

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: MODERN LAUNDRY & DRY : Chapter 7
CLEANING, INC. : Case No. 98-30505
: Adversary No. 01-1228

TEAMSTERS LOCAL 830 LAUNDRY :
DIVISION : CIVIL ACTION
and THE PHILADELPHIA TEXTILE :
MAINTENANCE AND OTHER INDUSTRIES :
PENSION PLAN :
: :
v. :
: :
THE CITY OF PHILADELPHIA and :
THE SCHOOL DISTRICT OF :
PHILADELPHIA : NO. 02-CV-2183

TEAMSTERS LOCAL 830 LAUNDRY :
DIVISION and THE PHILADELPHIA :
TEXTILE MAINTENANCE AND OTHER :
INDUSTRIES PENSION PLAN :
: :
v. : MISCELLANEOUS NO. 02-0024
: :
THE CITY OF PHILADELPHIA and :
THE SCHOOL DISTRICT OF :
PHILADELPHIA :

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

October 16, 2002

FACTS

Defendants, City of Philadelphia, The School District of Philadelphia (referred to collectively as "the City"), and Mayor John Street, move under Federal Rule of Civil Procedure 12(b)(6) to dismiss Count V of the complaint of Plaintiffs, Teamsters Local 830 Laundry Division and the Philadelphia Textile

Maintenance and Other Industries ("plaintiffs").¹ This Motion follows an unopposed withdrawal of the reference to Bankruptcy Court.

Modern Laundry & Dry Cleaning, Inc. ("Modern") owned property located at 4055-4089 Market Street, Philadelphia, PA ("Market Street Properties"). By early 1991, Modern was insolvent. A involuntary bankruptcy petition was filed by plaintiffs in February, 1991.² Plaintiffs obtained a judgment against Modern on February 11, 1997, in the original amount of \$1,178,715.22 plus additional interest and costs of collection. Plaintiffs assert that the 1997 judgment was valid, perfected and enforceable lien on the Market Street Properties.

In July, 1998, plaintiffs received notice of a sheriff's sale for the Market Street Properties. As a result, on August 18, 1998, plaintiffs again filed an involuntary bankruptcy petition under Chapter 7. The sheriff's sale was stayed, and a

¹Count V of the Complaint names Mayor Street as the sole defendant; allegations therein refer to the actions of Mayor Street, and those of "other individual officers and employees of the City and School". See Complaint at 20-21, ¶ 71. Paragraph eight (8) of the Complaint states: "Defendant John Street is an individual and Mayor of the City. He is sued with respect to Count V as an individual in order to obtain compliance by the City and the School District with orders of this Court and federal law." Id. at 3, ¶ 8.

²The 1991 Bankruptcy began with an involuntary Chapter 7 petition filed on February 15, 1991, a consensual Chapter 11 petition filed on April 29, 1991, and later reconversion to Chapter 7. The 1991 Bankruptcy closed with no assets or discharge on July 15, 1995.

"carve-out" agreement executed between plaintiffs and related creditors, including the City. If triggered, the "carve-out" agreement provided for payment in satisfaction of all claims then asserted by the City.

By order entered on April 30, 2001, the Bankruptcy Court approved sale of the Market Street Properties, free and clear of all liens with the liens to attach solely to proceeds. The City attempted to block the sale, claiming the sale would impair its liens. The Bankruptcy Court refused to stay the sale but directed Modern's Trustee in Bankruptcy to escrow sale proceeds sufficient to satisfy the City's claims. Sale of the Market Street Properties closed on November 14, 2001. The gross sales price was \$1,050,000 plus payment of transfer taxes; \$450,000 for City claims was placed in escrow.

Plaintiffs complained that the Bankruptcy Court efforts to protect the City by requiring the escrow jeopardized their interest in the sale proceeds of the Market Street Properties; plaintiffs claim that whatever rights the City might have, plaintiffs' judgment lien against Modern is senior to any liens of the City.

In December, 2001, plaintiffs filed a Complaint in Bankruptcy against the City, the School District of Philadelphia, Mayor John Street, and Reginald Krasney, Esquire. Of the counts

alleged³, Count V, a claim under 42 U.S.C. § 1983 against Mayor Street and "other individual officers and employees of the City and School [District]", alleged an unconstitutional taking in violation of the Fifth and Fourteenth Amendments of the U.S. Constitution.

On January 28, 2002, the City filed an Unopposed Motion for Withdrawal of Reference in Bankruptcy Court. This court, by Order dated February 19, 2002, granted the City's Motion.⁴ This Motion to Dismiss, filed March 12, 2002, followed. In April, 2002, the parties having represented that a settlement had been reached, this action was marked closed under Local Rule 41.1. On July 30, 2002, at the request of the parties, the action was reopened. Accordingly, the merits of the Motion to Dismiss Count V are now before the court.

DISCUSSION

I. Standard for Motion to Dismiss

Rule 12(b)(6) permits the court to dismiss an action for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). The motion to dismiss may be granted only if the non-movant cannot demonstrate any set of facts in support of

³More precisely, the complaint alleges Counts I-V, and Count VII. There is no Count VI.

