

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

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JOEL HARDEN,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 05-120
	:	
CITY OF PHILADELPHIA,	:	
PHILADELPHIA DEPARTMENT OF	:	
LICENSES & INSPECTIONS,	:	
PHILADELPHIA POLICE	:	
DEPARTMENT 14 <sup>TH</sup> POLICE DISTRICT,	:	
JOHN DOE POLICE OFFICER #1,	:	
JOHN DOE POLICE OFFICER #2 and	:	
JOHN DOE POLICE OFFICER #3,	:	
	:	
Defendants.	:	

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**MEMORANDUM**

**ROBERT F. KELLY, Sr. J.**

**MAY 18, 2005**

Presently pending before this Court is the Defendant’s, City of Philadelphia (“City”), Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). For the following reasons, the City’s Motion is granted in part and denied in part.

**I. BACKGROUND**

On January 11, 2005, the Plaintiff, Joel Harden (“Harden”), filed a Complaint against Defendants, the City, Philadelphia Department of Licenses & Inspections (“L & I”), Philadelphia Police Department 14<sup>th</sup> Police District (“Police Department”) and three unnamed police officers. The Complaint asserts numerous claims, including purported violations of Harden’s rights under the United States Constitution and 42 U.S.C. § 1983. Plaintiff has also brought various state law claims against all of the Defendants.

Plaintiff is the owner of 5541-47 Germantown Avenue (the “location”) in the City of Philadelphia. (Compl. ¶ 18). Plaintiff is also the owner and operator of HCFD Corporation (“HCFD”) whose principal place of business is at this location. According to the Complaint, the City, through L & I, issued a temporary sign poster permit to HCFD allowing HCFD to place signs on wooden polls which advertised that HCFD was in the business of buying and selling properties. (Id. ¶¶ 11-12). Ultimately, it was determined that the permit was issued in error. According to the Plaintiff, after HCFD did not take down all of its signs in the time designated by the City, the Police Department ceased the operations of all businesses and tenants at the location. According to the Complaint, there were other tenants at the location not associated with HCFD and the Defendants “had no right, authority, or power to cease operations of all commercial and residential tenants at the property owned by the Plaintiff.” (Id. ¶ 20). Thereafter, the Plaintiff avers that on several successive occasions, the Defendants shut down the operations not only of HCFD, but of all the tenants and businesses at the location causing Plaintiff, as owner of the location, significant harm.

## **II. STANDARD**

A motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A court must determine whether the party making the claim would be entitled to relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)(citing Conley, 355 U.S. at 45-46); see also Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a motion to dismiss, all allegations in the complaint must be accepted as true and viewed in the light most favorable to the non-moving

party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989)(citations omitted).

### **III. DISCUSSION**

Plaintiff's Complaint has seven counts. Each count is brought against all of the Defendants. Specifically, Plaintiff's claims are for: Federal Civil Rights Violations (Count I); Wrongful Use and Abuse of Civil/Criminal Process (Count II); Interference with Contractual and Business Relations (Count III); Intentional Infliction of Emotional Distress (Count IV); Gross Negligence (Count V); Harassment (Count VI); and Punitive Damages (Count VII). The City sets forth three bases for this Court to dismiss some or all of these claims. First, the City argues that L & I and the Police Department are both administrative arms of the City and, therefore, are not proper defendants in this action. Next, the City argues that Rooker/Feldman bars federal jurisdiction in this case.<sup>1</sup> Finally, the City argues that Plaintiff's state law claims (Counts II-VI) are barred by the Pennsylvania Political Subdivision Tort Claims Act ("PSTCA"). I will consider each of these arguments in turn.

