court lacks subject matter jurisdiction over the present claims because the plaintiffs raised these claims in their second Superior Court action, Grasso, 27 Conn. L. Rptr. 270. The defendants are correct on this point. In that state court action, the Grassos sought a writ of mandamus ordering the ZBA to hold a hearing on the GLPA's denial of the 1999 Application. After a trial on the merits, the Superior Court

found in favor of the defendants, and that decision has been appealed to the Connecticut Appellate Court.

The plaintiffs are in effect asking the court to review the Superior Court's decision in their mandamus action. The plaintiffs claim in this case that the ZBA's refusal to grant a hearing on the denial of their 1999 Application violated the plaintiffs' due process and equal protection rights, and also resulted in a deprivation of their property without just compensation. In Superior Court, the Grassos argued that the ZBA's refusal to hold a hearing violated their rights to due process and equal protection. Thus, to decide the constitutional claims made by the Grassos in this case, this court would be required to reach the merits of the Superior Court's decision that the Grassos were not entitled to a hearing before the ZBA. This would be in violation of the Rooker-Feldman doctrine.

IV. Conclusion

For the reasons set forth above, the defendants' Motion to Dismiss (doc. #12) is hereby GRANTED.

It is so ordered.

Dated this ___ day of June, 2001 at Hartford, Connecticut.

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Alvin W. Thompson
United States District Judge