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United States Court of Appeals, Sixth Circuit.

Marion SINCLAIR, Plaintiff-Appellant,
v.
Andrew E. MEISNER, in his official capacity as Oakland County Treasurer, et al.,
Defendants-Appellees.

No. 22-1264
|
FILED December 29, 2022

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

Attorneys and Law Firms

Jayson Edward Blake, Mark McAlpine, Mark William Oszust, McAlpine Law, Auburn Hills, MI, Scott Fenton Smith, Law Office, Farmington Hills, MI, for Plaintiff-Appellant.

Brandon K. Buck, David N. Asmar, Department 419, Pontiac, MI, John R. Fleming, William H. Horton, Giarmarco, Mullins & Horton, Troy, MI, for Defendants-Appellees Andrew E. Meisner, Oakland County, MI.

David N. Asmar, Brandon K. Buck, Department 419, Pontiac, MI, for Defendant-Appellee Oakland County Tax Tribunal.

Michael August Knoblock, T. Joseph Seward, Seward Henderson, Royal Oak, MI, for Defendants-Appellees City of Southfield, MI, Board President Kenson Siver, Board Member Frederick Zorn, Gerald Witkowski, Susan P. Ward-Witkowski, IRV Lowenberg, Board Member Michael Mandlebaum, Donald Fracassi, Daniel Brightwell, Myron Frasier, Lloyd Crews, Nancy L. Banks.

Matthew Nicols, Pentiuk, Couvreur & Kobiljak, Wyandotte, MI, for Defendants-Appellees Southfield Non-Profit Housing Corporation, A 501 (C) 3 Corporation and Its Officers, Employees, and Agents Both Personally and in Their Official Capacities, Mitchell Simon, Treasurer, Rita Fulgiam-Hillman, Lora Brantley-Gilbert, Earlene Trayler-Neal, Southfield Neighborhood Revitalization Initiative, LLC, a Michigan Based Corporation and Its Officers, Employees, and Agents Both Personally and in Their Official Capacities, E'toile Libbett.

Before: SUTTON, Chief Judge; CLAY and BUSH, Circuit Judges.

ORDER

***1** Marion Sinclair appeals the district court's judgment denying her motion for leave to file a second amended class-action complaint and dismissing her civil-rights action. Because the district court partially erred in finding that Sinclair's proposed amended complaint would be futile, we vacate the district court's judgment in part and affirm in part.

In 2019, Sinclair filed an amended complaint against Oakland County, Michigan; the Oakland County Tax Tribunal; Oakland County Treasurer Andy Meisner; the City of Southfield, Michigan; the Southfield Non-Profit Housing Corporation ("SNPHC"); the Southfield Neighborhood Revitalization Initiative, LLC ("SNRI"); Habitat for Humanity; GTJ Consulting, LLC; JBR Disposal, LLC; and various officers, employees, and agents of these entities. She alleged that the defendants discriminated against her and other African American homeowners in the City of Southfield by foreclosing on their properties to satisfy delinquent tax debts and failing to reimburse them for the equity in their homes. She alleged that, through a series of real estate transactions, the defendants deprived the original homeowners of their right to bid on and repurchase their homes at a county auction. Ultimately, the corporate defendants sold or sought to resell the properties for a profit. Based on these allegations, Sinclair claimed that the defendants violated the Fair Housing Act of 1968, 42 U.S.C. § 3604(a); the Fifth and Fourteenth Amendments; civil racketeering statutes; the Michigan Constitution; and various state statutes. Sinclair sought class certification of all affected homeowners, a preliminary injunction preventing further resale of her property, permanent injunctive relief, and compensatory and punitive damages.

