

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

TRI-COUNTY CONCERNED	:	CIVIL ACTION
CITIZENS ASSOCIATION,	:	
PATTY BRANN,	:	NO. 98-4184
KATHY BRILL,	:	
WILLIAM CRANSTON,	:	
HOLLY HARTSHORNE, and	:	
BARBARA MESSNER,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
RAYMOND CARR,	:	
MORGANTOWN PROPERTIES, INC.,	:	
WILLIAM BETZ,	:	
JUDITH BETZ,	:	
ROBERT G. WILLIAMS,	:	
CAROLYN WILLIAMS,	:	
CHERYL CONKEL, and	:	
NEW MORGAN BOROUGH,	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

November 20, 1998

In this latest skirmish between the incorporated municipality of New Morgan Borough and the residents of neighboring townships Caernarvon and Robeson, five individually named plaintiffs and an association of citizens residing in the area surrounding New Morgan Borough have filed a putative class action on behalf of all persons owning property and/or residing within one mile of the borough. See Compl. ¶¶ 2-3. In response to their allegations of

various federal constitutional deprivations and a number of other statutory and state law claims, the eight named defendants, represented by three sets of counsel, have moved this Court to dismiss the claims pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

After a careful review of the parties' submissions, the Court concludes that Plaintiffs lack Article III standing to assert any of the federal constitutional claims (which additionally suffer from unripeness) and thus, the Court lacks subject matter jurisdiction over those claims. Plaintiffs additionally lack statutory standing under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, and thus, have failed to state a claim upon which relief can be granted. Finally, in the absence of any federal anchor claim, the Court declines to exercise supplemental jurisdiction over Plaintiffs' pendent state law claims. Accordingly, Defendants' motions are GRANTED and the complaint is dismissed in its entirety without prejudice.

I. BACKGROUND

Plaintiffs are property owners who reside adjacent to the community of New Morgan Borough in Berks County, Pennsylvania. They commenced this lawsuit in August 1998 against a limited partnership, an incorporated municipality, and six individuals, five of whom are officials of the municipality. Raymond Carr allegedly "owns, or has interest in, virtually all or completely all of the land comprising New Morgan Borough." Compl. ¶ 4. Morgantown Properties, a limited partnership, is owned and operated by Carr, and New Morgan Borough is the name of the incorporated entity. *See id.*; *see also* Defs. Carr and Morgantown Properties' Mem. (Exhibit A thereto). The five officials ("Public Officials") are: William Betz, the mayor;

Judith Betz, the president of the Borough Council and chairperson of the Borough Planning Committee; Robert Williams, a council member; Carolyn Williams, the treasurer and secretary of the council, and secretary of the planning committee; and Cheryl Conkel, the vice-president of the council and co-chair of the planning committee. See Compl. ¶ 4.

Plaintiffs' complaint essentially recounts the saga of land development in New Morgan Borough from the perspective of a concerned neighbor and raises the following seven claims: 42 U.S.C. § 1983 claims for a violation of their substantive and procedural due process rights (counts I and II); a RICO claim (counts III); an inverse condemnation claim for an unconstitutional taking without just compensation (counts IV); a claim entitled, "Arbitrary Exercise of Zoning" (count V); a claim brought pursuant to Article I, §§ 1, 26, and 27 of the Pennsylvania Constitution (count VI); and common law nuisance (count VII).

Some thirteen years ago, Defendants Carr and Morgantown Properties acquired over 3,000 acres of land located in Caernarvon and Robeson Townships, which was, at the time of purchase, a mostly rural farming community with a small urbanized area in Morgantown. See Compl. ¶ 10. Having unsuccessfully sought permission from Caernarvon Township to construct a trash-to-steam plant on the property, Carr then brought a petition in Pennsylvania state court to incorporate the land as a borough, thereby being able to claim independent legal status and promulgate land-use regulation within its boundaries. See id. ¶ 11-12. The propriety of the incorporation of New Morgan Borough is now well settled and beyond dispute. See In re Incorporation of Borough of New Morgan, 590 A.2d 274 (Pa.) (affirming incorporation of borough over objections of twelve non-resident intervenors, various amici, and Caernarvon and

Robeson Townships), cert. denied sub nom., Caernarvon Township v. Morgantown Properties, 502 U.S. 860 (1991).

