

on September 9, 2005 by filing its Complaint for Appointment of Board of Viewers; it further appearing that plaintiff never removed the eminent domain action from the Court of Common Pleas of Lancaster County, Pennsylvania; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that the Motion of Defendants County of Lancaster, Pennsylvania and 150 N. Queen Street to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction or, Alternatively, Motion for Abstention is granted.

IT IS FURTHER ORDERED that action is dismissed for lack of subject matter jurisdiction and remanded to the eminent domain action in the Court of Common Pleas of Lancaster County, Pennsylvania (case no. CI-04-11545).

IT IS FURTHER ORDERED that the Clerk of Court shall this matter closed for statistical purposes.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge

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

I&S ASSOCIATES TRUST,)
) Civil Action
 Plaintiff) No. 05-CV-4846
)
 vs.)
)
 COUNTY OF LANCASTER, PENNSYLVANIA)
 and)
 150 NORTH QUEEN STREET, CITY)
 OF LANCASTER, PENNSYLVANIA,)
)
 Defendants)

* * *

APPEARANCES:

DON P. FOSTER, ESQUIRE
On behalf of Plaintiff

GEORGE C. WERNER, ESQUIRE,
On behalf of Defendants

* * *

MEMORANDUM OPINION

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on the Motion of Defendants County of Lancaster, Pennsylvania and 150 N. Queen Street to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction or, Alternatively, Motion for Abstention.² For the reasons expressed below, I grant defendants' motion to dismiss

² Because I grant defendants' motion to dismiss for lack of subject matter jurisdiction, I do not reach defendants' alternative request to abstain.

this action for lack of subject matter jurisdiction and remand this matter to the Court of Common Pleas of Lancaster County, Pennsylvania. The Court of Common Pleas has prior exclusive jurisdiction over the real property that is the subject of this eminent domain proceeding and the state eminent domain proceeding was never properly removed to this court.

JURISDICTION

Jurisdiction is based upon diversity of citizenship pursuant to 28 U.S.C. § 1332(a)(1). However, as explained below, this court may not exercise its jurisdiction in this case.

VENUE

Venue is proper pursuant to 28 U.S.C. § 1391(a)(2) because the property that is the subject of the action is situated in the City of Lancaster, Lancaster County, Pennsylvania, which is located in this judicial district. In addition, venue is also proper pursuant to 28 U.S.C. § 1391(a)(1) because all defendants reside within Lancaster County, Pennsylvania.

FACTS

The facts relevant to defendants' challenge to the subject matter jurisdiction of this court are undisputed and are

as follows:³

On December 15, 2004 defendant County of Lancaster, Pennsylvania, initiated a condemnation action in the Court of Common Pleas of Lancaster County, Pennsylvania (case no. CI-04-11545) pursuant to Pennsylvania's former Eminent Domain Code.⁴ The County of Lancaster filed a Declaration of Taking to vest in the County title in the nature of fee simple absolute for the property located at 150 North Queen Street in the City of Lancaster ("the condemned property"). Title in the condemned property was held by I&S Associates Trust ("I&S")(the plaintiff in the within action).

I&S did not file preliminary objections or otherwise contest the legality of the taking in the Court of Common Pleas. I&S never removed or attempted to remove the state condemnation proceeding to federal court. However, on September 9, 2005, I&S (as plaintiff) commenced the within federal action by filing a Complaint for Appointment of Board of Viewers in the United States District Court for the Eastern District of Pennsylvania. The complaint avers that the jurisdictional basis of this case is diversity of citizenship pursuant to 28 U.S.C. § 1332. The

³ The facts presented here are based upon the undisputed assertions in the memoranda of the parties and the docket entries and Orders and Opinions of record in this case.

⁴ Act of June 22, 1964, Sp.Sess., P.L. 84, art. IV, § 402, as amended, Dec. 5, 1969, P.L. 316, § 1, 26 P.S. § 1-402, (repealed by Act of May 4, 2006, P.L. 112, No. 34, § 5(2), and superceded by 26 Pa.C.S.A. § 302).

defendants in this action are the County of Lancaster and the condemned property.