Many of the defendants moved to dismiss the complaint under either Federal Rule of Civil Procedure 12(b)(1), for lack of subject-matter jurisdiction, or under Rule 12(b)(6),

for failure to state a claim upon which relief could be granted. A magistrate judge recommended dismissing the case without prejudice, finding that Sinclair's federal claims were barred by the Tax Injunction Act and principles of comity and that the court should decline to exercise supplemental jurisdiction over Sinclair's state-law claims. The magistrate judge alternatively recommended dismissing some claims as barred by the *Rooker-Feldman*[1] doctrine. Sinclair filed a general objection to the magistrate judge's report and recommendation and sought leave to file an amended complaint. The district court adopted the magistrate judge's report and recommendation, noting that Sinclair did not "make any specific objections" to the magistrate judge's findings. It declined to rule on Sinclair's request to amend her complaint, choosing instead to stay the case until we decided *Freed v. Thomas*, 976 F.3d 729 (6th Cir. 2020). Once we decided *Freed*, the district court gave Sinclair an opportunity to file a motion to amend her complaint.

***2** Sinclair obtained counsel and moved to file a second amended class-action complaint. Her proposed complaint named as defendants Oakland County; the City of Southfield; SNPHC; SNRI; Southfield city administrator, SNPHC board member, and SNRI manager Frederick Zorn; and Southfield mayor, SNPHC board manager, and SNRI manager Kenson Siver. Sinclair alleged that the defendants engaged in a conspiracy to enrich themselves by depriving her and the putative class members of the equity in their properties. According to Sinclair, the scheme played out as follows. Once Oakland County foreclosed on the tax-delinquent properties, it either sold the properties at auction and retained the entire amount of the sale proceeds or it allowed the City of Southfield, before any public auction, to exercise its "right of first refusal." This process was consistent with Michigan's General Property Tax Act ("GPTA"), Mich. Comp. Laws §§ 211.1-211.157, before the Act was amended in 2021. The right of first refusal allowed the City of Southfield to obtain title to a property by paying the unpaid taxes and any fees owed. SNPHC gave the City of Southfield the funds that the City used to exercise its right of first refusal. The City of Southfield then transferred ownership of the properties to SNRI, a for-profit corporation that was wholly owned by SNPHC, for one dollar. SNRI sold the properties to third-party buyers at fair market value, pocketing tens or even hundreds of thousands of dollars in profit. In all cases, Sinclair and the other putative class members were deprived of the equity in their properties—the property value that exceeded the amount of the unpaid taxes and fees. Sinclair questioned whether the GPTA, as it existed before the 2021 amendments, allowed Oakland County to keep sale proceeds that exceeded the amount of the delinquent taxes and fees. She alleged that, if it did, it violated the United States' and Michigan's Constitutions.

With respect to her property in particular, Sinclair alleged that she owed $22,047.46 in back taxes when Oakland County foreclosed in 2015. Oakland County then transferred the property to the City of Southfield for $28,424.84, meaning that Oakland County received a "surplus" of $6,377.38. Sinclair alleged that the defendants "specifically selected properties for this scheme that had a large amount of [e]quity in relation to the amount of unpaid taxes and expenses, preferring properties with no mortgages, in order to maximize the amount of [e]quity realized by SNRI." She further alleged that Zorn and Siver, who were both Southfield city officials and board members and managers of SNPHC and SNRI, personally benefitted from the arrangement.

The proposed second amended complaint set forth five claims:[2] (1) Oakland County and the City of Southfield violated the plaintiff's and putative class members' Fifth and Fourteenth Amendment rights by taking the equity in their properties without just compensation; (2) Oakland County and the City of Southfield violated Article X, Section 2 of the Michigan Constitution by taking the equity in their properties without just compensation; (3) Oakland County and the City of Southfield violated the plaintiff's and putative class members' procedural due process rights by failing to provide a process to challenge the forfeiture of their equity interests; (4) the defendants unjustly enriched themselves by refusing to compensate the plaintiff and putative class members for the equity in their homes; and (5) the defendants engaged in a civil conspiracy, in violation of 42 U.S.C. § 1983, to deprive the plaintiff and putative class members of the equity in their homes. Sinclair sought class-action certification, declaratory relief, compensatory damages, and exemplary and punitive damages. The district court denied leave to file the second amended complaint and dismissed the case with prejudice, finding that Sinclair's proposed amendments would be futile because they failed to state a claim upon which relief could be granted.

