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See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of Appeals 3rd Cir. App. I, IOP 5.1, 5.3, and 5.7.

United States Court of Appeals, Third Circuit.

Peter SAUERS, Appellant

v.

LOWER SOUTHAMPTON TOWNSHIP

No. 17-1093

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 26, 2017(Opinion filed: January 9, 2018)

On Appeal from the United States District Court
for the Eastern District of Pennsylvania (E.D. Pa.
Civil Action No. 2-16-cv-02325) District Judge:
Honorable Gene E. K. Pratter

Attorneys and Law Firms

Peter Sauers, Pro Se
Michael E. Peters, Esq., Michael T. Pidgeon, Esq.,
Michael J. Savona, Esq., Eastburn & Gray,
Doylestown, PA, for Defendant-Appellee
Before: VANASKIE, COWEN, and NYGAARD,
Circuit Judges

Opinion

OPINION*

We have jurisdiction pursuant to 28 U.S.C. § 1291. We exercise plenary review over the dismissal of a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. In re Asbestos Prod. Liab. Litig., 822 F.3d 125, 131 (3d Cir. 2016). To withstand a motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (citation omitted).

Sauers argues on appeal that the District Court erred in dismissing his due process claims. The District Court ruled that Sauers did not state a cognizable procedural due process claim because, among other things, public records provided by the Township established that it gave notice of its proposed zoning ordinance in a local newspaper and held public hearings. Sauers asserts that the District Court erred in addressing whether the Township gave notice of the zoning ordinance because he had claimed that his rights were violated by the Township’s later decision to grant zoning variances to property owners without public notice.

As the Township asserts, Sauers’ Amended Complaint does not mention zoning variances. It is at best unclear whether the Amended Complaint challenges an action by the Township regarding the

Amended Complaint. He has not shown that the District Court erred in dismissing this claim. See *id.*²

Sauers also argues that the District Court erred in dismissing his civil rights claim. He appears to refer to the dismissal of Count IV of his Amended Complaint. The District Court liberally construed this claim as a First Amendment retaliation claim pursuant to 42 U.S.C. § 1983, but found that he failed to state a claim for relief. Sauers does not contend that he states a retaliation claim but argues that his § 1983 action should not be dismissed because he has alleged that his rights under the Fifth and Fourteenth Amendments have been abridged. Sauers has not shown that the District Court erred in dismissing Count IV. His Fourteenth Amendment claims were brought in other counts and, as discussed below, the District Court considered his Fifth Amendment Takings Clause claim separately.

Finally, Sauers argues that the District Court erred in dismissing his Takings Clause claim. The District Court ruled that, to the extent Sauers was attempting to bring such a claim, he had not pled facts in support. The District Court noted that Sauers had not alleged that the Township took any action with regard to his property and that, even if he could make out a plausible claim, he had not shown that he had exhausted state law procedures for seeking compensation. Sauers contends on

7a

United States District Court,
E.D. Pennsylvania.

Peter Sauers, Plaintiff,

v.

Lower Southampton Township, Defendant.

CIVIL ACTION No. 16-2325

Filed 12/15/2016

Attorneys and Law Firms

Peter Sauers, Feasterville, PA, pro se.

Michael E. Peters, Eastburn & Gray PC,
Doylestown, PA, for Defendant.

Opinion

MEMORANDUM

Pratter, United States District Judge

Peter Sauers sued Lower Southampton Township (the "Township") alleging violations of his rights under the United States and Pennsylvania constitutions. The genesis of Mr. Sauers's concerns is a zoning dispute. With the Court's permission, Mr. Sauers filed an Amended Complaint specifically alleging violations (i) of his state and federal constitutional rights to due process (Count 1), (ii) of his federal constitutional right to equal protection (Count 3), (iii) of his civil rights under both the United States and Pennsylvania

(citations and internal quotation marks omitted) (alteration in original), the plaintiff must provide “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* (citation omitted).

To survive a motion to dismiss, the plaintiff must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. Specifically, “[f]actual allegations must be enough to raise a right to relief above the speculative level....” *Twombly*, 550 U.S. at 555 (citations omitted). The question is not whether the claimant will ultimately prevail, but whether the complaint is “sufficient to cross the federal court’s threshold.” *Skinner v. Switzer*, 131 S. Ct. 1289, 1296 (2011).

To decide a Rule 12(b)(6) motion to dismiss, the Court may rely on “the complaint, attached exhibits, and matters of public record.” *Sands v. McCormick*, 502 F.3d 263, 268 (3d Cir. 2007). The Court may also consider documents that are “integral to or explicitly relied upon in the complaint ... without converting the motion [to dismiss] into one for summary judgment.” *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997) (citation omitted). The Court must accept as true all well-pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. *Angelaastro v. Prudential-Bache Sec., Inc.*, 764 F.2d 939, 944 (3d Cir. 1985).

Complaint fails to state a claim for which this Court can grant relief.

