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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Armando Valles, et al.,
Plaintiffs,
vs.
Pima County, et al.,
Defendants.

No. CV 08-00009-TUC-FRZ (JCG)

ORDER

Pending before the Court is a Report and Recommendation (Doc. #173) issued by United States Magistrate Judge Jennifer C. Guerin whereby she recommends granting three motions to dismiss (Doc. #'s 149, 137, 151) for lack of jurisdiction.¹ The Court has reviewed the parties' objections and finds that they do not undermine the sound factual and legal analysis employed by Magistrate Judge Guerin in reaching the correct conclusion that there is no supplemental jurisdiction in this case. As such, the Court need not repeat the detailed factual and legal analysis discussed in the Report and Recommendation. The Court only briefly notes that this case stems from a failed subdivision whereby the purchasers of lots in the subdivision failed to receive the full value of their property as the defunct subdivision

¹The Court reviews de novo the objected-to portions of the Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for clear error the unobjected-to portions of the Report and Recommendation. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *see also Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

1 developer did not complete necessary improvements to the land at issue. In their Third
2 Amended Complaint, Plaintiffs allege only state law claims for negligence and
3 misrepresentation against Defendants Parkhurst, Sack and Long Realty, and Mason. Plaintiff
4 argues that the Court should assert supplemental jurisdiction over the state law negligence
5 and misrepresentation claims as they arise from a common nucleus of operative facts with
6 the federal claims asserted against the Pima County defendant. However, as the Report and
7 Recommendation discussed in detail, the Fifth Amendment Takings claim and Fourteenth
8 Amendment Due Process claim asserted against Pima County involve substantially different
9 factual and legal foundations compared to the state law negligence and misrepresentation
10 claims. As such, the Court finds that supplemental jurisdiction is not appropriate in this case
11 as discussed in the Report and Recommendation and therefore rejects Plaintiffs' objections;
12 thus, the Report and Recommendation properly concludes that Defendants Parkhurst, Sack
13 and Long Realty, and Mason should be dismissed without prejudice for lack of jurisdiction.

14 While on the topic of supplemental jurisdiction, the Court notes that Magistrate Judge
15 Guerin issued a separate Report and Recommendation (Doc. #172) as to Defendants Hosack
16 and Desert Vista Engineering whereby she recommends granting Hosack's and Desert Vista
17 Engineering's motion for summary judgment on the merits based on the economic loss rule.
18 Additionally, the same Report and Recommendation correctly finds that Hosack and Desert
19 Vista Engineering are subject to dismissal as the Court lacks supplemental jurisdiction over
20 these particular Defendants. *See* Report and Recommendation at 10, n. 5 ("Although
21 Defendants Hosack and Desert Vista did not challenge the Court's subject matter jurisdiction,
22 the Court may consider the issue of subject matter jurisdiction at any time and must dismiss
23 an action if it determines that subject matter jurisdiction is lacking. *See* Rule 12(h)(3), Fed.
24 R. Civ. P. For the reasons stated in this Report and Recommendation recommending that the
25 District Court grant the motions to dismiss filed by Defendants Parkhurst, Mason, Sack, and
26 Long Realty (Doc. No. 17[3]), Defendants are also entitled to dismissal of Plaintiffs'
27 negligence claims because the Court lacks supplemental jurisdiction over the claim."').
28 Similar to Defendants Parkhurst, Sack and Long Realty, and Mason, the only claim asserted

1 against Hosack and Desert Vista Engineering is a state law claim for negligence. The Fifth
2 Amendment Takings claim and Fourteenth Amendment Due Process claim asserted against
3 Pima County involve substantially different factual and legal foundations compared to the
4 state law negligence claims asserted against Hosack and Desert Vista Engineering; the Court
5 finds that it lacks jurisdiction over the claims asserted against Hosack and Desert Vista
6 Engineering and these parties are therefore dismissed without prejudice.

7 The Court notes that Defendants Parkhurst and Mason filed very brief objections whereby
8 they summarily argue that they should be dismissed with prejudice based on the merits of
9 their claims pertaining to the economic loss rule and statutes of limitation. However, as the
10 Court has found that supplemental jurisdiction is lacking as to these specific defendants, their
11 objections pertaining to the merits of the underlying case are denied.²

12 Accordingly, IT IS HEREBY ORDERED as follows:

13 (1) The Report and Recommendation as to Defendants Parkhurst, Mason, Sack, and Long
14 Realty (Doc. #173) is **accepted and adopted**. The Defendants' motions to dismiss (Doc. #'s
15 149, 137, 151) are **granted**. Defendants Parkhurst, Sack, Long Realty, and Mason are
16 **dismissed from this action without prejudice**. The **Clerk of the Court shall enter**
17 **judgment accordingly**.

18 (2) The Report and Recommendation (Doc. #172) as to Defendants Hosack and Desert Vista
19 Engineering is **accepted and adopted to the extent that the Report and Recommendation**
20 **finds that supplemental jurisdiction is lacking as to Defendants Hosack and Desert**
21 **Vista Engineering**. As such, Defendants Hosack and Desert Vista Engineering are
22 **dismissed from this action without prejudice**. The **Clerk of the Court shall enter**
23 **judgment accordingly**. The motion for summary judgment (Doc. #152) filed by Defendants
24 Hosack and Desert Vista Engineering is denied as moot as they have been dismissed on the
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27 ²As to the remaining issues that were not objected to by the parties, the Court has reviewed
28 the record and concludes that Magistrate Judge Guerin's recommendations are not clearly erroneous.

1 separate ground that the Court lacks jurisdiction over the claims asserted against these
2 Defendants.


3 (3) As pretrial proceedings still remain in this case, this case is hereby referred back to
4 Magistrate Judge Jennifer C. Guerin for all pretrial proceedings and report and
5 recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1), Fed.R.Civ.P.
6 72, and LRCiv 72.1, 72.2, and 72.3 of Rules of Practice of the United States District Court
7 for the District of Arizona.

8 **All future filings in this case shall be designated:**

9 **CV 08-9-TUC-FRZ (JCG)**

10 DATED this 28th day of July, 2009.

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FRANK R. ZAPATA
United States District Judge