APPENDIX A

17-3747-cv
Pulte Homes v. Town of Carmel

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

AMENDED SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this Court's Local Rule 32.1.1. When citing a summary order in a document filed with this Court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 13th day of June, two thousand eighteen.

PRESENT: JON O. NEWMAN,
JOSÉ A. CABRANES,
SUSAN L. CARNEY,
Circuit Judges.

PULTE HOMES OF NEW YORK LLC,

Plaintiff-Appellant,

v. 17-3747-cv

TOWN OF CARMEL, TOWN OF CARMEL PLANNING BOARD,

Defendants-Appellees.

FOR PLAINTIFF-APPELLANT: MICHAEL V. CARUSO, William A. Shilling, Jr., P.C., Carmel, N.Y.

FOR DEFENDANTS-APPELLEES: MAURIZIO SAVOIARADO III (Richard P. Epstein, *on the brief*), Miranda Sambursky Slone Sklarin Verveniotis LLP, Mineola, N.Y.

Appeal from a judgment of the United States District Court for the Southern District of New York (Vincent L. Briccetti, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the October 27, 2017 judgment of the District Court is **AFFIRMED**.

Plaintiff-appellant Pulte Homes of New York, LLC ("plaintiff" or "Pulte") appeals from a final order granting defendants' motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff brought suit pursuant to 42 U.S.C. § 1983 against the Town of Carmel and the Town of Carmel Planning Board (collectively, "the Town" or "defendants"), alleging that defendants violated its constitutional rights to equal protection and procedural and substantive due process when the Town assessed $749,000 in fees on plaintiff with respect to plaintiff's effort to build multiple new housing developments in the Town of Carmel. The District Court dismissed all of plaintiff's § 1983 claims as time-barred, and implicitly exercised supplemental jurisdiction over plaintiff's state law claim for a declaratory judgment and denied the claim by dismissing the Amended Complaint in its entirety. *Pulte Homes of N.Y., LLC v. Town of* Carmel, 16 CV 8093 (VB) 2017 WL 4877427 at *3 (S.D.N.Y. October 27, 2017). We assume the parties' familiarity with the facts, the procedural history of the case, and the issues on appeal.

BACKGROUND

Pulte owns approximately 100 acres of land in the Town of Carmel. On February 3, 2006, the Town Planning Board approved Pulte's request to use the land for development of residential units. The Town subsequently required that Pulte pay a $3,500 per unit "recreation fee," amounting to $749,000 total, in exchange for approval to develop the land. Pulte paid two separate sets of recreation fees: one on October 28, 2008 ("the 2008 fees"), and the other on October 18, 2013 ("the 2013 fees"). Pulte paid the 2008 fees after being informed by the Town that, pursuant to a local law enacted on May 18, 2006, Pulte would have to pay the recreation fees in order to begin construction.

Pulte does not make clear in its Amended Complaint precisely when it became aware that the 2006 law subjected it to these fees. The Town Planning Board subsequently passed three resolutions on November 12, 2008, in which it adopted Pulte's site plan amendments contingent on payment of the recreation fees. The fees had been paid approximately two weeks earlier, on October 28, 2008. Pulte paid the 2013 fees after the Town Planning Board passed two similar resolutions on September 27, 2013, in which it approved amendments to Pulte's construction plans, also contingent on the payment of the recreation fees.

Pulte's challenge to the recreation fees forms the basis of its lawsuit, in which it seeks to recover the fees it paid to the Town in 2008 and 2013. Pulte's principal claim on appeal is that the District Court improperly dismissed all federal claims as time-barred. We disagree.

DISCUSSION

The statute of limitations applicable to § 1983 claims in New York is three years. *Patterson v. County of Oneida*, 375 F.3d 206, 225 (2d Cir. 2004). "While state law supplies the statute of limitations for claims under § 1983, federal law determines when a federal claim accrues." *Connolly v. McCall*, 254 F.3d 36, 41 (2d Cir. 2001) (internal quotation omitted). "Under federal law, a cause of action generally accrues when the plaintiff knows or has reason to know of the injury that is the basis of the action." *M.D. v. Southington Bd. of Educ.*, 334 F.3d 217, 221 (2d Cir. 2003) (internal quotation marks omitted).