Then, Carr allegedly conferred public offices on family members, friends, employees, and tenants. See Compl. ¶ 13. This leads Plaintiffs to contend that these officers are “sham officers of a sham Borough . . . controlled by Carr.” Id. ¶ 5. Plaintiffs allege that Carr and Morgantown Properties “have effectively created a company town” and that “Carr controls the elections and identity of any and all political persons eligible for holding public office . . . in that each such person is a family member, employee, and/or a tenant of Carr, his enterprises, and the Borough itself, and among other things, are subject to firing and/or eviction if they fail to carry out Carr’s wishes in all matters.” Id. ¶ 15.

Through this extortionate control, Plaintiffs allege that “Defendants have erected, authorized, and threatened to erect virtually throughout his property . . . a massive accumulation of unreasonably noxious, abusive, destructive, and objectionable uses, imposing a wide range of adverse effects on their surrounding neighbors.” Id. ¶ 17. Defendants have erected a landfill and allegedly plan to construct a “trash-to-steam incinerator, a commercial gambling operation, i.e., a racetrack, a leachate treatment plant in the landfill, and a privately operated prison.” Id. ¶ 20. Citing “noxious odors, loud and disruptive noises, trash hanging from trees on local roads, damaged streets, and broken windshields and other property, constituting a public and private nuisance and giving rise to inhuman living conditions and a chronic, continuing devaluation of property,” id. ¶ 19, Plaintiffs allege that Defendants’ actions are not warranted by any legitimate governmental purpose but rather, are motivated by the illegal and inappropriate motivation of maximizing profits for Carr and Morgantown Properties, see id. ¶ 22.

Indeed, it is incontrovertible that the Borough undertook development of the land through the adoption of a comprehensive plan, a zoning ordinance, and subdivision and land development ordinances. See Defs. Carr and Morgantown Properties' App. (Exhibits 1-3 thereto). Pursuant to these regulations, a tract of land was set aside for the operation of a landfill by Browning Ferris Industries under the supervision of the Pennsylvania Department of Environmental Protection. See id. (Exhibit 4 thereto); Defs. Public Officials' Mem. (Exhibits C and D thereto). While Defendants have denied that there is any proposal to construct a trash-to-steam plant on the land, the minutes of the Borough Council and Borough Planning Committee meetings and the various real estate transactions documents indicate that consideration is currently underway for a motor sports park to be owned and operated by Formula Motorsports, Inc., a juvenile detention center/boarding school to be owned and operated by Cornell Corrections, Inc., and a leachate treatment plant. See Defs. Carr and Morgantown Properties' App. (Exhibits 5-8 thereto); Defs. Public Officials' Mem. (Exhibits E and F thereto). Significantly, the named defendants appear to have neither any ownership interest in, nor any business connection to, the uses intended by these operations. See Defs. Carr and Morgantown Properties' App. (Exhibits 9 and 10 thereto).

II. DISCUSSION

A. Standards of Review

Defendants bring their motions by way of Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction, and 12(b)(6) for failure to state a claim upon which relief can be granted. "When a motion under Rule 12 is based on more than one ground, the court should

consider the 12(b)(1) challenge first because if it must dismiss the complaint for lack of subject matter jurisdiction, all other defenses and objections become moot.” In re Corestates Trust Fee Litig., 837 F. Supp. 104, 105 (E.D. Pa. 1993) (Buckwalter, J.), aff’d, 39 F.3d 61 (3d Cir. 1994). Accord Bell v. Hood, 327 U.S. 678, 682 (1946) (“Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy.”).

In ruling on a motion to dismiss pursuant to Rule 12(b)(1), “a district court is not limited to the face of the pleadings. Rather, as long as the parties are given an opportunity to contest the existence of federal jurisdiction, the court ‘may inquire, by affidavits or otherwise, into the facts as they exist.’” Armstrong World Indus., Inc. v. Adams, 961 F.2d 405, 410 n.10 (3d Cir. 1992) (quoting Land v. Dollar, 330 U.S. 731, 735 n.4 (1947)) (citations omitted). By contrast, in reviewing a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the district court must accept all well-pleaded allegations in the complaint as true and view them in the light most favorable to plaintiffs. See In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997).

B. The Federal Constitutional Claims Must Be Dismissed (Counts I, II, and IV)

Among the grounds Defendants advance in support of their Rule 12(b)(1) challenge against the due process and takings claims include one for lack of standing under Article III of the United States Constitution. See Def. New Morgan Borough’s Mem. at 10-13. The Court agrees and declines to exercise subject matter jurisdiction in the absence of constitutional standing.