CONTENTIONS OF THE PARTIES

Nearly three years after this federal action was initiated, defendants have moved to dismiss this case for lack of subject matter jurisdiction. Defendants contend that this court does not have subject matter jurisdiction over the condemned property in this in rem action because the Pennsylvania proceeding was never removed from the Lancaster Court of Common Pleas. Defendants assert that the Lancaster Court of Common Pleas had prior exclusive jurisdiction over the res, and that jurisdiction could only be effected in this court by timely removing the action from state court. Defendants also assert, in the alternative, that this court should abstain.

Plaintiff opposes defendants' construction of this court's subject matter jurisdiction. Plaintiff contends that the federal dispute between the parties solely concerns money damages and does not involve the exercise or control of the condemned property. Plaintiff asserts that the issue of the sovereign's right to condemn its private property was definitively resolved in the Lancaster Court of Common Pleas when I&S Associates Trust elected not to file preliminary objections to the taking.

Plaintiff argues that the issue is analogous to a beneficiary's claim to an interest in a trust fund, which is not the exclusive province of a state court overseeing the administration of the trust. Moreover, plaintiff contends that

there was no pending action in state court when the federal action was commenced because it did not file a petition for board of viewers in the state proceeding. Plaintiff asserts that the state and federal courts have concurrent jurisdiction over this dispute and that this court's jurisdiction was properly invoked.

STANDARD OF REVIEW

A party may mount a challenge to the court's subject matter jurisdiction at any time in the action, Fed.R.Civ.P. 12(h)(3), and this court has a continuing duty to ensure its own jurisdiction. Desi's Pizza, Inc. v. City of Wilkes-Barre, 321 F.3d 411, 420 (3d Cir. 2003). A challenge to subject matter jurisdiction may be either facial or factual. Gould Electronics Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000).

A "facial" challenge to subject matter jurisdiction attacks the sufficiency of the complaint on its face in alleging subject matter jurisdiction. In a facial challenge, the court must accept all allegations contained in the complaint as true. Mortensen v. First Federal Savings and Loan Association, 549 F.2d 884, 891 (3d Cir. 1977).

A "factual" challenge to subject matter jurisdiction attacks the underlying factual basis for subject matter jurisdiction such that no presumption of truthfulness attaches to the allegations in the complaint. Under a factual challenge, plaintiff has the burden of proving the existence of

jurisdiction, and the court may evaluate the merits of jurisdictional claims by considering evidence beyond the pleadings. Id.

Defendants have asserted a factual attack on this court's subject matter jurisdiction because they rely on facts beyond the pleadings. However, the pertinent facts are undisputed. Furthermore, the only materials beyond the pleadings and briefs necessary to resolve this dispute are public records, including the state court docket and record documents from the Lancaster Court of Common Pleas. These are materials which I could consult even if the jurisdictional challenge was facial. Cf. Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1380 n.1 and n.2 (3d Cir. 1995).

DISCUSSION

The principal United States Supreme Court case governing defendants' jurisdictional challenge is Princess Lida of Thurn and Taxis v. Thompson, 305 U.S. 456, 59 St.Ct. 275, 83 L.Ed. 285 (1939). In Princess Lida, the Supreme Court held as follows:

[I]f...two suits are in rem, or quasi in rem, so that the court, or its officer, has possession or must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought the jurisdiction of the one court must yield to the that of the other. We have said that the principle applicable to both

federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other, is not restricted to cases where property has been actually seized under judicial process before a second suit is instituted, but applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction, the court must control the property. The doctrine is necessary to the harmonious cooperation of federal and state tribunals.

305 U.S. at 466, 59 St.Ct. at 280-281, 83 L.Ed. at 291 (footnotes omitted). The Supreme Court has reaffirmed its holding in Princess Lida, and courts in this district have recognized the continuing viability of the decision. See Colorado River Water Conservation District v. United States, 424 U.S. 800, 818, 96 S.Ct. 1236, 1247, 47 L.Ed.2d 483, 498 (1976); Mellon Bank, N.A. v. Poling, Civ.A.No. 04-1461, 2004 WL 1535799, at *4 (E.D.Pa. June 10, 2004)(Surrick, J.).

