

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

R. DAVID. VILLELA : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA, et al. : NO. 95-1313

MEMORANDUM AND FINAL JUDGMENT

HUTTON, J. DECEMBER , 1999

Presently before this Court are Defendants' Motion for Summary Judgment (Docket No. 14), Plaintiff's response thereto (Docket No. 15), and Plaintiff's supplemental response thereto (Docket No. 16). For the reasons discussed below, Plaintiff's Complaint is DISMISSED with prejudice and Defendants' Motion is DENIED as moot.

I. BACKGROUND

The facts pertinent to the instant lawsuit are as follows. In 1982, R. David Villela ("Plaintiff") was hired as an architect by Defendant, the City of Philadelphia (the "City") to work in the City's Department of Public Property. In January 1989, Plaintiff was promoted to the position of Director of the Division of Architecture and Engineering. Both of these positions were civil service positions. Commencing in 1991, Plaintiff made reports to City authorities, including Mayor Edward Rendell, David Cohen, and others, concerning mismanagement, wrongdoing, fraud, and waste within the Department of Public Property. Plaintiff's reports addressed governmental

impropriety and matters of public concern.

After commencing these activities, Plaintiff received his first unsatisfactory job performance evaluation. This evaluation was prepared by Defendant Louis Einhorn ("Einhorn"), signed by Defendant Andres Perez ("Perez"), and delivered to Plaintiff in 1992.

Notwithstanding this evaluation, Plaintiff continued his reporting efforts in an attempt to expose alleged mismanagement and wrongdoing. Plaintiff received additional unsatisfactory job performance evaluations as well as letters of reprimand in 1993 and 1994. Plaintiff alleges that the unsatisfactory evaluations and letters of reprimand were in retaliation for his reporting of matters of public concern, such as wrongdoing, waste and mismanagement within the Department of Public Property. In or about May 1993, he filed an appeal with the Philadelphia Civil Service Commission (the Commission) regarding his performance reports.

On August 29, 1994, Plaintiff received a Notice of Intention to Demote which was signed by Perez. Said Notice informed Plaintiff of Perez's intent to demote him from his position as Director of Architecture and Engineering. On September 7, 1994, Plaintiff responded to said Notice, and communicated his belief that the proposed demotion was motivated by a desire to retaliate against him for his reporting of waste, mismanagement, and wrongdoing. Plaintiff requested an investigation into the substance of the matters covered by his reports and the

connection between his constitutionally protected speech and the proposed demotion. Plaintiff also requested an investigation into the defamatory statements allegedly disseminated about him by others in the Department of Public Property. Plaintiff also requested and was refused a pre-demotion hearing. Plaintiff's demotion became effective in or about September 1994, whereafter he moved to a position five levels lower than his former Director position.

On or about October 4, 1994, Plaintiff filed an appeal with the Commission. Plaintiff's appeals were consolidated and the Commission conducted nine hearings into Plaintiff's allegations. On December 11, 1995, the Commission denied Plaintiff's appeals of his unsatisfactory job performance evaluations, concluding there was insufficient evidence to find that Plaintiff's unsatisfactory job ratings were the product of, inter alia, personal prejudice. The Commission also denied Plaintiff's appeal of the decision to demote him, concluding that sufficient bases existed to warrant said demotion.

Plaintiff appealed the Commission's decision to the Court of Common Pleas which ultimately affirmed the Commission's decision. Plaintiff then appealed the trial court's decision to the Commonwealth Court of Pennsylvania, which ultimately upheld the lower court's ruling. In the meantime, however, Plaintiff filed the instant lawsuit in this Court. In or about October 1997, the Pennsylvania Supreme Court denied Plaintiff's request for allowance of appeal. While Plaintiff was pursuing relief in the

Pennsylvania court system, this Court, in a Memorandum and Order dated May 10, 1995, dismissed Plaintiff's causes of actions for violation of his due process rights and intentional infliction of emotional distress. Eventually, the Court placed the case in civil suspense.

Plaintiff's instant federal lawsuit, although filed in March 1995, placed in civil suspense in July 1996, and removed from civil suspense in October 1998, is now ripe for adjudication. Plaintiff alleges that his demotion resulted in, inter alia, a substantial loss of salary, benefits, working conditions, damage to his professional reputation, a deprivation of his property and liberty interest, a violation of his rights under the First Amendment and the Fourteenth Amendment. Three causes of action remain for the Court's consideration: Count I) deprivation of right of free speech; Count II) violation of the Pennsylvania Whistleblower Law, 43 Pa. Cons. Stat. Ann. § 1421 et seq.; and Count V) punitive damages.

Defendants City, Perez, and Einhorn (collectively, the "Defendants") filed the instant Motion for Summary Judgment on June 7, 1999. Defendants argue that summary judgment should be granted on the following grounds: 1) Plaintiff's claims are barred by the Rooker-Feldman doctrine; 2) Plaintiff is barred from bringing his claims in federal court by issue and claim preclusion; and 3) Plaintiff cannot prove the elements necessary to sustain a claim under either the Whistleblower Law or the First and Fourteenth Amendments.