Pulte argues that all of its claims remain timely by virtue of the continuing violation doctrine. We reject this argument, as the continuing violation doctrine plainly does not apply to the Town's assessment of a construction fee on two occasions. "[A] continuing violation cannot be established merely because the claimant continues to feel the effects of a time-barred discriminatory act." *Harris v. City of New York*, 186 F.3d 243, 250 (2d Cir. 1999).

In the alternative, Pulte argues that its claims accrued in March of 2014, when the Town refused to return to Pulte the 2008 and 2013 fees. The Town argues that the claims accrued earlier, when Pulte had reason to know that it would be subject to the fees if it wanted to begin construction on its land. The Town thus contends that, at the latest, Pulte became aware that it would be subject to the 2008 fees on October 28, 2008, when it paid the first set of fees, and it became aware that it would be subject to the 2013 fees on September 27, 2013, when the Town passed resolutions subjecting Pulte to the 2013 fees.

We reject Pulte's argument that its claims with respect to both the 2008 and 2013 fees accrued in March of 2014, when the Town refused to return the recreation fees. Pulte first paid the 2008 fees it now alleges to be unconstitutional more than 5 years prior to the Town's refusal to return the fees. It clearly challenged the fees as unconstitutional prior to March of 2014, when it argued as much in its Article 78 Petition. It does not matter whether Pulte's 2008 fees claim accrued when it paid the fees or at an earlier time when it first learned it would be subject to them. Either way, this claim is time-barred. Because Pulte does not sufficiently allege a continuing violation, it would have had to file suit within three years of October 28, 2008, at the latest. It did not file suit until October 17, 2016. The District Court thus properly dismissed Pulte's claims relating to the 2008 fees.

We also reject Pulte's argument with respect to the 2013 fees. At a minimum, Pulte knew that it would be subject to new recreation fees when the Town passed its September 27, 2013 resolutions. Although it did not pay the 2013 fees until October 18th of that year, "[t]he proper focus is on the time of the *discriminatory act*, not the point at which the *consequences* of the act become painful." *Chardon v. Fernandez*, 454 U.S. 6, 8 (1981) (emphasis in original). Under *Chardon*, plaintiff's claim accrued no later than September 27, 2013, when the Planning Board passed the resolutions and formally imposed the recreation fees on Pulte.

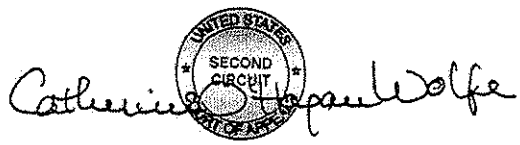
Pulte argues that it did not have reason to know that the fees would be imposed when the September 27, 2013 resolutions were passed. We disagree. Pulte clearly alleged in its complaint that in public hearings from May 2013 through September 2013, it actively objected to the imposition of further recreation fees because it knew that the Town would impose such fees as a condition on further construction. Am. Compl. Par. 33. Pulte also attended a September 25, 2013 hearing in which the Town preliminarily approved its site plans, specifically contingent upon Pulte's payment of the $3,500 per unit recreation fee. Its claim that it was not made aware of the imposition of the fees until well after the resolutions were passed, and that it was not actively involved in resisting otherwise imminent resolutions that mandated recreation fees, is thus without merit.

Finally, Pulte argues that the District Court erred in dismissing its state law claim seeking a declaratory judgment requiring the Town to refund Pulte's recreation fees. Pulte previously pursued this claim in state court and lost. *See Pulte Homes of N.Y., LLC v. Planning Bd. of Town of Carmel*, 136 A.D. 3d 643 (2d Dep't 2016). A United States district court is not the proper forum for an appeal from a state court decision. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Accordingly, the District Court properly dismissed this claim.

CONCLUSION

We have considered all of Pulte's remaining arguments and find them to be without merit. Accordingly, for the foregoing reasons, the judgment of the District Court is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PULTE HOMES OF NEW YORK, LLC,
Plaintiff,

v.

TOWN OF CARMEL and TOWN OF CARMEL PLANNING BOARD,
Defendants.

