United States Court of Appeals
Fifth Circuit
FILED
March 21, 2022
Lyle W. Cayce Clerk

United States Court of Appeals
for the Fifth Circuit

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No. 21-30335

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Ariyan, Incorporated, *doing business as* Discount Corner; M. Langenstein & Sons, Incorporated; Prytania Liquor Store, Incorporated; West Prytania, Incorporated, *doing business as* Prytania Mail Service/Barbara West; British Antiques, L.L.C., Bennet Powell; Arlen Brunson; Kristina Dupre; Brett Dupre; Gail Marie Hatcher; Betty Price; Et Al.,

Plaintiffs—Appellants,

versus

Sewerage & Water Board of New Orleans; Ghassan Korban, In his Capacity as Executive Director of Sewerage & Water Board of New Orleans,

Defendants—Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:21-CV-534

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Before Barksdale, Stewart, and Dennis, *Circuit Judges*. James L. Dennis, *Circuit Judge*:

Plaintiffs who succeed in winning a money judgment against a state governmental entity in state court in Louisiana often find themselves in a frustrating situation. Though they have obtained a favorable judgment, they lack the means to enforce it. The Louisiana Constitution bars the seizure of public funds or property to satisfy a judgment against the state or its political subdivisions. La. Const. art. XII, § 10(c). Instead, the Legislature or the political subdivision must make a specific appropriation in order to satisfy the judgment. *Id.*; La. R.S. 13:5109. And since Louisiana courts lack the power to force another branch of government to make an appropriation, the prevailing plaintiff has no judicial mechanism to compel the defendant to pay. *See Newman Marchive P'ship, Inc. v. City of Shreveport*, 979 So. 2d 1262, 1265 (La. 2008). The "plaintiff who succeeds in an action against a governmental unit thus becomes a supplicant," relying on the grace of the government to appropriate funds to satisfy her judgment. David W. Robertson, *Tort Liability of Governmental Units in Louisiana*, 64 Tul. L. Rev. 857, 881 (1990).

Finding themselves in this position, the Plaintiffs in this case, like others before them, have turned to the federal courts to force payment on their state court judgment. They claim that the Defendants' failure to timely satisfy a state court judgment violates the Takings Clause of the Fifth Amendment. The district court granted the Defendants' motion to dismiss, applying long-standing precedent that there is no property right to timely payment on a judgment.

We agree and AFFIRM.

## I.

In 2013, the United States Army Corps of Engineers and the Sewerage and Water Board of New Orleans (the "SWB") began construction on a massive flood control project across Uptown New Orleans as part of the Southeast Louisiana Urban Flood Control Program ("SELA"). The Uptown phase involved the construction of underground box culverts that run the length of several major thoroughfares. Plaintiffs are seventy landowners, including both businesses and private homeowners, who suffered property damage and economic loss as the result of SELA construction. The Plaintiffs filed suit in state court and obtained final judgments against the SWB for a combined $10.5 million. Some of these judgments became final in early 2018 and 2019, others as recently as fall 2020.

As of January 2021, though, the Plaintiffs had not received any payment from the SWB. So, in March 2021 they filed a § 1983 suit in district court under the theory that the SWB's failure to comply with the state court judgments "creates a secondary Constitutional violation of Plaintiffs' Fifth Amendment rights," more specifically a violation of their due process rights and their rights to just compensation for a taking. As relief, the Plaintiffs requested a writ of execution seizing the SWB's property in order to satisfy the judgments. Separately, the Plaintiffs' complaint sought a declaration that the SWB is contractually obligated to seek reimbursement from the Army Corps for the judgments via a procedure the two entities agreed to, called the "Damages SOP."

The SWB filed a motion to dismiss under Rule 12(b)(6) and the district court granted it. The court sympathized with the Plaintiffs' frustrations, but noted that there were "centuries of precedent" establishing that a state's failure to timely pay a state

court judgment did not violate any federal constitutional right. With no underlying constitutional right at issue, Plaintiffs' § 1983 claim was "legally baseless." The district court also declined to exercise jurisdiction over Plaintiffs' request for declaratory relief as a standalone claim, citing the "particularly local nature of this dispute." Finally, the court denied Plaintiffs' generic request to amend their complaint should a failure to state a claim be found, holding that any amendment would be futile. Plaintiffs appealed.

**II.**

We review dismissal of a case under Rule 12(b)(6) *de novo*, accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff. *Allen v. Walmart Stores, L.L.C.*, 907 F.3d 170, 177 (5th Cir. 2018). "In the context of a 12(b)(6) motion in a section 1983 suit, the focus should be whether the complaint properly sets forth a claim of a deprivation of rights, privileges, or immunities secured by the Constitution or laws of the United States caused by persons acting under color of state law. If there is no deprivation of any protected right the claim is properly dismissed." *S. Christian Leadership Conf. v. Supreme Ct. of State of La.*, 252 F.3d 781, 786 (5th Cir. 2001) (internal citation omitted).

Ordinarily a district court's denial of a motion to amend a complaint is reviewed for abuse of discretion. *Stripling v. Jordan Prod. Co., LLC,* 234 F.3d 863, 872 (5th Cir. 2000). However, when denial is based on the futility of amendment, we "apply the same standard of legal sufficiency as applies under Rule 12(b)(6)." *Id.* at 873 (citation omitted). If the complaint, as amended, would be subject to dismissal, then amendment is futile and the district court was within its discretion to deny leave to amend. *Id.*

## III.

### A.

The Plaintiffs' claim is fairly discrete. They "do not seek to re-litigate the legal or factual issues or compensation awards decided in the state courts." Rather, their case "concerns an independent Takings Clause violation—the failure to timely pay just compensation once the compensation was determined and awarded." This nonpayment is, according to the Plaintiffs, a "second taking," and the only one at issue in their case.[1]

More than a century ago, the Supreme Court decided the case of a pair of litigants in a similar situation as the Plaintiffs here. In *Folsom v. City of New Orleans*, 109 U.S. 285 (1883), two relators had obtained state court judgments against the City of New Orleans for property damage caused by riots in 1873. In 1879, a new state constitution limited the taxes New Orleans could levy to just enough to cover the City's budget. *Id.* at 287. The effect was that the relators were prevented from collecting on their judgments. *Id.* The relators argued that this state constitutional change deprived them of property without due process of law in violation of the Fourteenth Amendment. *Id.* The Supreme Court rejected the argument, agreeing that the judgments were property, but holding that "the relators cannot be said to be deprived of them so long as they continue

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[1] In their complaint, Plaintiffs asserted a separate due process violation "because Defendants have treated them differently than non-litigants merely because Plaintiffs have exercised their constitutional right to file suit." Plaintiffs did not argue this claim in their briefs before the district court or in their briefs before this Court. It is therefore deemed abandoned. *Yohey v. Collins*, 985 F.2d 222, 224 (5th Cir. 1993).

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