The United States Court of Appeals for the Third Circuit has specified that Princess Lida doctrine is implicated where: "(1) the litigation in both the first and second fora are in rem or quasi in rem in nature, and (2) the relief sought requires that the second court exercise control over the property in dispute and such property is already under the control of the first court." Dailey v. National Hockey League, 987 F.2d 171, 176 (3d Cir. 1993). The holding of Princess Lida is a

"mechanical rule" which "requires dismissal when its conditions are met." R&R Capital, LLC v. Merritt, Civ.A.No. 07-2869, 2007 WL 3102961, at *13 (E.D.Pa. Oct. 23, 2007)(McLaughlin, J.) (citing Dailey v. National Hockey League, supra)).

The parties in the within matter have not directly addressed the Third Circuit's test because they dispute the nature of the state and federal actions. Defendants argue that the Eminent Domain Code contemplates a single action which is divided into two phases, condemnation (assessing the validity of the taking) and just compensation (determining damages). Therefore, defendants assert that control of the res must be vested in the court exercising jurisdiction over the entire action.

In contrast, plaintiff asserts that the Eminent Domain Code contemplates two separate legal proceedings, and only the condemnation proceeding implicates Princess Lida doctrine. Plaintiff contends that the doctrine does not apply here because the only relief sought is money damages as just compensation.

This issue of whether the two-phase eminent domain proceeding constitutes one or two actions definitively resolves the Princess Lida doctrine issue in this case. If under the Eminent Domain Code there is only a single "action" with two sub-parts, then Princess Lida doctrine applies because there are two concurrent in rem actions (the Court of Common Pleas action and

the within federal action) which both require control over the same res (the condemned property). If the two components are separate actions, however, then Princess Lida doctrine is not implicated because plaintiff seeks only money damages from state funds in this federal action, relief which does not require this court to exercise control of the condemned property.

As stated above, effective September 20, 2006, Pennsylvania partially repealed, amended and re-codified its Eminent Domain Code. See Act of May 4, 2006, P.L. 112, No. 34, §§ 1-7; see also 26 Pa.C.S.A. §§ 101-1106. However, no material changes were effected which affect the outcome of this Order. The current and former "[p]rovisions throughout the Code demonstrate the [Pennsylvania] Legislature's goal of simplified, fair, and speedy condemnation proceedings." Douglas Waste Paper Company v. Redevelopment Authority of the City of Philadelphia, 481 Pa. 634, 639, 393 A.2d 341, 343-344 (1978).

The parties have not pointed to any case in which a Pennsylvania or federal court has construed the two components of a eminent domain proceeding to be a single action with multiple phases or two separate actions. My own research has also failed to reveal any such case. Reviewing the applicable provisions of the Eminent Domain Code and relevant case law, however, I conclude that the two phases of a condemnation action must be considered to be a single legal action.

This construction of the condemnation proceeding as a single action is supported by both the current and former versions of the Eminent Domain Code. The Code itself states that it "provides a complete and exclusive procedure and law to govern all condemnations of property for public purposes and the assessment of damages."⁵ Cases in this district have recognized the complex and integrated nature of state eminent domain proceedings. See Cole v. City of Philadelphia, 145 F.Supp.2d 646, 653 (E.D.Pa. 2001)(Joyner, J.).

Moreover, the current Eminent Domain Code, as well as its prior version, is structured to reflect the single action concept. In both its current and prior version, the Code contemplates that the parties may agree to the amount of just compensation at any point in the action, including the condemnation phase of the action. In its current version, the Code explicitly states that "[a]t any stage of the proceedings, the condemnor and the condemnee may agree upon all or any part or item of the damages and proceed to have those parts or items not agreed upon assessed as provided [elsewhere in the Code]."⁶

Under the Code, a Declaration of Taking must be filed to commence a condemnation action (unless the case is a de facto

⁵ 26 Pa.C.S.A. § 102(a) (superceding 26 P.S. § 1-303).

