UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DANIEL GOLDSTEIN, et al.,	:	
Plaintiffs,	:	CV 06 5827 (NGG) (RML)
v.	:	ECF Case
GEORGE E. PATAKI, et al.,	:	
Defendants.	:	

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THE ESDC DEFENDANTS' MOTION TO DISMISS THE FOURTH CAUSE OF ACTION IN THE AMENDED COMPLAINT

Douglas M. Kraus (DK 7497)
Preeta D. Bansal (PB 9452)
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036
(212) 735-3000

Attorneys for Defendants Empire State Development Corporation and Charles A. Gargano

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Plaintiffs' brief in opposition to the ESDC Defendants' motion to dismiss the fourth cause of action in the amended complaint ("Pl. Opp.") is, for the most part, an unfortunate blend of accusations and invective belaboring points not in dispute. Although the ESDC Defendants noted, in their memorandum of January 19, 2005 ("ESDC Mem."), that three federal courts had found that they lacked jurisdiction under 28 U.S.C. § 1367 to entertain state-law Article 78 "claims," most of the discussion and cases cited therein supported dismissal of plaintiffs' EDPL § 207 challenge under the "exceptional circumstances" provision of 28 U.S.C. § 1367(c)(4). (See ESDC Mem. at 8-12.) The ESDC Defendants never argued that federal courts lack supplemental jurisdiction over state-law challenges to agency action that entail "on the record" review (cf. Pl. Opp. at 1, 4-8), or that the claims plaintiffs purport to bring under EDPL § 207 are not "related to" their federal claims (cf. id. at 3-4). And the ESDC Defendants explicitly acknowledged that state statutes typically cannot circumscribe federal courts' jurisdiction (cf. id. at 1, 7-8; see ESDC Mem. at 10 n.6). Fully half of plaintiffs' brief is devoted to addressing these non-issues.

As for City of Chicago v. International College of Surgeons, 522 U.S. 156 (1997), plaintiffs' suggestion that counsel for the ESDC Defendants violated an "obligation to acknowledge controlling authority" (Pl. Opp. at 1) by not discussing it is entirely misplaced. We did not discuss the case because it simply does not address the question presented here. The issue in City of Chicago was whether a district court had supplemental jurisdiction over state-law claims that had been filed in state court, but which the municipal defendants chose to remove to federal court along with certain federal claims. See 522 U.S. at 161. The Supreme Court held that the fact that the state-law claims, as defined by state law, called for on-the-record rather than de novo review of state agency action did not, by itself, preclude the exercise of supplemental

jurisdiction over those claims. See id. at 169. "After all," the Court explained, "district courts routinely conduct deferential review pursuant to their original jurisdiction over federal questions, including on-the-record review of federal administrative action." Id. at 171. That holding is not disputed here.

Significantly, however, in a portion of the decision plaintiffs neglect to mention, the Court in City of Chicago proceeded to "express no view" on whether the district court should have declined to exercise supplemental jurisdiction based on the facts and circumstances of that case. Id. at 174. The Court explained that a number of considerations might well weigh against the exercise of jurisdiction:

> Depending on a host of factors . . . —including the circumstances of the particular case, the nature of the state law claims, the character of the governing state law, and the relationship between the state and federal claims—district courts may decline to exercise jurisdiction over supplemental state law claims. . . . [W]hen deciding whether to exercise supplemental jurisdiction, 'a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity.'

Id. at 173 (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343 (1988)).[1]

The thrust of the ESDC Defendants' argument in their opening brief supporting dismissal of plaintiffs' EDPL § 207 claim was that these factors, as applied to this case, counsel strongly against the exercise of supplemental jurisdiction. Specifically, the exercise of the eminent domain power is traditionally a matter of local character and concern (see ESDC Mem. at 1 n.1), and the New York state legislature has made plain its intention to create a special, exclusive procedure for resolving challenges to that exercise, see EDPL §§ 101, 207(B), & 208.

