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Najas Realty, LLC v. Seekonk Water Dist., 821 F.3d 134 (1st Cir. 2016)

COURT REPORTS

FEDERAL COURTS

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Najas Realty, LLC v. Seekonk Water Dist., 821 F.3d 134 (1st Cir. 2016) (holding that a real estate developer and home builder failed to state facts sufficient to establish a facially plausible claim for relief in their complaint, which alleged that a water district and its superintendent deprived them of federal and state constitutional rights when the superintendent raised valid objections of public concern against the construction of a subdivision).

In 2012, Najas Realty, LLC (“Najas”) purchased a ten-acre parcel of land (the “Property”) in Seekonk, Massachusetts (the “Town”) and filed a preliminary subdivision plan application to develop a ten-lot subdivision (the “Pine Hill project”). The Seekonk Board of Health met to discuss the application. The Seekonk Water District’s Superintendent, Robert Bernardo, attended the meeting and expressed concerns that the Pine Hill project could potentially impact one of the Town’s wells, Well GP-4. Bernardo asserted that a malfunctioning septic system servicing a nearby middle school caused high nitrate levels in the soil around GP-4. As a solution, the Board of Health required that Najas perform a nitrate loading analysis.

After the Seekonk Board of Health initially met, Bernardo expressed concerns at two other meetings that the Pine Hill project’s septic system could increase nitrate levels and expose unborn babies and nursing infants to “Blue Baby Syndrome,” and that nitrate contamination requires high clean-up costs. Najas rejected these claims.

After these meetings, Najas completed its nitrate loading analysis and submitted a definitive subdivision plan. Najas claimed the plan satisfied regulatory requirements for septic systems and kept nitrate levels in the GP-4 area within regulatory limits. The Board of Health initially voted to approve the analysis. After approval, the Planning Board held a public hearing. At the hearing, Bernardo claimed the nitrate loading analysis’ data was false. In response, the Planning Board reviewed and denied the Pine Hill project. Najas then appealed to the Massachusetts Land Court.

The appeal led to a settlement allowing Najas to proceed if it reduced the number of lots from ten to nine and shortened the subdivision’s road length. The Planning Board reviewed the revised plan at another public meeting. Bernardo again attended and voiced concerns about water contamination issues. The Planning Board approved the revised Pine Hill project. The Seekonk Water District then filed a petition to the Planning Board to rescind or modify the approved plan. The Planning Board denied the petition, and the Pine Hill project continued in accordance with the revised plan.

Najas, joined by Petra Building Corporation ("Petra") (collectively, "Plaintiffs"), filed a complaint in the United States District Court for the District of Massachusetts against the Seekonk Water District and Bernardo (collectively, "Defendants"), asserting claims under the United States Constitution and analog claims under the Massachusetts Constitution. The complaint asserted: (1) Defendants retaliated against the Plaintiffs for asserting First Amendment rights to petition and freedom of speech; (2) Defendants violated Plaintiffs' Fourteenth Amendment equal protection rights by singling them out; (3) Defendants violated Plaintiffs' Fourteenth Amendment due process rights by opposing the plan; and (4) Defendants tortuously interfered with Plaintiffs' business. The district court granted judgment on the pleadings in favor of the Defendants, stating that Najas and Petra failed to state a viable claim. Subsequently, Plaintiffs submitted a second complaint, which the district court also dismissed in a final judgment.

Plaintiffs appealed to the United States Court of Appeals for the First Circuit, claiming the district court required too much at the pleading stage and the complaint was sufficient to deny a motion for judgment on the pleadings. The court of appeals reviewed the appeal *de novo*.

The court of appeals started its analysis noting that for constitutional claims under 42 U.S.C. § 1983, plaintiffs must prove the conduct complained of was committed under color of state law and that the conduct worked as a denial of rights secured by the United States Constitution. The court of appeals accepted that Bernardo acted under the color of state law, and proceeded by determining whether he encroached on the Plaintiffs' constitutional rights.

