MASSACHUSETTS LAWYERS WEEKLY

Municipal – Due process – Grinder pump

U.S. District Court

By: Mass. Lawyers Weekly Staff August 31, 2019

Where a defendant town has been sued over its failure to pay for repairs to a grinder pump issued to a household, the complaint should not be dismissed, as the plaintiffs have not failed to state a plausible procedural due process claim.

"Defendants Town of Chelmsford ('Chelmsford'), the Town of Chelmsford Board of Selectmen, Emily Antul, Paul Cohen, Glenn Diggs, George Dixon, Jr., Kenneth Lefebvre and Patricia Wojitas ('Defendants') seek dismissal of Plaintiffs David Markham, the Sewer Fairness Alliance of Chelmsford and the Sewer Fairness Alliance of Chelmsford, Inc.'s ('Plaintiffs') complaint, … which alleges that Defendants violated Plaintiffs' due process rights under both the Massachusetts Declaration of Rights and the United States Constitution. …

"Plaintiffs David and Jill Markham are residents of Chelmsford and members of Plaintiff Sewer Fairness Alliance of Chelmsford. … The Sewer Fairness Alliance of Chelmsford is an unincorporated organization of over three hundred households in Chelmsford, most of which use grinder pumps provided by the Town of Chelmsford. … Plaintiff Sewer Fairness Alliance of Chelmsford, Inc. is a 501(c)(3) organization with a mission to advocate on behalf of homeowners with grinder pumps. … Defendants are Chelmsford, the Town of Chelmsford Board of Selectmen, and all of the current Selectmen, in their official capacities. …

"The instant dispute arises out of Chelmsford's provision of a sewage grinder pump to the Markhams and subsequent repair costs for the pump. …

"Plaintiffs' first cause of action is for a violation of their procedural due process rights under the Massachusetts Declaration of Rights. … As an initial matter, Defendants contend that there is no private right of action exists under the state constitution and so the claim must be converted to one under the Massachusetts Civil Rights Act, Mass. Gen. Laws ch. 12, §§11H & 11I ('MCRA'), which, according to Defendants, must also fail. … Plaintiffs counter that a private cause of action, at least for injunctive or declaratory relief, does exist under the Massachusetts Declaration of Rights. …

"Defendants' position has some recent support where at least one court in this district has concluded that it would not recognize a direct state constitutional claim because '[n]o Massachusetts appellate court … has ever held that such a right exists' and '[i]t is up to the courts of Massachusetts, not this Court, to make that choice.' … Even more recently, however, a Massachusetts appellate court has recognized a direct claim for declaratory or injunctive relief under the Declaration of Rights. *Doe v. Sex Offender Registry Bd.*, 94 Mass. App. Ct. 52, 64 (2018) (citing *Lane v. Commonwealth*, 401 Mass. 549, 552 (1988) and distinguishing direct constitutional claim for declaratory or injunctive relief from a claim for damages that would have to be made under the MCRA). Accordingly, to the extent that Plaintiffs seek declaratory or injunctive relief for their state constitutional claim, the Court shall not dismiss it on the grounds that they have failed to make a showing for a MCRA claim. …

"Although it may well be that the Plaintiffs have received all of the process that was due them, the Court cannot resolve that issue at this juncture since '[e]xactly what sort of notice and what sort of hearing the Constitution requires … vary with the particulars of the case.' …

"Defendants also claim that Plaintiffs have failed to state a plausible procedural due process claim since, whatever process was due was satisfied by a post-deprivation procedure available under state law for abatement of the charges. That is, while exhaustion of state remedies is not required for asserting a federal constitutional claim, … 'the existence of state remedies *is* relevant' for determining whether any pre-deprivation (or post-deprivation for those deprivations 'occasioned by random and unauthorized conduct by state officials') process was sufficient. …

Here, Defendants cite to Plaintiffs' failure to pursue abatement of the repair charges under Mass. Gen. L. c. 59 §59 for general tax abatement or Mass. Gen. L. c. 83 §16E through appeal to the appellate tax board as the statute permits. … Although Plaintiffs may have effectively sought an abatement from Chelmsford (and the town reduced the charge from $1065 to $640), … it is not clear from the allegations that they sought (or could seek) such abatement under Mass. Gen. L. c. 59 §59 or c. 83 §16E or, having not having received full relief, appealed to the appellate tax board. Although it is correct, as Defendants point out, that 'so long as the government provides an adequate post-deprivation remedy, an individual claiming to have been deprived of a constitutionally protected property interest cannot claim a violation of procedural due process,' … the Court cannot conclude at this juncture that even if such post- deprivation process would be sufficient here, whether such remedy was available to the Markhams for the grinder repair cost (which Plaintiffs contend it does not, D. 10 at 10)."

Markham, et al. v. Town of Chelmsford, et al. (Lawyers Weekly No. 02-390-19) (11 pages) (Casper, J.) (Civil Action No. 19-10018-DJC) (Aug. 26, 2019).

Click here to read the full text of the opinion.

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