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[1] The Court further observed that "district courts may be obligated not to decide state law claims (or to stay their adjudication) where one of the abstention doctrines articulated by this Court applies." Id. at 174. On remand, the Seventh Circuit held that plaintiffs had waived their argument for declining supplemental jurisdiction and that abstention was not required. See Int'l Coll. of Surgeons v. City of Chicago, 153 F.3d 356, 359 (7th Cir. 1998).

Indeed, the single state-law claim that plaintiffs now assert here is a creature of the very statute that governs that procedure. EDPL § 207 proceedings, moreover, are inextricably intertwined with (indeed, effectively part of) a state administrative process. These factors plainly qualify as "exceptional circumstances" triggering the comity concerns described in City of Chicago. And considerations of both comity and judicial economy militate in favor of resolving plaintiffs' EDPL § 207 challenge in state court, where a section 207 proceeding was already pending before the Appellate Division when plaintiffs filed their amended complaint. (See ESDC Mem. at 12.) By express directive of the state legislature, the two EDPL § 207 challenges should be considered together. See EDPL § 207(A).

It bears emphasizing, in examining just how "exceptional" the circumstances presented are, that this is the very first time, to the ESDC Defendants' knowledge, that anyone has pursued the tack plaintiffs are pursuing. As noted in the ESDC Defendants' opening brief in support of dismissing the amended complaint, in the 30 years since the EDPL was passed, only 19 challenges to eminent domain have even been brought (judging from publicly-accessible decisions) in federal district courts in New York—a sharp contrast with the 100-plus challenges presented to the state courts during that same period. (See ESDC Mem. at 2-3 & n.2.) And not one of those federal cases—not even the ones brought while the EDPL Article 2 process was still ongoing—included a "claim" under EDPL § 207.

Plaintiffs offer no response on the merits of the argument that exceptional circumstances exist here for declining jurisdiction. Instead, they attack the numerous courts that have applied 28 U.S.C. § 1367(c)(4) to decline supplemental jurisdiction in the analogous Article 78 context. According to plaintiffs, those cases were all wrongly decided because they failed to cite the Second Circuit's decision in Itar-Tass Russian News Agency v. Russian Kurier, 140 F.3d

442 (2d Cir. 1998). (See Pl. Opp. at 11-12.) As with their reliance on City of Chicago, plaintiffs again go much too far here. Neither the ESDC Defendants nor any of the judges in the Article 78 cases questioned the general proposition—emphasized in Itar-Tass—that a federal court's discretion under 28 U.S.C. § 1367(c) is both guided and limited by the criteria set forth in the statute. But it hardly follows that the Itar-Tass court's refusal to find the existence of "exceptional circumstances" under section 1367(c)(4) should have compelled the courts in the Article 78 cases to do likewise. The question in Itar-Tass was whether a district judge who had presided over a copyright bench trial should have exercised supplemental jurisdiction to resolve a straightforward, state-law-based fee dispute that had arisen among plaintiffs' counsel prior to the court's ruling. See 140 F.3d at 444-45. In answering that question in the affirmative, the Second Circuit observed that the judge was in a uniquely advantageous position to adjudicate the fees claim, the resolution of which depended chiefly on an examination of "the professional services" rendered by the attorneys in the case. See id. at 445. By contrast, the appeals panel observed, the various factors pertinent to resolving the fee dispute "would have to be considered anew and relitigated in possibly more than one state court unfamiliar with the proceedings and the trial services if supplemental jurisdiction is not exercised." Id.

Crucially, neither the district court in Itar-Tass nor (it would appear) the appellee before the Second Circuit could identify any feature of the state-law attorneys'-fees claim that would give rise to "compelling" reasons for declining to exercise jurisdiction. The reasons the district court did give—that the fee dispute was "entirely separate" from the copyright suit, would require expenditure of judicial resources, and might affect resolution of the federal fee dispute already before the court—were neither persuasive nor at all unique to the claim at issue.