Plaintiff filed a response on July 2, 1999 and a supplemental response on August 11, 1999. Plaintiff's first response argues that the Rooker-Feldman doctrine is inapplicable in the instant matter. Plaintiff's supplemental response argues in broad terms with minimal legal citation or analysis that genuine issues of material exist such that a trial is necessary. The Court hereafter considers each of Defendants' argument for summary judgment.

II. DISCUSSION

The Court first considers the validity of Defendants' Rooker-Feldman argument.

1. The Rooker-Feldman doctrine

A federal district court is a court of original jurisdiction and as such it does not have subject matter jurisdiction to decide appeals from state courts. See District of Columbia Ct. of App. v. Feldman, 460 U.S. 462, 482, 103 S. Ct. 1303 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16, 44 S. Ct. 149 (1923). Accordingly, the Rooker-Feldman doctrine precludes a federal court from reviewing the final adjudication of a state s highest court or to evaluate constitutional claims that are inextricably intertwined with the state court s decision in a judicial proceeding. See Marks v. Stinson, 19 F.3d 873, 886 n.11 (3d Cir. 1994). A claim is "inextricably intertwined" if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it or, in other words, if the requested relief in the federal suit would effectively reverse

the state decision or otherwise void its ruling. See FOCUS v. Allegheny County Ct. of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996). The Third Circuit Court of Appeals interprets the Rooker-Feldman doctrine to also encompass final decisions of lower state courts.¹

A federal proceeding is barred under Rooker-Feldman where considering the federal court cause of action would be the equivalent of an appellate review of the state court's decision. See FOCUS, 75 F.3d at 840. Rooker-Feldman applies to both claims that were brought and claims that could have been brought in state court. See Feldman, 460 U.S. at 483 n.16 (emphasis added). In Valenti v. Mitchell, 962 F.2d 288 (3d Cir. 1992), the Third Circuit Court of Appeals underscored the Feldman Court's statement that the doctrine also applies to claims that could have been brought in the state court proceeding. See id. at 296. Therefore, a disgruntled plaintiff may not attempt to reverse a state court decision through artful pleading in a federal court. See Gulla v. North Starbane Township, 146 F.3d 168, 171 (3d Cir. 1998); Stern v. Nix, 840 F.3d 208, 212 (3d Cir. 1988).

Defendants set forth several arguments for its contention that the Rooker-Feldman doctrine precludes Plaintiff from proceeding on the instant federal lawsuit. Defendants contend that this Court lacks subject matter jurisdiction because Plaintiff had a full and fair opportunity to present all of his

¹ The Court notes that the Rooker-Feldman doctrine is extremely similar to issue and claim preclusion. See E.B. v. Verniero, 119 F.3d 1077, 1090 (3d Cir. 1997); Port Auth. v. Police Benev Ass'n v. Port Auth., 973 F.2d 169, 178 (3d Cir. 1992).

arguments to the state courts, including the arguments contained in the instant federal lawsuit, that the Pennsylvania courts had a complete record of the proceedings on which to determine the merits of Plaintiff's various appeals thereby implying that Pennsylvania's Local Agency Act is relevant, that Plaintiff pursued his claims to the state's highest court, and that Plaintiff's requested relief would effectively reverse the decisions of the state courts.

Plaintiff argues that the issues in the state court proceedings were "different" because he was appealing the limited issue of the decision by the Commission. (Pl. s Mem. in Supp. of Pl. s Supplemental Response to Def.s' Mot. for Summ. J. at 2). Implicit in Plaintiff's argument is that because the issues before the state court were "different," he should be allowed to litigate the instant causes of action in federal court. Plaintiff's argument withstands neither the requirements of section 752(a) of Pennsylvania's Local Agency Law, 2. Pa. Cons. Stat. Ann. § 752(a), nor the Rooker-Feldman doctrine.

Section 752(a) states in pertinent part as follows:

A party who proceeded before a local agency [such as the Philadelphia Civil Service Commission] under the terms of a particular statute, home rule charter, or local ordinance or resolution shall not be precluded from questioning the validity of the statute, home rule charter or local ordinance or resolution in the appeal, but if a full and complete record of the proceedings before the agency was made such party may not raise upon appeal any other question not raised before the agency (notwithstanding the fact that the agency may not be competent to resolve such question) unless allowed by the court upon due cause shown.

2. Pa. Cons. Stat. Ann. § 752(a) (emphasis added). While the

plain language of section 753(a) indicates that Plaintiff waived any issue that he failed to raise before the Commission, Pennsylvania state court decisions indicate that constitutional challenges need not be raised at the administrative level. See Newcomb v. Civil Serv. Comm n of Fairchance Borough, 515 A.2d 108, 110 (Pa. Commw. Ct. 1986). Nevertheless, if constitutional claims are not raised at the administrative level, they must be raised before the trial court or they are otherwise waived. See id.; see also Reisenbach v. Civil Serv. Comm n, 417 A.2d 1292 (Pa. Commw. Ct. 1980).