OPINION AND ORDER

16 CV 8093 (VB)

Briccetti, J.:

Plaintiff Pulte Homes of New York, LLC ("Pulte"), brings this action pursuant to 42 U.S.C. § 1983 against defendants Town of Carmel (the "Town") and Town of Carmel Planning Board (the "Planning Board"), alleging defendants violated its constitutional rights to equal protection and procedural and substantive due process, and seeking damages, declaratory relief, and equitable relief.

Now pending is defendants' motion to dismiss the amended complaint pursuant to Rule 12(b)(6). (Doc. #20).

For the following reasons, the motion is GRANTED in part and DENIED in part.

The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

BACKGROUND

In deciding the pending motion, the Court accepts as true all well-pleaded allegations in the amended complaint and draws all reasonable inferences in Pulte's favor.

Pulte owns approximately one hundred acres of land in the Town of Carmel, divided into three lots: "Lot 3," "Lot 4," and "Lot 5" (together "the property"). (Am. Compl. ¶ 18).

On February 3, 2006, the Planning Board "granted final site plan approval" for the property to be developed with a total of 313 "dwelling units." (Am. Compl. ¶ 22).

In August 2008, Pulte sought site plan amendments. In October 2008, Pulte was informed it would be required to pay a $3,500 recreation fee per dwelling unit. (Miranda Decl. Ex. G at 2).[1]

On October 28, 2008, Pulte paid $385,000 in recreation fees "under protest" for Lot 4 because had it not made the payment, it "could not have commenced construction on Lot 4 and all development would have ground to a halt." (Am. Compl. ¶¶ 28-29).

On November 12, 2008, the Planning Board passed three resolutions adopting Pulte's site plan amendments (the "2008 Resolutions").

On January 7, 2009, Pulte initiated an Article 78 proceeding in Supreme Court, Putnam County, challenging the imposition of the recreation fees. By decision and order dated March 15, 2010, the Article 78 court denied the Article 78 petition, finding the "Planning Board's request for recreation fees in accordance with Local Law #4 of 2006 was not arbitrary or capricious." (Miranda Decl. Ex. G at 4). However, on May 3, 2011, the Appellate Division, Second Department, reversed, concluding "the Planning Board made no 'individualized consideration' prior to imposing the recreation fee and made no specific findings as to the recreational needs created by the petitioner's improvements." (Id. Ex. H). The court ordered that the matter to be "remit[ted] . . . to the Planning Board for further consideration as to whether a recreation fee is appropriate, the amount of the fee, if any, and to make the specific findings which support such a fee." (Id.).

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[1] "In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint." DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 111 (2d Cir. 2010) (citing Chambers v. Time Warner, Inc., 282 F.3d 147, 153 (2d Cir. 2002)).

On June 28, 2012, Pulte applied for additional site plan amendments and sought approvals for Lots 3 and 5. From May through September 2013, the Planning Board held public hearings on Pulte's plans, and by resolutions dated September 27, 2013, it approved the plans and imposed a recreation fee of $3,500 per unit (the "2013 Resolutions"). On October 18, 2013, Pulte paid the Town $364,000 for recreation fees on Lots 3 and 5, again "under protest." (Am. Compl. ¶ 38).

On October 25, 2013, Pulte commenced a second Article 78 proceeding challenging the recreation fees levied in the the 2013 Resolutions. By decision and order dated March 11, 2014, the Supreme Court, Putnam County, "ORDERED and ADJUDGED that the determination of [the] Planning Board finding that Lots 3 and 5 provide inadequate current and future recreation space, and imposing an imposition of a fee of $3,500.00 per unit is annulled." (Miranda Decl. Ex. D at 9). However, the Supreme Court's decision did not direct the Town or Planning Board to refund the recreation fee payments Pulte had already made.

In March and April 2014, Pulte wrote to defendants to request a refund of the money paid under the now annulled—at least in part—2013 Resolutions. Defendants refused to refund the money.