Cf. id.; see id. at 448 ("None of the reasons cited by the district court qualify as adequate grounds for declining supplemental jurisdiction under 1367(c)(4).").

Itar-Tass, in short, implicated none of the special concerns that have prompted courts in the Article 78 context to decline supplemental jurisdiction pursuant to section 1367(c)(4)—principally, the peculiar nature of the Article 78 "claim" (which "'differs markedly from the typical civil action brought in [federal district court] in a number of ways,'" and is really a "'purely state procedural remedy . . . designed to accommodate to the state court system,'" Morningside Supermarket Corp. v. New York State Dep't of Health, 432 F. Supp. 2d 334, 346 (S.D.N.Y. 2006) (citations omitted)), and the state legislature's unmistakable determination that that "claim" deserves special, inexpensive, and speedy resolution in a particular state forum. The latter concerns are exactly the sort to which the Supreme Court was referring when it instructed that, in evaluating whether to decline supplemental jurisdiction under 28 U.S.C. § 1367(c), district courts should examine "the circumstances of the particular case, the nature of the state law claims, the character of the governing state law, and the relationship between the state and federal claims." City of Chicago, 522 U.S. at 173. As discussed above, those factors—and a general inquiry into whether "exceptional circumstances" exist—point even more decidedly in favor of declining jurisdiction in this case than they do in the Article 78 cases.[2]

Most of the other cases that plaintiffs try to marshal in opposition to the "essentially unanimous" (Morningside Supermarket, 432 F. Supp. 2d at 347) view that federal courts should decline jurisdiction over Article 78 "claims" (see Pl. Opp. at 11) are not remotely

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[2] It should be noted that the erroneous retention of jurisdiction is no less reversible error than is the erroneous refusal to exercise jurisdiction. See, e.g., Seabrook v. Jacobson, 153 F.3d 70 (2d Cir. 1998) (vacating district court's judgment on state-law claim and holding that court should have declined jurisdiction under § 1367(c)).

comparable to this case.[3] The only two cases cited in which Article 78 claims were considered, Nevares v. Morrissey, No. 95 Civ. 1135, 1998 WL 265119 (S.D.N.Y. May 22, 1998), and Casale v. Metropolitan Transportation Authority, No. 05 Civ. 4232, 2005 WL 3466405 (S.D.N.Y. Dec. 19, 2005), do not advance plaintiffs' position. (Cf. Pl. Opp. at 7.) The dictum in Nevares to the effect that the court would not "lack jurisdiction to review" an Article 78 "claim under its supplemental jurisdiction" neither formed part of the holding in that case nor answers the further question of whether the exercise of jurisdiction is appropriate under 28 U.S.C. § 1367(c)(4). See 1998 WL 265119, at *4. And Casale discussed not supplemental jurisdiction but federal "arising under" jurisdiction. See 2005 WL 3466405, at *5-7. The municipal defendants in that case sought to remove federal constitutional claims and pendent state-law claims asserted against them in an Article 78 proceeding before the New York State Supreme Court. Before dismissing the removal petition as untimely, and relying on a part of the Supreme Court's City of Chicago