Standing imports justiciability and thus, is properly brought under Rule 12(b)(1) for lack of subject matter jurisdiction. See 13A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure, Civil 2d, § 3531.15, at 95 n.9 (2d ed. 1984). Whether the plaintiff has made out a “case or controversy” against the defendant within the meaning of Article III of the United States Constitution “is the threshold question in every federal case, determining the power of the court to entertain the suit.” Warth v. Seldin, 422 U.S. 490, 498 (1975).

“[T]he standing question is whether the plaintiff has ‘alleged such a personal stake in the outcome of the controversy’ as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court’s remedial powers on his behalf.” Id. (quoting Baker v. Carr, 369 U.S. 186, 204 (1962)) (emphasis in original). It is well settled that Article III standing consists of three distinct elements:

First, the plaintiff must have suffered an “injury in fact” -- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of. . . . Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

United States v. Hays, 515 U.S. 737, 742-43 (1995) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (footnote, citations, and internal quotation marks omitted)); accord Davis v. Philadelphia Hous. Auth., 121 F.3d 92, 95-96 (3d Cir. 1997).

Plaintiffs simply contend that they have made the necessary averments in the pleading to withstand Defendants’ challenge for lack of standing. See Pl. Mem. at 31-34. The facts of the case, however, lead this Court to rule otherwise. Because Plaintiffs cannot establish

the necessary “causal connection between the injury and the conduct complained of,” they lack Article III standing to assert the federal constitutional claims.

The gist of Plaintiffs’ claims is that governmental entities enacted ordinances and regulations governing land-use within the boundaries of New Morgan that in some way affected their interests in property outside the confines of the borough. None of the named plaintiffs (or any members of the putative class) are residents of, or own any property in, New Morgan Borough. Consequently, their property is beyond the reach of the various ordinances and regulations promulgated by the Borough Council and the Planning Committee and thus, Plaintiffs cannot properly bring challenges to these ordinances as landowners.

Moreover, the “adverse effects” alleged by Plaintiffs are too attenuated from the actions of the governmental actors here to impute liability onto them. It is not the borough or its officials that are causing the “noxious odors, loud and disruptive noises, trash hanging from trees on local roads, damaged streets, and broken windshields and other property, constituting a public and private nuisance and giving rise to inhuman living conditions and a chronic, continuing devaluation of property.” The named defendants here do not possess any ownership interest in, nor any business connection to, the uses being complained of by Plaintiffs. All the municipality did was to designate the intended uses for the respective tracts of land, which was well within their authority. It is the subsequent operation of these uses that would give rise to Plaintiffs’ claims. Plaintiffs may have suffered injuries (or may be threatened with injuries) for which relief may be available, but these injuries are not fairly traceable to the actions of these defendants.

This lack of legal nexus between the application of the land-use regulations at issue and Plaintiffs’ property interests renders Plaintiffs unable to demonstrate the direct causal

connection necessary to satisfy the second element of constitutional standing. It must be remembered that not every infringement to one's property interests rises to the level of a constitutional claim and that some annoyances are adequately addressed by the common law.

Defendants additionally argue that the due process and takings claims are not yet ripe for adjudication and thus, must be dismissed for lack of subject matter jurisdiction under Article III of the United States Constitution. See Defs. Public Officials' Mem. at 7-13; Defs. Carr and Morgantown Properties' Mem. at 10-13; Defs. New Morgan Borough's Mem. at 26-27. Ripeness also imports justiciability and thus, is properly brought under Rule 12(b)(1) for lack of subject matter jurisdiction. See Reno v. Catholic Soc. Servs., Inc., 509 U.S. 43, 57 n.18 (1993) ("We have noted that ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction."); Taylor Inv., Ltd. v. Upper Darby Township, 983 F.2d 1285, 1290 (3d Cir.), cert. denied, 510 U.S. 914 (1993); see also 13A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure, Civil 2d, § 3532.1, at 130 (2d ed. 1984) ("Ripeness doctrine is rooted in the same general policies of justiciability as standing and mootness."). The "basic rationale" of the ripeness doctrine

is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.

Abbott Labs. v. Gardner, 387 U.S. 136, 148-49 (1967). Thus, a claim of unripeness is invoked when a dispute has not yet matured into a "case or controversy" within the meaning of Article III.