As a result, on July 14, 2014, Pulte moved to resettle the March 11, 2014, Supreme Court order to seek a "ministerial clarification directing the Town's Comptroller to refund the annulled recreation fees paid under protest and declaring all other portions of the 2013 Resolutions as lawful and valid." (Am. Compl. ¶ 69). On September 24, 2014, the Supreme Court denied Pulte's motion, finding Pulte had "failed to request such refund in its Article 78 petition, despite the fact that it paid the monies approximately 7 days prior to commencing" the Article 78 proceeding. (Miranda Decl. Ex. E. at 2). The Supreme Court concluded Pulte was "left with two

options – direct appeal or by motion to vacate." (Id. at 3). By decision and order dated February 3, 2016, the Appellate Division, Second Department, affirmed the Supreme Court's ruling denying the motion to resettle. (Miranda Decl. Ex. F). It explained that "in seeking to amend the judgment so as to provide that it was entitled to a refund of the recreation fee it paid to the Planning Board, [Pulte] was not seeking to correct a mere clerical error[,] [r]ather [Pulte] sought to change the judgment in a substantive manner." (Id. at 3).

On October 17, 2016, Pulte commenced the instant action, seeking to recover the $749,000 in recreation fees it paid in 2008 and 2013, plus "further compensatory damages," costs, and fees. (Am. Compl. ¶ 1).

DISCUSSION

I. Legal Standard

In deciding a Rule 12(b)(6) motion, the Court evaluates the sufficiency of the operative complaint under the "two-pronged approach" articulated by the Supreme Court in Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). First, Pulte's legal conclusions and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not entitled to the assumption of truth and are thus not sufficient to withstand a motion to dismiss. Id. at 678. Second, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Id. at 679.

To survive a Rule 12(b)(6) motion, the allegations in the complaint must meet a standard of "plausibility." Ashcroft v. Iqbal, 556 U.S. at 678. A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. "The plausibility standard is not akin to a

'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id.

II. Statute of Limitations

Defendants argue the claims set forth in Pulte's amended complaint are barred by the applicable statute of limitations.

The Court agrees with respect to the claims relating to the 2008 Resolutions, but disagrees with respect to the claims relating to the 2013 Resolutions.

The parties agree that the applicable statute of limitations in this Section 1983 case is three years. "While state law supplies the statute of limitations for claims under § 1983, federal law determines when a federal claim accrues. . . . The claim accrues when the plaintiff 'knows or has reason to know' of the harm." Eagleston v. Guido, 41 F.3d 865, 871 (2d Cir. 1994) (citing Cullen v. Margiotta, 811 F.2d 698, 725 (2d Cir.), cert. denied, 483 U.S. 1021 (1987)). "The crucial time for accrual purposes is when the plaintiff becomes aware that he is suffering from a wrong for which damages may be recovered in a civil action." Singleton v. City of New York, 632 F.2d 185, 192 (2d Cir. 1980).

This action was commenced on October 17, 2016. Thus, only incidents that occurred after October 17, 2013, are actionable.

The latest point at which Pulte was allegedly injured and thus knew or should have known of the harm, was when it paid the recreation fees of which it complains. Pulte paid the recreation fees imposed by the 2008 Resolutions on October 28, 2008, and it paid the recreation fees imposed by the 2013 Resolutions on October 18, 2013.

Accordingly, Pulte's claims relating to the 2013 Resolutions are timely, but those relating to the 2008 Resolutions are not.

Pulte argues all of its claims are timely by virtue of the continuing violation doctrine. In particular, Pulte alleges the Town has refused to refund the fee payments, despite state court orders invalidating their imposition. According to Pulte, defendants now claim both Resolutions are invalid in their entirety—not just with respect to the recreation fees aspect—and as a result they continue to "prevent[] any permits and certificates of occupancy from issuing for units approaching or under construction." (Am. Compl. ¶ 67). Pulte alleges defendants thus "continue to engage in . . . deceptive and unlawful practices" which are causing Pulte "economic injury on a daily basis" and that defendants' deceptive intentions only came to light after Pulte demanded a refund. (Id. ¶ 75).

The Court finds these facts do not constitute a continuing violation.