⁴The Motion for Withdrawal of Reference in Bankruptcy Court was granted as unopposed, without prejudice to vacating the withdrawal after clarification of underlying issues of fact.

the claim that would entitle the non-movant to relief. See Conley v. Gibson, 355 U.S. 41, 45-46, 2 L.Ed. 2d 80, 78 S. Ct. 99; Williams v. New Castle County, 970 F.2d 1260, 1266 (3d Cir. 1992). In considering the motion to dismiss, the court must accept as true all factual allegations in the pleading and all reasonable inferences that might be drawn therefrom, and construe the complaint in the light most favorable to the non-movant. See Weiner v. Quaker Oats Co., 129 F.3d 310, 315 (3d Cir. 1997).

I. Count V - Unconstitutional Taking

The Fifth Amendment proscribes the taking of private property for public use without just compensation. See U.S. Const. amend. V. It is well-recognized that this prohibition applies to state and local governments under the Fourteenth Amendment. See Crowell v. Palmer Twp., 263 F.3d 286, 290 (3d Cir. 2001).

Plaintiffs contend that Mayor Street and "other individual officers and employees of the City and School [District]" effected an unconstitutional taking in violation of the Fifth and Fourteenth Amendments by:

- (a) refusing to abide by the April 30, 2001, Order of the Bankruptcy Court directing the sale of the Market Street Properties free and clear of liens;
- (b) continuing to assert liens on the Market Street Properties absent full payment of asserted claims;

(c) causing title insurers and others to fear liability for defense costs or other items in the absence of full payment of City claims and to demand an escrow or payment of City claims ... ;

(d) other acts or omissions to obtain possession of the Escrow or delay distribution to Plaintiffs absent payment of invalid City and School District claims.

See Plaintiff's Complaint, Count V, at 21.

In Ultimate Sportsbar, Inc. v. United States, 48 Fed. Cl. 540, 541 (2001), Ultimate Sportsbar asserted a possessory interest in property owned by a bankrupt land owner. Some years before the bankruptcy, the U.S. Environmental Protection Agency ("EPA") had sued the land owner to compel cleanup. To collect the money judgment obtained by the EPA, the United States initiated the bankruptcy proceedings in which Ultimate Sportsbar's interest was extinguished. Ultimate Sportsbar filed a claim asserting the eradication of its possessory interest was an unconstitutional taking. In granting the defendant's motion to dismiss, the Court of Claims stated, "Mere assertion of claims to property in a judicial proceeding which is neither eminent domain nor regulatory in nature is not the kind of government action that is capable of causing a taking within the meaning of the Fifth Amendment." Id. at 549.

The Court of Claims, in reaching its decision, relied on DSI

Corp. v. United States, 655 F.2d 1072 (1981). In DSI, the plaintiff alleged an unconstitutional taking when the United States challenged the validity of plaintiff's first mortgage. In granting the government's motion for summary judgment, the Court of Claims stated:

When the government "takes" property, it exercises its right as sovereign to acquire property from the rightful owner for the public good. ... In the instant case, however, the government did not exercise its sovereignty and expropriate private property from the rightful owner. Instead, the government asserted a claim of right to the property In essence, this case involved a contest between two parties over conflicting claims of ownership. On such facts, it is axiomatic that there is no taking

655 F.2d at 1074 (citations omitted).

Most recently, in Klump v. United States, 50 Fed. Cl. 268, 269-70 (2001) aff'd, 30 Fed. Appx. 958 (2002), a rancher with water rights had his permits canceled and those rights reassigned on a United States Bureau of Land Management request. The rancher asserted an unconstitutional taking of the water rights; the Court of Claims held no unconstitutional taking occurs "when the government simply asserts its ultimate right to ownership of an interest in property through the same legal channels that any other individual would employ to assert such an interest" Klump, 50 Fed. Cl. at 271.

These cases establish that a governmental entity's effort to assert its right to property in a non- eminent domain judicial proceeding does not constitute a taking under the Fifth

Amendment. The City of Philadelphia asserts rights in the Bankruptcy Court not to property itself but to proceeds of its sale. The City is not using its power of eminent domain or issuing a regulation taking plaintiffs' property; it is acting, like plaintiffs, as a lienholder/creditor in a bankruptcy proceeding.

Plaintiffs have failed to establish an unconstitutional taking in violation of the Fifth Amendment; the Motion to Dismiss Count V is granted. The Unopposed Motion for Withdrawal of Reference in Bankruptcy Court granted by the court February 19, 2002, is vacated with respect to Counts I-IV and Count VII, and the action is remanded to the Bankruptcy Court to resolve the dispute over seniority of liens on the sale proceeds. An appropriate order follows.

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ORDER

AND NOW, this day of October, 2002, upon consideration of the Motion to Dismiss of the Defendants, City of Philadelphia, The School District of Philadelphia, and John Street (paper #6 in 02-MC-24), and Plaintiff's Response to Motion to Dismiss of City of Philadelphia (paper #7 in 02-MC-24), it is hereby **ORDERED** that:

1. The Motion to Dismiss Count V (paper #6 in 02-MC-

24) is **GRANTED**, with prejudice; and

2. Defendants' Unopposed Motion for Withdrawal of Reference in Bankruptcy Court (paper #1 in 02-MC-24) is **VACATED** with respect to Counts I-IV, and Count VII, and this action is **REMANDED** to Bankruptcy Court.

S.J.