While not entirely necessary for the disposition of Plaintiffs' federal constitutional claims, to the extent those claims address threatened injuries from the uses conditionally approved by the New Morgan Borough Council and Planning Committee, the Court agrees that Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City, 473 U.S. 172 (1985), and its progeny, mandating that a plaintiff first seek relief through the procedures the state has provided for doing so, render those claims unripe for judicial review. That rule of finality applies to all of Plaintiffs' constitutional claims. See Taylor, 983 F.2d at 1290-92. Thus, those claims are dismissed on this alternative basis as well.

C. Plaintiffs Lack Statutory Standing to Assert the RICO Claim (Count III)

Defendants have moved to dismiss the RICO claim on a number of grounds. Chief among them is that Plaintiffs cannot establish that they have been injured in their property as a result of a pattern of racketeering activity or that they have been injured in their property independent of the alleged predicate acts. See Defs. Carr and Morgantown Properties' Mem. at 19-24; Defs. New Morgan Borough's Mem. at 28-37. Notwithstanding the unacceptably bare allegations of a RICO violation in the complaint, see Compl. ¶¶ 41-45, the Court agrees that Plaintiffs cannot establish a cognizable injury and thus, dismisses this claim on the merits.

In order to prevail on a civil action for damages under RICO, a plaintiff must establish a violation of § 1962, allege an injury to his/her business or property "by reason of" the alleged violation of § 1962, and plead the requisite causal connection between the injury and the violation of § 1962. 18 U.S.C. § 1964(c); see also Masnik v. Bolar Pharm. Co., Civ. A. No. 90-4086, 1991 WL 138331, at *6 (E.D. Pa. July 18, 1991) (Buckwalter, J.). Defendants' argument essentially finds its basis in principles of statutory standing. By contrast, statutory standing does

not implicate any constitutional concerns. Rather, the question is “whether the so-called nexus . . . between the harm of which this plaintiff complains and the defendant’s so-called predicate acts is of the sort that will support an action under civil RICO.” Holmes v. Securities Investor Protection Corp., 503 U.S. 258, 286-87 (1992) (Scalia, J., concurring) (emphasis in original). That is, a plaintiff must establish that the damages that have occurred were proximately caused by a defendant’s racketeering activity. See Sedima v. Imrex Co., 473 U.S. 479, 495-97 (1985) (“the plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting a violation”); Brittingham v. Mobil Corp., 943 F.2d 297, 304 (3d Cir. 1991) (“the plaintiff must demonstrate that his injuries were proximately caused by that violation”). Hence, a civil RICO claim is subject to dismissal if it fails to allege either an adequate injury to business or property, or an adequate causal nexus between that injury and the predicate acts of racketeering activity.

As the Court’s analysis above indicates, even assuming that Defendants have engaged in some kind of illegal racketeering activity, the chain of causation resulting in the alleged harm to Plaintiffs’ property is too attenuated to satisfy the statute’s requirement. At best, Plaintiffs have suffered a kind of derivative harm, which does not represent the kind of allegation that demonstrates injury flowing from the commission of the predicate acts. Accordingly, the RICO claim is dismissed.

D. The Court Will Not Exercise Jurisdiction Over the Pendent State Law Claims (Counts V, VI, and VII)

Plaintiffs’ remaining claims all find their substantive basis in state law. As there are no federal anchor claims upon which original subject matter jurisdiction may be exercised,

this Court dismisses the pendent state law claims pursuant to 28 U.S.C. § 1367(c)(3). See Markowitz v. Northeast Land Co., 906 F.2d 100, 106 (3d Cir. 1990) (“the rule within this Circuit is that once all claims with an independent basis of federal jurisdiction have been dismissed the case no longer belongs in federal court”).

III. CONCLUSION

For the foregoing reasons, Defendants’ motions are GRANTED and Plaintiffs’ complaint is dismissed in its entirety without prejudice. An appropriate order follows.

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CAROLYN WILLIAMS,	:	
CHERYL CONKEL, and	:	
NEW MORGAN BOROUGH,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 20th day of November 1998, upon consideration of Defendants' motions to dismiss and accompanying exhibits (Docket Nos. 3, 4, 5, and 6), Plaintiffs' response thereto (Docket No. 7), and Defendants' reply memoranda (Docket Nos. 8 and 9), it is hereby ORDERED that Defendants' motions are GRANTED. Plaintiffs' complaint is dismissed in its entirety without prejudice.

BY THE COURT:

RONALD L. BUCKWALTER, J.