Under the continuing violation doctrine, "[w]here a plaintiff can demonstrate an ongoing or continuing violation of his federally protected rights, the plaintiff is entitled to bring suit challenging all conduct that was a part of the violation, even conduct that occurred outside the limitations period." Roman Catholic Diocese of Rockville Ctr., New York v. Inc. Vill. of Old Westbury, 2011 WL 666252, at *12 (E.D.N.Y. Feb. 14, 2011) (internal quotations and citation omitted). "However, the mere fact that wrongful acts may have a continuing impact is not sufficient to find a continuing violation." Blankman v. Cty. of Nassau, 819 F. Supp. 198, 207 (E.D.N.Y.), aff'd, 14 F.3d 592 (2d Cir. 1993) (citing Delaware State College v. Ricks, 449 U.S. 250, 257 (1980) and United Air Lines v. Evans, 431 U.S. 553, 558 (1977)).

Moreover, "courts of this circuit consistently have looked unfavorably on continuing violation arguments," and apply the theory "only under 'compelling circumstances.'" Blesedell v. Mobil Oil Co., 708 F. Supp. 1408, 1415 (S.D.N.Y. 1989) (quoting LaBeach v. Nestle Co., 658 F. Supp. 676, 687 (S.D.N.Y. 1987)). Compelling circumstances have been found when "'the

unlawful conduct takes place over a period of time, making it difficult to pinpoint the exact day the violation occurred; where there is a[n] express, openly espoused policy [that is] alleged to be discriminatory; or where there is a pattern of covert conduct such that the plaintiff only belatedly recognizes its unlawfulness.'" Remigio v. Kelly, 2005 WL 1950138, at *8 (S.D.N.Y. Aug. 12, 2005) (quoting Yip v. Bd. of Trs. of State Univ. of New York, 2004 WL 2202594, at *4 (W.D.N.Y. Sept. 29, 2004), aff'd sub nom. Yip v. Bd. of Trs. of State Univ. of New York, 150 F. App'x 21 (2d Cir. 2005) (summary order).

Here, Pulte has not alleged any such compelling circumstances. Pulte knew the exact moment when its constitutional rights were allegedly impinged—when it made payments "under protest" to the Town on the basis of Resolutions it considered unlawful. Moreover, its broad and conclusory allegations suggesting an ongoing conspiracy to cause injuries are insufficient to show a continuing violation. See Singleton v. City of New York, 632 F.2d 185, 192 (2d Cir. 1980) ("Characterizing . . . separate wrongful acts as having been committed in furtherance of a conspiracy or as 'a single series of interlocking events' does not postpone accrual of claims based on individual wrongful acts.").

The Court likewise rejects Pulte's equitable estoppel argument. "'Equitable estoppel will apply where plaintiff was induced by fraud, misrepresentations or deception to refrain from filing a timely action.'" Mohamed v. Donald J. Nolan, Ltd., 967 F. Supp. 2d 647, 655 (E.D.N.Y. 2013), aff'd sub nom. Mohamed v. Nolan Law Grp., 574 F. App'x 45 (2d Cir. 2014) (summary order) (quoting Zumpano v. Quinn, 6 N.Y.3d 666, 674 (2006)). "A plaintiff asserting equitable estoppel 'must demonstrate reasonable reliance on the defendant's misrepresentations.'" Id. "'It is fundamental to the application of equitable estoppel for plaintiffs to establish that subsequent and specific actions by defendants somehow kept them from timely bringing suit.'" Id.

Here, Pulte has not plausibly alleged fraud, misrepresentation, or deception by defendants. At most, it alleges defendants communicated their interpretation of the state court decisions in the Article 78 proceedings—i.e., that those decisions annulled the entire Resolutions, not just the fees. Pulte does not allege, for example, that defendants represented they would return the fees if Pulte did not file suit.

Accordingly, Pulte's claims related to the 2008 Resolutions are barred by the statute of limitations. Its claims related to the 2013 Resolutions are timely.

III. Res Judicata

Because Pulte's claims related to the 2013 Resolutions are not barred by the applicable statute of limitations, the Court next addresses defendants' argument that Pulte's claims are barred by the doctrine of res judicata.

The Court concludes Pulte's surviving claims are not barred by res judicata.

"'Under both New York law and federal law, the doctrine of res judicata, or claim preclusion, provides that a final judgment on the merits of an action precludes the parties . . . from relitigating issues that were or could have been raised in that action.'" Duane Reade, Inc. v. St. Paul Fire & Marine Ins. Co., 600 F.3d 190, 195 (2d Cir. 2010) (quoting Maharaj v. Bankamerica Corp., 128 F.3d 94, 97 (2d Cir. 1997)).