#### **A. L & I AND THE POLICE DEPARTMENT**

As previously noted, the seven counts of the Complaint are against all of the listed Defendants. The City argues that L & I and the Police Department are administrative arms of the City, and as such, the claims against these two entities should be dismissed. There is no allegation in the Complaint that L & I and the Police Department are separate legal entities from the City. Indeed, the Complaint states that both departments are owned, operated and managed by the City. (Compl. ¶¶ 5-6). As there appears to be no disagreement amongst the parties that

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<sup>1</sup> As discussed in Part III.B, the City also argues that issue preclusion bars Plaintiff's claims.

both the L & I and the Police Department are administrative arms of the City, the claims against these two agencies will be dismissed.<sup>2</sup> See Bornstad v. Honey Brook Township, No. 03-2822, 2004 WL 1171244, at \*2 (E.D. Pa. May 26, 2004)(citing Mitros v. Cooke, 170 F. Supp. 2d 504, 507 (E.D. Pa. 2001); Setchko v. Township of Lower Southhampton, No. 00-3659, 2001 WL 229625, at \*2 (E.D. Pa. Mar. 8, 2001); Smith v. City of Phila., No. 98-3338, 1998 WL 966025, at \*2 (E.D. Pa. Nov. 10, 1998)); see also, Black v. Town of Harrison, No. 02-2097, 2002 WL 31002824, at \*4 (S.D.N.Y. Sept. 5, 2002).

## **B. ROOKER-FELDMAN DOCTRINE/ISSUE PRECLUSION**

Next, the City argues that Plaintiff's claims are barred by the Rooker-Feldman doctrine and/or issue preclusion.

### **1. Rooker-Feldman**

“The Rooker-Feldman doctrine bars federal jurisdiction under two circumstances: if the claim was ‘actually litigated’ in state court or if the claim is ‘inextricably intertwined’ with the state court adjudication.” ITT Corp. v. Intelnet Int’l Corp., 366 F.3d 205, 210 (3d Cir. 2004). In determining whether an issue was “actually litigated” by the state court, “a plaintiff must present its federal claims to the state court, and the state court must decide those claims.” Id. at 210 n.8 (citing Desi’s Pizza, Inc. v. City of Wilkes-Barre, 321 F.3d 411, 419 (3d Cir. 2003)). Determining that a claim was “actually litigated” “requires that the state court has considered and

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<sup>2</sup> Indeed, Plaintiff's Brief in Opposition to the Motion to Dismiss fails to respond to the City's argument seeking to dismiss L & I and the Police Department. As there appears to be no opposition to dismissing these Defendants based upon Plaintiff's response brief, this provides further support for the dismissal of these two Defendants. See Cini v. Nat'l R.R. Passenger Corp., No. 99-2630, 1999 WL 1049833, at \*2 (E.D. Pa. Nov. 19, 1999)(citing Carter v. Dragovich, No. 94-7163, 1999 WL 549030, at \*1 (E.D. Pa. July 27, 1999); Ricciardi v. Consol. R.R. Corp., No. 98-3420, 1999 WL 77253, at \*3 (E.D. Pa. Feb. 8, 1999)).

decided precisely the same claim that the plaintiff has presented in the federal court.” Id.

As to determining whether claims are inextricably intertwined, the United States Court of Appeals for the Third Circuit (“Third Circuit”) has stated that:

[s]tate and federal claims are inextricably intertwined (1) when in order to grant the federal plaintiff the relief sought, the federal court must determine that the state court judgement was erroneously entered [or] (2) when the federal court must . . . take action that would render [the state court’s] judgment ineffectual . . . . If the relief requested in the federal action requires determining that the state court’s decision is wrong or would void the state court’s ruling, then the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit.

Id. (internal quotation marks and citations omitted). As noted by the Third Circuit, “the first step in a Rooker-Feldman analysis is to determine exactly what the state court held.” Id. (citing Gulla v. N. Strabane Township, 146 F.3d 168, 171 (3d Cir. 1998)). Thus, I will now turn my attention to the state court proceeding.