To begin, the court of appeals analyzed whether Bernardo had retaliated against the Plaintiffs' First Amendment right to petition and freedom of speech. The court of appeals stated that a cognizable retaliation claim under the First Amendment requires plaintiffs to show the conduct was constitutionally protected and that a causal connection existed between the protected conduct and the retaliatory response. The court of appeals found it was unclear whether Najas's conduct was protected petitioning conduct or free speech comprising commentary on a matter of public concern. Instead, the court of appeals evaluated the test's second prong, whether the Plaintiffs had established a causal connection between the protected conduct and the retaliatory response.

For this element, Najas pointed to Bernardo's accusation that the data submitted for the Pine Hill project was "fabricated, false, inflammatory, and baseless." The court of appeals first discussed the retaliatory conduct and found the record offered no indication that Bernardo did not genuinely hold his concerns. Graphs revealed "variable and sometimes excessive" nitrate levels from in the monitoring the area dating back to 1995. The record also showed that members on the Board of Health previously expressed concerns regarding nitrate levels before Bernardo spoke at the initial meeting. The court of appeals also took judicial notice that the Environmental Protection Agency has linked excessive nitrate levels to Blue Baby Syndrome and that nitrate contamination requires high clean-up costs. Therefore, the court of appeals found the Plaintiffs' allegations of retaliatory conduct were conclusory and that Bernardo had a duty to raise objections about potential public health impacts that he believed were valid.

The court of appeals then discussed whether Bernardo violated the Plaintiffs' protected First Amendment right to free speech on a matter of public concern. Matters of public concern are those "relating to any matter of political, social, or other concern." The court of appeals found Bernardo had not committed such a violation because, as superintendent, he had an obligation to speak out on matters of public concern.

Next, the court of appeals analyzed the claim that Bernardo violated the Plaintiffs' Fourteenth Amendment equal protection rights by singling them out for unique reasons. To prevail on this claim, the complaint had to show the Defendants were motivated by bad faith or malicious intent to injure when they treated the Plaintiffs differently from others similarly situated and without a rational basis for doing so. However, the court of appeals found the Plaintiffs failed to explain how other developers and builders were similarly situated because they did not provide basic information, such as when other projects were located, and when they were built.

After the equal protection claim, the court of appeals examined the Plaintiffs' substantive due process claim under the Fourteenth Amendment. To assert a viable substantive claim, plaintiffs must prove deprivation of an established life, liberty, or property interest, and that the deprivation occurred through governmental action that shocks the conscience. The court of appeals found that it was unclear what deprivation occurred, and noted the Plaintiffs "oddly" claimed that by opposing the project, the Defendants deprived them of life and liberty. The court of appeals instead analyzed the claim as a deprivation of property.

Substantive due process claims regarding deprivation of property cases are only available in "horrendous situations." The court of appeals found that, at worst, the Defendants actions were "doggedly persistent," and this did not amount to "brutal, meaning, and harmful" conduct as is necessary in such a claim.

Finally, the court of appeals analyzed the Plaintiffs' claim that Bernardo intentionally interfered with a business expectation, opportunity, and advantage. Here, the court of appeals addressed whether Bernardo's actions directly attempted to interfere with business relations. The court of appeals granted Bernardo immunity for his actions under Massachusetts common law, where public officials who act in good faith and exercise judgment and discretion are not liable for errors in making decisions. Here, the court of appeals again stated that the Plaintiffs' complaint failed to state a plausible claim for bad faith or malice intent.

Accordingly, the court of appeals affirmed the order of the district court.

Kole Kelley

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

United States v. Washington, 827 F.3d 836 (9th Cir. 2016) (holding: (i) the fishing clause in the Stevens Treaties guaranteed Indian tribes the right to off-reservation fishing, with an inferred promise that sustainable fish populations would be available for tribal harvest; (ii) the State violated the fishing clause by constructing and operating barrier culverts that interfered with fish migration;