A federal court must give the same preclusive effect to a state court decision as the state's law would give it. See 28 U.S.C. § 1738; Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984). Thus, New York law governs the res judicata analysis here.

Under New York law, res judicata "'will bar litigation of a claim that was either raised, or could have been raised, in a prior action provided that the party to be barred had a full and fair opportunity to litigate any cause of action arising out of the same transaction and the prior

disposition was a final judgment on the merits.'" Pope v. Enzo Biochem, Inc., 432 F. App'x 7, 9 (2d Cir. 2011) (summary order) (quoting Kinsman v. Turetsky, 21 A.D.3d 1246, 1246 (3d Dep't 2005)).

However, "[r]es judicata does not . . . 'bar subsequent litigation where the prior action could not have provided the relief the plaintiff seeks in the subsequent litigation.'" McGuinn v. Smith, 2012 WL 12887595, at *5 (S.D.N.Y. Sept. 7, 2012) (quoting Vega v. State Univ. of N. Y. Bd. of Trs., 67 F. Supp. 2d 324, 333 (S.D.N.Y. 1999)).

Of particular relevance here, res judicata is inapplicable where "a state court entertaining an Article 78 proceeding does not have the power to award the full measure of relief available in subsequent section 1983 litigation." Vargas v. City of New York, 377 F.3d 200, 205 (2d Cir. 2004) (citing Davidson v. Capuano, 792 F.2d 275, 278–79 (2d Cir. 1986)). See also McGuinn v. Smith, 2012 WL 12887595, at *6.

Accepting Pulte's allegations as true, and drawing all reasonable inferences in its favor, the amended complaint seeks relief not available to Pulte in its Article 78 proceedings. In particular, Pulte alleges it is suffering "ongoing[] economic injury" as a result of defendants' position that the plan approvals for the property are no longer valid and their continued refusal to refund Pulte for the recreation fees it paid. (Am. Compl. ¶ 58; see also id. ¶¶ 67, 92-93). Moreover, Pulte seeks "compensatory damages" above and beyond the refund it sought in its Article 78 proceedings. (Id. ¶ 1, Prayer for Relief ¶ (a)). These allegations and claims for relief were not before the state courts in Pulte's Article 78 proceedings.

Accordingly, Pulte's 2013 Resolution-based claims are not barred by res judicata.

CONCLUSION

Defendants' motion to dismiss is GRANTED with respect to Pulte's claims related to the 2008 Resolutions and DENIED with respect to Pulte's claims related to the 2013 Resolutions.

The Court will schedule an initial conference by separate order.

The Clerk is instructed to terminate the motion. (Doc. #20).

Dated: September 5, 2017
White Plains, NY

SO ORDERED:

Vincent L. Briccetti
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PULTE HOMES OF NEW YORK, LLC,
Plaintiff,

v.

TOWN OF CARMEL and TOWN OF CARMEL PLANNING BOARD,
Defendants.

OPINION AND ORDER

16 CV 8093 (VB)

Briccetti, J.:

Plaintiff Pulte Homes of New York, LLC ("Pulte"), brings this action pursuant to 42 U.S.C. § 1983 against defendants Town of Carmel (the "Town") and Town of Carmel Planning Board (the "Planning Board"), alleging defendants violated its constitutional rights to equal protection and procedural and substantive due process, and seeking damages, declaratory relief, and equitable relief.

Now pending are (i) defendants' motion for reargument of one aspect of the Court's September 5, 2017, Opinion and Order, which granted in part and denied in part defendants' motion to dismiss the amended complaint (Doc. #36), and (ii) plaintiff's motion to certify an appeal of the Court's September 5, 2017, Opinion and Order (Doc. #35).

For the following reasons, defendants' motion is GRANTED. Plaintiff's motion is DENIED AS MOOT.

The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

BACKGROUND

Familiarity with the factual background of the case is presumed. Of relevance to the instant motions are the following facts:

Pulte owns approximately one hundred acres of land in the Town of Carmel, divided into three lots: "Lot 3," "Lot 4," and "Lot 5" (together "the property"). (Am. Compl. ¶ 18).