⁶ 26 Pa.C.S.A. § 501 (superceding 26 P.S. § 1-410).

taking).⁷ After the declaration is filed, a condemnee may contest the validity of the taking by filing preliminary objections.⁸ However, if the condemnee does not contest the taking, the condemnor may only take possession after the payment of just compensation (the amount of which may be subject to later adjustment), or a written offer to pay the same.⁹

If a condemnee contests the award of just compensation, it must file a petition for the appointment of board of viewers.¹⁰ Significantly, however, the former version of the Code stated that "[e]xcept as otherwise ordered by the court, [the proceeding to determine the award of just compensation] shall be at the same court term and number as the declaration of taking."¹¹ Thus, the version of the Code applicable when plaintiff commenced this federal lawsuit specifically contemplated a single Eminent Domain action.

The construction of the two phases of an eminent domain proceedings as a single action also comports with the Takings Clause of the Fifth Amendment to the United States Constitution. The Takings Clause specifically provides that takings are

⁷ 26 Pa.C.S.A. § 302 (superceding 26 P.S. § 1-401).

⁸ 26 Pa.C.S.A. § 306 (superceding 26 P.S. § 1-406).

⁹ 26 Pa.C.S.A. § 307 (superceding 26 P.S. § 1-407).

¹⁰ 26 Pa.C.S.A. § 502 (superceding 26 P.S. § 1-502).

¹¹ 26 P.S. § 1-502(a)(1) (repealed).

constitutional only after the award of just compensation. U.S. Const. amend. V. If the two phases of Pennsylvania's Eminent Domain Code were separate actions, it would mean that a condemnation would be effected without the award of just compensation, which would run afoul of the Takings Clause.

This understanding also comports with the Commonwealth Court of Pennsylvania's construction of the prior version of the Eminent Domain Code and the Pennsylvania Constitution, which recognize that payment of or security for just compensation is required before a taking may be effected. Appeal of Perry, 75 Pa.Comm. 343, 345, 461 A.2d 916, 917 (1983).

Federal courts face a constitutional duty to exercise their jurisdiction over eminent domain matters. County of Allegheny v. Mashuda Company, 360 U.S. 185, 79 S.Ct. 1060, 3 L.Ed.2d 1163 (1959); Fed.R.Civ.P. 71.1. However, a party cannot choose piecemeal those aspects of the controversy it would prefer to litigate in a federal forum. If a party desires to avail itself of a federal forum in an eminent domain matter where there is diversity of citizenship, that party must timely remove the entire action and do so promptly after the proceeding is commenced. See 28 U.S.C. §§ 1441 and 1446.

It is undisputed that this eminent domain proceeding was commenced in the Court of Common Pleas of Lancaster County, Pennsylvania. It is clear that the condemnation phase of this

eminent domain action was conducted in the Court of Common Pleas. It is also clear that plaintiff never removed the proceeding from the Court of Common Pleas.

Based upon my review of the Eminent Domain Code and relevant case law, although eminent domain proceedings may be conducted in two phases, such proceedings are single integrated in rem actions. Therefore, because an in rem action was commenced in the Court of Common Pleas, another court first attained prior exclusive jurisdiction over the res that is the subject of this federal action, and this action must be dismissed under the Princess Lida doctrine.

Accordingly, the Motion of Defendants County of Lancaster, Pennsylvania and 150 N. Queen Street to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction or, Alternatively, Motion for Abstention is granted and this matter is dismissed for lack of subject matter jurisdiction.

CONCLUSION

For all the foregoing reasons I grant the Motion of Defendants County of Lancaster, Pennsylvania and 150 N. Queen Street to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction or, Alternatively, Motion for Abstention and dismiss plaintiff's Complaint for Appointment of Board of Viewers.

Because it appears that the eminent domain action in the Court of Common Pleas of Lancaster County, Pennsylvania

(case no. CI-04-11545) remains pending, and because of the significant steps taken to advance this litigation in federal court, including the appointment of a Board of Viewers and the filing of its report, this matter is remanded to the Court of Common Pleas of Lancaster County, Pennsylvania. I respectfully suggest that the Court of Common Pleas consider the reports and documents of record filed within this federal action in an effort to minimize any delay and repetition which results from this dismissal.