Whether or not Plaintiff raised his constitutional and/or statutory claims before the Commissions or the state trial court, in the words of deceased author Joseph Heller, he is in a Catch-22 situation. That is, whether Plaintiff did or did not raise the causes of action stated in the instant matter, the Court lacks subject matter jurisdiction pursuant to the Rooker-Feldman doctrine to hear the merits Plaintiff's claims. Accordingly, Plaintiff's instant cannot be adjudicated in this Court as it lacks subject matter jurisdiction.

As discussed above, Rooker-Feldman applies to both claims that were brought and claims that could have been brought in state court. See Feldman, 460 U.S. at 483 n.16; Valenti v. Mitchell, 962 F.2d 288, 296 (3d Cir. 1992). Each of the claims stated in Plaintiff's federal lawsuit, at the very least, could have been brought in the state court proceedings.

Because Pennsylvania law requires that all but

constitutional claims must be raised at the administrative level if such claims to be preserved on appeal, Plaintiff was statutorily required to raise his Whistleblower claim while he was before the Commission. It appears that he did not expressly do so, thereby waiving his right to have this claim heard in federal court. On the other hand, even if he raised the Whistleblower issue before the Commission, the Rooker-Feldman doctrine precludes this Court from considering this claim because doing so would be equivalent to performing an appellate review of the state courts' decisions. See FOCUS, 75 F.3d at 840. Moreover, the record makes clear the Commonwealth's courts conclusively decided that there existed substantial legitimate bases for the personnel actions challenged by Plaintiff, thereby repudiating Plaintiff's Whistleblower Law cause of action. The Court now considers Plaintiff's constitutional claims.

Again, Plaintiff is in a Catch-22 situation. Constitutional claims, if not raised at the administrative level, must be raised at trial court. Plaintiff's responses to Defendants' Summary Judgment Motion implicitly indicates that he did not raise his constitutional claims in any of the state court proceedings which he initiated. This failure dooms Plaintiff's instant constitutional claims. Indeed, the Third Circuit Court of Appeals determined that when a litigant failed to bring a constitutional claim in state court and then attempts to bring said claim in federal court, "it is appropriate to presume that the state court would have been willing to decide [the

Plaintiff's] constitutional claims subject to rebuttal by clear evidence to the contrary." Guarino v. Larsen, 11 F.3d 1151, 1156 (3d Cir. 1993). Therefore, Plaintiff waived his constitutional claims and this Court is powerless to override his waiver.

On the other hand, assuming arguendo that Plaintiff raised the instant constitutional claims before either the Commission or the state trial court, the Court is still precluded by the Rooker-Feldman doctrine from hearing said claims a second time. As stated above, the doctrine prevents a federal trial court from hearing constitutional claims that are inextricably intertwined with the state courts decisions. Because Plaintiff seeks, inter alia, reinstatement in the instant federal lawsuit and he sought, inter alia, reinstatement in his state court proceedings, the Court may not adjudicate the instant constitutional claims as they are inextricably intertwined with the state court s decisions.

It is conceivable that Plaintiff instituted this federal lawsuit upon the realization that he waived certain causes of action by not raising them before the Commission or the state trial court. If this indeed is the case, the Rooker-Feldman is ideally suited to this situation as it is fashioned to prevent plaintiffs from circumventing state court decisions through artful pleadings. It is also conceivable that Plaintiff innocently decided to structure his pursuit of relief by seeking redress in both state and federal court. Even when giving Plaintiff the benefit of the doubt by assuming that he did not

try to gain an unfair advantage through artful pleading and procedural shenanigans, the Court still lacks subject matter jurisdiction.

Accordingly, because Plaintiff could have but did not litigate his state statutory and constitutional claims in the Pennsylvania courts, he is barred from pursuing those claims in this Court. The Court lacks subject matter jurisdiction over the instant matter pursuant to the Rooker-Feldman doctrine. Therefore, Plaintiff's Complaint is dismissed with prejudice and Defendants' Motion for Summary Judgment is denied as moot.²

² As the Court lacks subject matter jurisdiction over Plaintiff's federal claims, the Court need not consider Defendants' other arguments for summary judgment.

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FINAL JUDGMENT

AND NOW, this day of December, 1999, upon consideration of Defendants' Motion for Summary Judgment (Docket No. 14), Plaintiff's response thereto (Docket No. 15), and Plaintiff's supplemental response thereto (Docket No. 16), IT IS HEREBY ORDERED that Plaintiff's Complaint is **DISMISSED with prejudice** and Defendants' instant Motion is **DENIED as moot**.

BY THE COURT:

HERBERT J. HUTTON, J.