On February 3, 2006, the Planning Board "granted final site plan approval" for the property to be developed with a total of 313 "dwelling units." (Am. Compl. ¶ 22).

In 2008, Pulte sought site plan amendments, which reduced the overall unit and building count. Later that year, Pulte was informed it would be required to pay a $3,500 recreation fee per dwelling unit. On October 28, 2008, Pulte paid $385,000 in recreation fees "under protest" for Lot 4. (Am. Compl. ¶28). On November 12, 2008, the Planning Board passed three resolutions adopting Pulte's site plan amendments (the "2008 Resolutions").

On June 28, 2012, Pulte applied for additional site plan amendments for Lots 3 and 5, which again reduced the number of units, and sought Planning Board approval. From May through September 25, 2013, the Planning Board held public hearings, and by resolutions dated September 27, 2013, it approved the plans and imposed a recreation fee of $3,500 per unit (the "2013 Resolutions"). On October 18, 2013, Pulte paid the Town $364,000 in recreation fees for Lots 3 and 5, again "under protest." (Am. Compl. ¶ 38).

On October 17, 2016, plaintiff commenced this action with the filing of a complaint.

In its September 5, 2017, Opinion and Order, the Court concluded Pulte's claims stemming from the 2008 Resolutions were barred by the applicable statute of limitations, but that its claims stemming from the 2013 Resolutions were timely. (Doc. #33).

DISCUSSION

I. Legal Standard

"The Court has authority under Fed.R.Civ.P. 54(b), as well as the inherent power of the court, to reconsider a prior decision at any time before the entry of final judgment." Richman v. W.L. Gore & Assocs., 988 F.Supp. 753, 755 (S.D.N.Y. 1997).

"A party seeking reargument must demonstrate that the Court overlooked controlling decisions or factual matters that were put before it on the underlying motion and that might reasonably be expected to alter the conclusion reached by the court." Abrahamson v. Bd. of Educ. of Wappingers Cent. Sch. Dist., 237 F. Supp. 2d 507, 510 (S.D.N.Y. 2002) (citing Shrader v. CSX Transportation, Inc., 70 F.3d 255, 256 (2d Cir. 1995); Davis v. The Gap, Inc., 186 F.R.D. 322, 324 (S.D.N.Y. 1999)). "In doing so, a party in its motion for reargument may not advance new facts, issues or arguments not previously presented to the court." Id. (internal quotation marks omitted).

II. Timeliness of Pulte's Claims

Defendants argue the Court overlooked controlling precedent in its September 5, 2017, Opinion and Order, when it determined Pulte's claims related to the 2013 Resolutions were timely.

The Court agrees. Accordingly, upon reconsideration, the Court concludes its determination in this regard was erroneous.

"The statute of limitations applicable to claims brought under . . . [Section] 1983 in New York is three years." Patterson v. City of Oneida, 375 F.3d 206, 225 (2d Cir. 2004). "While state law supplies the statute of limitations for claims under § 1983, federal law determines when a federal claim accrues." Connolly v. McCall, 254 F.3d 36, 41 (2d Cir. 2001) (internal quotation marks omitted). "Generally speaking, under federal law 'the time of accrual is that point in time when the plaintiff knows or has reason to know of the injury which is the basis of his action.'" Covington v. City of New York, 171 F.3d 117, 121 (2d Cir. 1999) (quoting Singleton v. City of New York, 632 F.2d 185, 191 (2d Cir. 1980)).

"The crucial time for accrual purposes is when the plaintiff becomes aware that he is suffering from a wrong for which damages may be recovered in a civil action." Singleton v. City