The City cites to a January 30, 2003 hearing in front of the Honorable Matthew D. Carrafiello of the Court of Common Pleas of Philadelphia County in support of its Rooker-Feldman argument. In that case, HCFD brought an equity action against the City. Ultimately, the state court held that the City’s cease order towards HCFD was legal. (City Mot. Dismiss Ex. B, at 41-42). It is this decision by Judge Carrafiello that the City argues bars Plaintiff’s claims under the Rooker-Feldman doctrine. However, Judge Carrafiello did not end the hearing with this ruling, rather he continued by noting the following:

Now, there is a issue as to tenants in the building. Tenants may have a right to be in that building; however, they are not party to this action, nor are they present. This Court will grant leave to any such tenants to intervene in this action, even intervene informally. However, they must come forward, identify themselves and show

their legal right to be in that building.  
I'm going to suggest that such a showing be made to the Law Department and that the Law Department instruct the police department to allow any persons who have a putative right to be in that premises to be in that premises.

(Id. at 43).

The Plaintiff's claims in this case arise from his position as owner of the building and the City's closure of the entire building rather than just the closure of HCFD.<sup>3</sup> As noted by the passage quoted above, Judge Carrafiello never considered the impact the City's actions had on other tenants of the building. As such, Plaintiff's claims as owner of the entire building were not "actually litigated" in state court. Additionally, as the state court never ruled on the issue of the closure of the entire building, any relief sought by Plaintiff as it relates to this closure and the impact it had on him as owner is not inextricably intertwined so as to bar Plaintiff's current claims under Rooker-Feldman. More specifically, any ruling this Court might make as it relates to Plaintiff's claims as owner of the entire building will have no effect on Judge Carrafiello's

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<sup>3</sup> Indeed, in his Brief in Opposition, the Plaintiff states the following:

The state court proceeding did not address, nor was asked to address, the affect of Defendants' actions upon Plaintiff as an individual, owner of 5547 Germantown Avenue, or as landlord of the other tenants in the building. As such, the state court ruling only concluded that the Defendants' actions to cease operations of HCFD Corporation were valid. The court did not rule upon, nor consider, whether the Defendants' actions of shutting down the whole building, ceasing the operations of all business in the building, and evicting Plaintiff's residential tenants were valid, lawful, or in violation of Plaintiff's federal civil rights. They are the issues that Plaintiff is asking this honorable court to hear.

(Pl. Ans. Opp'n Defs.' Mot. Dismiss, at 4-5). I agree with this interpretation of Plaintiff's current claims.

ruling that the cease order as applied to HCFD was legal.

## **2. Issue Preclusion**

In addition to asserting that Plaintiff's claims are barred by the Rooker-Feldman doctrine, the City argues that Plaintiff's claims should be dismissed due to issue preclusion. I note that the Third Circuit has noted that the "actually litigated" element of the Rooker-Feldman doctrine "derives from the preclusion context." ITT Corp., 366 F.3d at 211 (footnote omitted). In this case, I have already determined in Part III.B.1 that Plaintiff's claims arising from his position as owner of the entire building were not "actually litigated" in the state court action.<sup>4</sup> As such, the City's argument that issue preclusion warrants this Court dismissing Plaintiff's Complaint is unpersuasive.

## **C. PENNSYLVANIA POLITICAL SUBDIVISION TORT CLAIMS ACT**

Finally, the City argues that Plaintiff's state law claims (Counts II-VI) should be dismissed since each of these claims is barred under the PSTCA. Governmental agencies are immune from liability except in eight specific instances. See Gula v. Commonwealth of Pa.,

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<sup>4</sup> As noted by the courts:

The Third Circuit has held preclusion was appropriate when an issue was distinctly put in issue, directly determined adversely to the party against whom estoppel is asserted, and where: "(1) the identical issue was decided in a prior adjudication; (2) there was a final judgment on the merits; (3) the party against whom the bar is asserted was a party or in privity with a party to the prior adjudication; and (4) the party against whom the bar is asserted had a full and fair opportunity to litigate the issue in question."

Arena v. McShane, No. 02-7639, 2004 WL 1925048, at \*3 n.5 (quoting Del. River Port. Auth. v. Fraternal Order of Police, 290 F.3d 567, 573 (3d Cir. 2002)). Thus, if the issue was not decided in the prior adjudication, issue preclusion will not apply.