On appeal, Sinclair argues that the district court erred in dismissing her takings, due process, unjust-enrichment, and civil-conspiracy claims because it erred in finding that she and the putative class members did not have a cognizable property interest in the equity of their homes and the surplus funds that the City of Southfield paid to Oakland County when exercising its right of first refusal.

As an initial matter, Sinclair forfeited any challenge to the district court's order dismissing her first amended

complaint, because she filed only a general objection to the magistrate judge's report and recommendation. In her objection, Sinclair noted that she had "many objections to the [m]agistrate [j]udge's report and recommendation" but that she would prefer to file a second amended complaint "in light of recent developments in the law and facts in this case." Because Sinclair did not identify any specific error in the magistrate judge's reasoning, and because the district court recognized this and declined to conduct a de novo review, Sinclair forfeited her right to appeal the order dismissing her first amended complaint. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Frontier Ins. v. Blaty*, 454 F.3d 590, 596-97 (6th Cir. 2006). Further, because the district court dismissed the first amended complaint without prejudice and we can review the district court's denial of Sinclair's motion to file a second amended complaint, "the interests of justice" do not warrant excusing the forfeiture. *Thomas*, 474 U.S. at 155.

***3** If a district court denies leave to file an amended complaint because amendment would be futile, we review the district court's decision de novo. *Babcock v. Michigan*, 812 F.3d 531, 541 (6th Cir. 2016). "A proposed amendment is futile if the amendment could not withstand a Rule 12(b)(6) motion to dismiss." *Beydoun v. Sessions*, 871 F.3d 459, 469 (6th Cir. 2017) (quoting *Riverview Health Inst. LLC v. Med. Mut. of Ohio*, 601 F.3d 505, 520 (6th Cir. 2010)). To avoid dismissal under Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Zakora v. Chrisman*, 44 F.4th 452, 464 (6th Cir. 2022) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

I. Takings Claims

Sinclair's proposed second amended complaint first claims that Oakland County and the City of Southfield violated the U.S. Constitution's Takings Clause. In light of our recent decision in *Hall v. Meisner*, 51 F.4th 185 (6th Cir. 2022), the district court partially erred by finding that this claim would not survive dismissal under Rule 12(b)(6). The district court found that Sinclair's proposed amendment failed to state a claim because she did not have a cognizable property interest in the equity of her home. In *Hall*, however, we held that a homeowner's equitable interest in her property is an interest that is protected by the Takings Clause. *Hall*, 51 F.4th at 194-96. By alleging that Oakland County took her property without compensating her for the equity in her home, Hall stated a Takings Clause claim against Oakland County. *See id.* As we cautioned in *Hall*, however, the only party responsible for this taking is Oakland County, the party that initially took title to the property, *id.* at 196, so the district court properly concluded that amendment would be futile to the extent that Sinclair sought to pursue a Takings Clause claim against the City of Southfield.

The second claim in Sinclair's proposed second amended complaint alleges that Oakland County and the City of Southfield violated the Michigan Constitution's Takings Clause. *See* Mich. Const., Art. X, Sec. 2. The plaintiffs in *Hall* also brought a Takings Clause claim under the Michigan Constitution alleging that they had a vested property right in the equity that they held in their home. In *Hall*, we vacated the district court's dismissal of the Michigan Takings Clause claim with instructions to abstain from adjudicating the issue on remand under *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 500–01 (1941). *Hall*, 51 F.4th at 196. The same approach applies here.