of New York, 632 F.2d at 192. "[T]he proper focus is on the time of the discriminatory act, not the point at which the consequences of the act become painful." Chardon v. Fernandez, 454 U.S. 6, 8 (1981) (emphasis in original) (citing Delaware State Coll. v. Ricks, 449 U.S. 250, 258 (1980)). For example, in Chardon v. Fernandez, non-tenured administrators working for the Puerto Rico Department of Education were notified by letter that their "appointment[s] would terminate at a specified date" in the future. 454 U.S. at 6. One of these administrators filed suit within one year after his appointment ended, but more than one year after he was notified that his appointment would end. The Supreme Court determined the one-year statute of limitations applicable there began to run at the time of the notification, not at the termination of the appointment. Id. at 8. See also Delaware State Coll. v. Ricks, 449 U.S. 250, 258 (1980); Pauk v. Bd. of Trustees of City Univ. of New York, 654 F.2d 856, 859 n.2 (2d Cir. 1981) ("We reject [plaintiff's] theory that no 'deprivation' occurred under § 1983 until his employment actually terminated. The alleged deprivation violating [plaintiff's] constitutional rights was not the fact of his discharge but the denial of reappointment with tenure.").

Here, in its September 5, 2017, Opinion and Order, the Court found that "[t]he latest point at which Pulte was allegedly injured and thus knew or should have known of the harm, was when it paid the recreation fees of which it complains," which, for the 2013 Resolutions, was on October 18, 2013. (Doc. #33 at 5). The Court therefore concluded Pulte's claims related to the 2013 Resolutions, included in its complaint filed on October 17, 2016, were timely.

However, upon reconsideration, and in light of the binding precedent discussed above, the Court concludes Pulte's claims related to the 2013 Resolutions accrued not when it paid the recreation fees, but instead at the latest on September 27, 2013, when the Planning Board passed the Resolutions and imposed the recreation fees on Pulte.

In particular, Pulte alleges "[t]he Planning Board held protracted public hearings from May, 2013 through September 25, 2013, during which Pulte requested the Planning Board conduct fact-finding and assess the present and future need for recreation space on the Property and the Town of Carmel, or imposing a fee in lieu thereof." (Am. Compl. ¶ 33). Pulte further alleges the 2013 Resolutions were signed "[u]pon closing of the public hearing on Lot 3 and Lot 5," and were dated September 27, 2013. (Id. ¶ 36). In addition, Pulte alleges, "[l]ike the 2008 Resolutions, the 2013 Resolutions summarily imposed conditions that Pulte pay recreation fees in lieu of parkland in the amount of $3,500.00 per dwelling unit on Lot 3 and Lot 5." (Id. ¶ 37). Finally, Pulte alleges constitutional violations based on defendants' conduct of "selectively enforc[ing] the law by imposing an unusually onerous and protracted site plan process, and in repeatedly denying Pulte the right to be heard on the issue of recreation fees and the need for parkland before summarily and arbitrarily imposing fees of $3,500 per dwelling unit." (Id. ¶ 89; see also id. ¶¶ 96, 101, 111).

Thus, the allegations contained in its amended complaint show Pulte knew or should have known of of the allegedly unconstitutional acts related to the 2013 Resolutions—the denial of Pulte's right to be heard, and the imposition of the recreation fees—by September 27, 2013, when the 2013 Resolutions were passed.[1] Pulte did not file its complaint in this action until October 17, 2016, more than three years later.

Accordingly, Pulte's claims related to the 2013 Resolutions are time-barred.

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[1] Although Pulte does not allege the specific date it became aware of the 2013 Resolutions, its claims would only be timely if it did not know or had no reason to know about them until October 17, 2013 (three years before it filed this lawsuit) or later. Given the allegations that Pulte actively participated in the Planning Board's public hearings from May through September 25, 2013, and that the 2013 Resolutions were passed on September 27, 2013, it is not plausible that it took twenty days or more for news of the Resolutions to reach Pulte. Nothing in the complaint suggests this might be the case, and nowhere does Pulte make this argument.

III. Pulte's Motion to Certify an Appeal

Because the Court's determination that Pulte's claims are time-barred mandates dismissal of the case, appeal as of right is now permitted. Accordingly, the Court need not consider the arguments raised in Pulte's motion to certify an appeal.

CONCLUSION

Defendants' motion for reargument is GRANTED, and the amended complaint is DISMISSED.

Plaintiff's motion to certify an appeal of the Court's September 5, 2017, Opinion and Order is DENIED AS MOOT.

The Clerk is instructed to terminate the motions (Docs. ##35, 36) and close this case.

Dated: October 27, 2017
White Plains, NY

SO ORDERED:

Vincent L. Briccetti
United States District Judge