123 Pa. Cmwlth. 458, 462, 554 A.2d 593, 595 (1989)(citing 42 Pa. C.S. §§ 8541-42). More specifically, “the [Pennsylvania] legislature has provided that liability may be imposed in these eight exceptions if the alleged harm occurred as a result of the acts described in the eight exceptions and if two conditions are satisfied. Id. (citing Pa. C.S. § 8542(a); Mascaro v. Youth Study Ctr., 514 Pa. 351, 423 A.2d 1118 (1987)). “These pre-conditions are (1) that damages would otherwise, i.e. except for immunity, be recoverable and (2) that the harm was caused by negligent acts of the agency or its employees, performed within the scope of their duties, with respect to one of the eight exceptions.” Id. (citing Pa. C.S. § 8542(a)(1) and (2)). The eight listed exceptions under the PSTCA which may result in the imposition of liability on the City are: (1) vehicle liability; (2) care, custody or control of personal property; (3) real property; (4) trees, traffic controls and street lighting; (5) utility service facilities; (6) streets; (7) sidewalks; and (8) care custody or control of animals. See 42 Pa. C.S.A. § 8542(b). Plaintiff fails to identify which exception his state law claims fall under against the City. As Plaintiff’s state law claims arise from the City’s actions relating to the closure of the building in which he owns, it appears that the PSTCA will bar Counts II-VI against the City since Plaintiff’s claims do not fall under one of the eight listed exceptions.<sup>5</sup>

#### **IV. CONCLUSION**

I conclude that the City’s Motion to Dismiss should be granted in part and denied in part. First, as Defendants L & I and the Police Department are mere administrative arms of the

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<sup>5</sup> Additionally, similar to the City’s argument regarding dismissing L & I and the Police Department as Defendants, Plaintiff fails to respond to the City’s PSTCA argument in his Brief in Opposition to the Motion. This provides further support to dismiss these claims against the City. See Cini, 1999 WL 1049833, at \*2 (citing Carter, 1999 WL 549030, at \*1; Ricciardi, WL 77253, at \*3).

City and because the Plaintiff did not respond to the City's argument which sought to dismiss them as Defendants, all claims against L & I and the Police Department are dismissed. Next, I conclude that Plaintiff's current claims are not barred by the Rooker-Feldman doctrine or issue preclusion. Finally, I conclude that since Plaintiff's state law claims (Counts II-VI) are barred by the PSTCA and that Plaintiff has failed to respond to the City's PSTCA argument, this warrants dismissal of these counts against the City.

An appropriate Order follows.

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JOEL HARDEN,	:	
	:	CIVIL ACTION
Plaintiff,	:	
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v.	:	No. 05-120
	:	
CITY OF PHILADELPHIA,	:	
PHILADELPHIA DEPARTMENT OF	:	
LICENSES & INSPECTIONS,	:	
PHILADELPHIA POLICE	:	
DEPARTMENT 14 <sup>TH</sup> POLICE DISTRICT,	:	
JOHN DOE POLICE OFFICER #1,	:	
JOHN DOE POLICE OFFICER #2 and	:	
JOHN DOE POLICE OFFICER #3,	:	
	:	
Defendants.	:	
	:	

**ORDER**

**AND NOW**, this 18<sup>th</sup> day of May, 2005, upon consideration of Defendant’s, the City of Philadelphia (“City”), Motion to Dismiss (Doc. No. 3) and the Response thereto, it is hereby **ORDERED** that:

1. the City’s Motion is **GRANTED IN PART**<sup>1</sup>; and
2. the City’s Motion is **DENIED IN PART**.

BY THE COURT:

/s/ Robert F. Kelly  
Robert F. Kelly Sr. J.

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<sup>1</sup> All claims against Defendants the Philadelphia Department of Licenses and Inspections and the Philadelphia Police Department 14<sup>th</sup> Police District are dismissed. Furthermore, Counts II-VI of the Complaint are dismissed against the City.