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[3] In Jones v. Ford Motor Credit Co., 358 F.3d 205 (2d Cir. 2004), the Second Circuit remanded for reconsideration a district court's decision dismissing a set of state-law counterclaims. The court below had ruled that it lacked jurisdiction over the counterclaims because they were permissive and not compulsory, and that the exercise of supplemental jurisdiction would in any event be inappropriate for a number of reasons, none of which seemed to mirror the factors set forth in 28 U.S.C. § 1367(c). See id. at 208, 214-15. The Second Circuit reversed the first ruling and remanded for a clearer analysis of the second. Id. at 211-15. Similarly, in Treglia v. Town of Manlius, 313 F.3d 713 (2d Cir. 2002), the district court had offered no reasons for declining supplemental jurisdiction over a state-law discrimination claim brought in tandem with similar federal discrimination claims. See id. at 723. The appeals court, not surprisingly, reversed the refusal to adjudicate the claim. Id. The only reason offered in support of declining the exercise of supplemental jurisdiction in Mendez v. Roman, No. 3:05-CV-1257, 2006 WL 276976 (D. Conn. Feb. 2, 2006), was that there was a suit pending in state court—albeit with a different defendant—raising some of the same claims as were before the federal court. See id. at *2. Here, the pendency of the parallel state proceeding (the Anderson litigation) is just one of many factors rendering the circumstances exceptional. Green Hills (USA), L.L.C. v. Aaron Streit, Inc., 361 F. Supp. 2d 81 (E.D.N.Y. 2005), involved an uncontested request for exercise of supplemental jurisdiction; accordingly, no reasons, much less compelling ones, were offered under section 1367(c)(4). In United States Fire Insurance Co. v. United Limousine Service, 328 F. Supp. 2d 450 (S.D.N.Y. 2004), Judge McMahon (the same judge who, five years earlier, declined to exercise jurisdiction over an Article 78 "claim," see Birmingham v. Ogden, 70 F. Supp. 2d 353, 372-73 (S.D.N.Y. 1999)) simply found that there were no grounds for declining jurisdiction over a straightforward state-law unjust enrichment claim. See United States Fire Ins., 328 F. Supp. at 454. Finally, the only reasons offered against exercise of supplemental jurisdiction in Hutchinson v. United States, No. 01-CV-1198, 2004 WL 350576 (E.D.N.Y. Feb. 20, 2004), were that the state-law claims were too broad in scope and, unlike the federal claims in the suit, would require adjudication by a jury. See id. at *4. The court's ruling that those concerns did not qualify as "compelling reasons" for declining jurisdiction has no bearing here.

decision not relevant here, the court explained that, to the extent the Article 78 "claims" were really federal constitutional claims, they fell within the original jurisdiction of the federal courts. See id. at *6-7 (discussing City of Chicago). The court in Casale did not discuss whether—much less decide that—it would have exercised supplemental jurisdiction over the pendent state-law claims had it permitted removal of the federal claims.

Finally, plaintiffs' opposition to the ESDC Defendants' motion to strike pursuant to Fed. R. Civ. P. 12(f) lacks merit. Contrary to plaintiffs' contention, EDPL § 207 does not "give rise to" a "remed[y]" not otherwise available under 42 U.S.C. § 1983. (Cf. Pl. Opp. at 4-5 n.1.) Section 401(A) of the EDPL simply sets forth a limitations period during which the condemnor must initiate condemnation proceedings. Although ESDC's ordinary practice is to refrain from initiating Article 4 proceedings while section 207 proceedings are pending, nothing in the statute itself "gives rise to an automatic stay." (Pl. Opp. at 5 n.1.) Those aspects of plaintiffs' fourth cause of action under EDPL § 207 that raise federal constitutional claims are entirely redundant of their first through third causes of action and should be stricken for that reason. See, e.g., Brown v. Royal Caribbean Cruises, Ltd., 99-ICIV.2435, 2000 WL 34449703, at *7 (S.D.N.Y. Aug. 24, 2000) (striking duplicative causes of action under Fed. R. Civ. P. 12(f)).

CONCLUSION

For the foregoing reasons, the Court should dismiss the fourth cause of action asserted in the amended complaint. Alternatively, and in the event the Court dismisses the first through third causes of action for any reason, it should decline to exercise supplemental jurisdiction over plaintiffs' state-law claims pursuant to 28 U.S.C. § 1367(c)(3) (district court may decline supplemental jurisdiction when it has "dismissed all claims over which it has original jurisdiction").

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Respectfully submitted,

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: _____
Douglas M. Kraus (DK 7497)
Preeta D. Bansal (PB 9452)

Four Times Square
New York, NY 10036
(212) 735-3000
Attorneys for Defendants ESDC and Charles A. Gargano