Procedural Due Process

The third claim in Sinclair's proposed second amended complaint alleges that Oakland County and the City of Southfield violated the homeowners' procedural due process rights by "failing to provide for any procedure at all ... to secure the return of their [e]quity after their properties' sale or transfer." To state a procedural due process claim, Sinclair had to allege that the defendants deprived her of a life, liberty, or property interest that is protected by the Due Process Clause and "that the state did not afford [her] adequate procedural rights prior to depriving [her] of [her] protected interest." *Med Corp., Inc. v. City of Lima*, 296 F.3d 404, 409 (6th Cir. 2002) (quoting *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999)). The district court found that this claim would be futile because Sinclair did not have a cognizable property interest in the equity of her home. In light of *Hall*, that finding was erroneous. Sinclair also alleged that the defendants had no "procedure at all" in place for homeowners to challenge the forfeiture of their equity interests. In light of these allegations, the district court erred in finding that this claim would not survive a Rule 12(b)(6) motion. Still, because Oakland County is the only defendant that allegedly took the titles of the properties from the homeowners, Oakland County is the only defendant that is potentially liable under § 1983. *See Hall*, 51 F.4th at 196.

II. Unjust Enrichment

***4** Sinclair's fourth proposed claim alleges that the defendants unjustly enriched themselves by taking and retaining the equity interests in the plaintiff's and putative class members' properties. The district court found that this proposed claim would be subject to dismissal under Rule 12(b)(6) because Oakland County received only the amount of delinquent taxes and fees that Sinclair owed and Sinclair did not allege that the other defendants, who were third-party beneficiaries, engaged in misleading or deceptive conduct. "The elements of a claim for unjust enrichment are: (1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to plaintiff because of the retention of the benefit by defendant." *Innotext, Inc. v. Petra'Lex USA Inc.*, 694 F.3d 581, 594 (6th Cir. 2012) (quoting *Barber v. SMH (US), Inc.*, 509 N.W.2d 791, 796 (Mich. Ct. App. 1993)). If these elements are satisfied, "[a] contract will be implied in law to prevent unjust enrichment." *AFT Mich. v. Michigan*, 846 N.W.2d 583, 660 (Mich. Ct. App. 2014).

Sinclair alleged that the defendants received the benefit of "substantial equity" in her home and the homes of other putative class members when they obtained the titles to these homes. Again, as we recognized in *Hall*, Sinclair had a property interest in the equity of her home. *Hall*, 51 F.4th at 194-96. Sinclair alleged that her equity interest exceeded the amount that she owed in back taxes and fees, and Oakland County took this interest when it took title to the home. Sinclair therefore plausibly alleged that Oakland County received a benefit from her when it took ownership of her home. Because Sinclair had a property interest in the equity of her home, she also plausibly alleged that she suffered an inequity when Oakland County retained that interest without compensating her for it. Thus, the district court erred in finding that an unjust enrichment claim against Oakland County would be futile. Sinclair also alleged facts from which it could be inferred that SNRI benefitted from the transfer of the homeowners' properties from the homeowners to Oakland County. Specifically, she alleged that SNRI eventually obtained the properties from the City of Southfield for one dollar and resold them for tens or hundreds of thousands of dollars in profits. However, because the homeowners' properties were not transferred directly from the homeowners to SNRI, SNRI is a third party.

A third party that benefits from an implied contract is not liable for unjust enrichment unless it "requested the benefit or misled the other parties." *Karaus v. Bank of N.Y. Mellon*, 831 N.W.2d 897, 906 (Mich. Ct. App. 2012) (per curiam) (quoting *Morris Pumps v. Centerline Piping, Inc.*, 729 N.W.2d 898, 904 (Mich. Ct. App. 2006)). Sinclair's allegations could not support a finding that SNRI requested a benefit from either Oakland County or Sinclair. According to the allegations in the proposed second amended complaint, SNRI entered into an agreement with the City of Southfield to obtain the properties in question only after Oakland County acquired ownership of the properties. And it was the City of Southfield, not SNRI, that obtained title from Oakland County. Sinclair also did not allege that SNRI misled either Oakland County or Sinclair.