A. Federal Claims

1. Substantive and Procedural Due Process

In order to make out a substantive due process claim based on a land use decision by a municipality, a plaintiff must show conduct by the municipality that “shocks the conscience.” *United Artists Theatre Circuit, Inc. v. Twp. of Warrington*, 316 F.3d 392, 400 (3d Cir. 2003). “[O]nly the most egregious official conduct” will suffice to meet this standard. *Id.* (quoting *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)); *see also Eichenlaub v. Twp. of Indiana*, 385 F.3d 274, 286 (3d Cir. 2004) (suggesting corrupt or self-dealing conduct would satisfy this standard). “A land use substantive due process claim must implicate more than just disagreement about conventional zoning or planning rules to pass the ‘shock the conscience’ test.” *Lonzetta Trucking & Excavating Co. v. Schan*, 144 Fed.Appx. 206, 212 (3d Cir. 2005); *see also Eichenlaub*, 385 F.3d at 285 (“[The shocks the conscience test] is designed to avoid converting federal courts into super zoning tribunals.”). Here, apart from merely generic allegations of self-dealing and fraud, *see Am. Compl.* pp. 6, 22, Mr. Sauers's Amended Complaint fails to allege any facts to suggest that the Township or any of its

the administrative decision ... the state provides adequate due process.” (quotation marks and citation omitted)).

2. Equal Protection Claim

The focus of an equal protection claim in the context of municipal land use decisions is whether “the Township has irrationally distinguished between similarly situated classes.” *Cty. Concrete Corp. v. Town of Roxbury*, 442 F.3d 159, 171 (3d Cir. 2006) (quoting *Rogin v. Bensalem Twp.*, 616 F.2d 680, 689 (3d Cir. 1980)). Here, Mr. Sauers alleges that the Township sold its zoning ordinances “in a discriminatory manner” and that there were “[n]o meetings for just the new intended use of a [sic] subject residential property and the comprehensive plan.” Am. Compl. p. 24. Mr. Sauers simply fails to make out a cognizable equal protection claim because his allegations do not contain any facts at all that could support a finding that the Township “irrationally distinguished between similarly situated classes.” See *Cty. Concrete Corp.*, 442 F.3d at 171 (quoting *Rogin*, 616 F.2d at 689).

3. Civil Rights Claim

While Count 4 of Mr. Sauers's Amended Complaint asserts a civil rights claim, it is not clear from the Amended Complaint what type of civil rights claim Mr. Sauers is attempting to bring.⁴ The Court will

Mr. Sauers has not pled that the Township took any action with regard to property he owns. Furthermore, even if Mr. Sauers could make out a plausible Takings Clause claim, he has not demonstrated that he has exhausted the procedures provided by Pennsylvania law for seeking compensation for the alleged taking. *See Chainey v. Street*, 523 F.3d 200, 222 (3d Cir. 2008) (holding that a Takings Clause claim was not ripe because the plaintiffs did not exhaust the procedures provided by state law to seek just compensation (citing *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194 (1985))).

B. State Law Claims

1. Pennsylvania Constitutional Claims

Mr. Sauers alleges that the Township's actions violated his due process rights and civil rights as protected by the Pennsylvania Constitution. To the extent Mr. Sauers seeks monetary damages as a result of the alleged violations of the Pennsylvania Constitution, his claims fail because there is no private right of action for damages for violations of the Pennsylvania Constitution. *See Pocono Mountain Charter Sch. v. Pocono Mountain Sch. Dist.*, 442 Fed.Appx. 681, 687 (3d Cir. 2011) ("No Pennsylvania statute establishes, and no Pennsylvania court has recognized, a private cause of action for damages under the Pennsylvania Constitution.") (citing *Jones v. City of Phila.*, 890

W.C.A.B. (Rite Aid Corp.), 883 A.2d 518, 532 (Pa. 2005). Because Mr. Sauers has failed to make out a federal civil rights violation or a federal equal protection violation, his Pennsylvania civil rights and/or equal protection claim fails as well.

2. Pennsylvania Right-to-Know Law

Mr. Sauers's Right-to-Know Law claim must fail because Pennsylvania law provides that Pennsylvania state courts are the exclusive forum for litigating Right-to-Know Law claims. *Vega v. Miller*, No. 11-7224, 2012 WL 6709642, at *4 n.7 (E.D. Pa. Dec. 27, 2012) (citing *Profitt v. Davis*, 707 F. Supp. 182, 188 (E.D. Pa. 1989)).

3. Un-enumerated Unjust Enrichment Claim

While Mr. Sauers's Amended Complaint appears to allege unjust enrichment simply in order to invoke this Court's diversity jurisdiction, Mr. Sauers represented at oral argument that he intended to include a distinct claim for unjust enrichment.⁶ Mr. Sauers's claim for unjust enrichment is not included in the enumerated counts of the Amended Complaint.

In order to make out an unjust enrichment claim under Pennsylvania law, a plaintiff “must show that the party against whom recovery is sought either wrongfully secured or passively received a benefit that would be unconscionable for the party

Appendix1

No.

Document Description

- 1.Proof of Publication in the Bucks County Courier Times on June 12, 2012 for Hearing on Zoning Ordinance No. 558
- 2.Proof of Publication in the Bucks County Courier Times on August 14, 2012 and August 21, 2012 for Hearing on Zoning Ordinance No. 558
- 3.Meeting Minutes from September 4, 2012 Hearing on Zoning Ordinance No. 558
- 4.Zoning Ordinance No. 558 with Attached Zoning Map