Sinclair did not allege that the remaining defendants received a benefit from the implied contracts between the homeowners and Oakland County. She alleged that the City of Southfield was a mere intermediary that used funds provided by SNPHC to obtain the properties from Oakland County and then transferred the properties to SNRI for a nominal fee of one dollar. And SNPHC merely provided the City of Southfield with the funds that the City needed to exercise its right of first refusal. Sinclair alleged that Zorn and Siver were managers of SNRI and board members of SNPHC, which wholly owned SNRI. She also alleged that Zorn and Siver "benefitted personally and professionally" from these property transactions, but she did not include any specific factual allegations that, if true, would support that conclusion. Such conclusory allegations are insufficient to state a claim for relief. *See Iqbal*, 556 U.S. at 678.

III. Civil Conspiracy

***5** Finally, Sinclair alleged in the proposed second amended complaint that the defendants engaged in a civil conspiracy, in violation of § 1983. "Civil conspiracy under § 1983 requires evidence of 'an agreement between two or more persons to injure another by unlawful action.' " *Boxill v. O'Grady*, 935 F.3d 510, 519 (6th Cir. 2019) (quoting *Memphis, Tenn. Area Loc., Am. Postal Workers Union, AFL-CIO v. City of Memphis*, 361 F.3d 898, 905 (6th Cir. 2004)). To state a civil conspiracy claim, Sinclair had to allege that "(1) a single plan existed, (2) the conspirators shared a conspiratorial objective to deprive the plaintiffs of their constitutional rights, and (3) an overt act was committed in furtherance of the conspiracy that caused the injury." *Marvaso v. Sanchez*, 971 F.3d 599, 606 (6th Cir. 2020) (quoting *Robertson v. Lucas*, 753 F.3d 606, 622 (6th Cir. 2014)). "Although circumstantial evidence may prove a conspiracy, [i]t is well-settled that conspiracy claims must be pled with some degree of specificity and that vague and conclusory allegations unsupported by material facts will not be sufficient to state such a claim under § 1983." *Id.* (alteration in original) (quoting *Heyne v. Metro. Nashville Pub. Sch.*,

655 F.3d 556, 563 (6th Cir. 2011)).

The district court found that Sinclair's civil-conspiracy claim would be futile because she failed to plausibly allege that any defendant violated her constitutional rights. This finding, again, is erroneous in light of *Hall*. Because decisions regarding motions for leave to amend are subject to the district court's discretion, the district court should reevaluate Sinclair's civil conspiracy claim in light of *Hall*. *See Graveline v. Benson*, 992 F.3d 524, 546 (6th Cir. 2021).

IV. *Federal Rule of Civil Procedure 5.1*

One argument raised by several defendants on appeal warrants further discussion. Several defendants argue that the district court properly dismissed the case because Sinclair did not serve notice on the Michigan Attorney General that she was challenging the constitutionality of the GPTA, as required by Federal Rule of Civil Procedure 5.1. As Sinclair points out, however, Rule 5.1 itself states that "[a] party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted." Fed. R. Civ. P. 5.1(d). Further, because the district court denied leave to file the proposed second amended complaint, the complaint was never "filed," and Rule 5.1 may not have been triggered. *See* Fed. R. Civ. P. 5.1(a) ("A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly ... file a notice.").

For the foregoing reasons, we **VACATE** the district court's judgment to the extent that it denied Sinclair leave to file a second amended complaint alleging a federal takings claim, a procedural due process claim, an unjust-enrichment claim against Oakland County, and a state takings claim against Oakland County and the City of Southfield, and a civil conspiracy claim, and we **REMAND** for further proceedings on those claims. We otherwise **AFFIRM** the district court's judgment.

All Citations

Not Reported in Fed. Rptr., 2022 WL 18034473

Footnotes

1 *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 415-16 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 476 (1983).

2 The proposed second amended complaint included a sixth "count," which sought declaratory relief but did not clearly set forth a separate "claim" for relief. In any event, Sinclair's appellate brief addresses only the takings, due process, unjust-enrichment, and civil-conspiracy claims set forth in counts one through five.

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