

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUZIE ZUPAN and PAUL ZUPAN,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
CORPORATIONS, PRESTON DEFAUCHARD,
JOHN DREWS, MARC VALLE, JAMES WALL,
HOWARD GORE, LEONARD RIFKIND, POSIE
CONKLIN and MARK MOSLEY,

Defendants.

No. 09-01014 CW

ORDER DENYING
MOTION TO REOPEN
CASE AND TO FILE
AMENDED COMPLAINT

Plaintiffs Suzie and Paul Zupan, husband and wife, move to
reopen their case and file an amended complaint against Defendants
John Drews and Marc Valle, employees of the California Department
of Corporations (CDOC). Defendants Drews and Valle oppose the
motion. The motion was taken under submission on the papers.
Having read all the papers filed by the parties, the Court denies
Plaintiffs' motion.

PROCEDURAL BACKGROUND

I. State Court Actions

On March 9, 2009, Plaintiffs filed this civil rights action
against state and non-state actors which arose from three

1 underlying state proceedings. One proceeding was a civil action
2 brought by Plaintiffs against investors in Plaintiffs' businesses,
3 the Latitude Capital Management High Income Fund, LLC and the
4 Latitude Capital Management Strategic Income Fund (together, LCM).
5 The second was a civil action brought by the investors against
6 Plaintiffs' businesses. The third state action was an
7 administrative proceeding brought by the CDOC regarding the
8 investors' allegations that Plaintiffs were improperly managing
9 their businesses. On December 12, 2008, in the administrative
10 proceeding, the CDOC ruled against Plaintiffs, revoking LCM's
11 business licenses and Plaintiffs' individual certifications as
12 investment advisor representatives and barring them from holding
13 any position of employment, management or control of any finance
14 lender, broker, investment adviser, broker-dealer or commodity
15 adviser. On March 2, 2009, Plaintiffs filed in state superior
16 court a petition for a writ of administrative mandamus setting
17 aside the December 12, 2008 CDOC decision. On May 20, 2010,
18 judgment was entered denying Plaintiffs' petition for a writ of
19 administrative mandamus. On July 2, 2010, Plaintiffs filed an
20 appeal of the superior court's decision in the California court of
21 appeal. This appeal is still pending. See Zupan, et al. v.
22 California Department of Corporations, California Appellate Court
23 case number A128948.

24 II. Federal Action

25 All Defendants named in Plaintiffs' original complaint filed
26 motions to dismiss. On February 10, 2010, the Court granted
27 Defendants' motions to dismiss and ordered that the case be
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1 administratively closed pending the resolution of state court
2 proceedings. The Court made the following rulings relevant to the
3 pending motion to reopen the case.

4 The Court found that the state court proceedings came within
5 the meaning of the Younger doctrine, which requires a federal court
6 to abstain from adjudicating a case where there is an ongoing state
7 judicial proceeding which implicates an important state interest
8 and which provides a full and fair opportunity for the plaintiffs
9 to litigate their federal claims. See February 10, 2010 Order at
10 11-15 (citing Younger v. Harris, 401 U.S. 37 (1971)). Under
11 Younger, the Court dismissed Plaintiffs' claims for injunctive and
12 declaratory relief and stayed the claims for damages.

13 The Court found that the Rooker-Feldman doctrine, which bars
14 federal courts from adjudicating challenges to state court
15 decisions, did not bar Plaintiffs' claims because Rooker-Feldman
16 does not apply to a decision of a state agency like the CDOC, which
17 was at issue in Plaintiffs' original complaint. See February 10,
18 2010 Order at 10-11 (citing Rooker v. Fidelity Trust Co., 263 U.S.
19 413, 415-16 (1923); District of Columbia Court of Appeals v.
20 Feldman, 460 U.S. 462, 476, 482-83 (1983)). The Court noted,
21 however, that the Rooker-Feldman doctrine might bar Plaintiffs'
22 claims once the state court issued its decision in the mandamus
23 action.

24 The Court also found that the allegations in Plaintiffs'
25 complaint were insufficient to state any constitutional claims. In
26 regard to their due process claims, the Court noted that "assuming
27 that Plaintiffs have alleged a property interest in their business
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1 licenses, they have failed to allege what process was due to them
2 that they did not receive." February 10, 2010 Order at 22. The
3 Court administratively closed the case, permitting Plaintiffs to
4 file a motion to reopen it within thirty days after the state court
5 issued its judgment in the mandamus action. The Court noted that,
6 if Plaintiffs were permitted to file an amended complaint, they
7 could only add allegations remedying the deficiencies in their
8 claims for damages against Drews and Valle.

9 DISCUSSION

10 Plaintiffs filed this motion to reopen their case within
11 thirty days of the issuance of the superior court judgment in the
12 mandamus action and submitted an amended complaint which they state
13 is in compliance with the Court's February 10, 2010 Order.

14 Plaintiffs' amended complaint alleges that Drews and Valle, in
15 their individual capacities and in their official capacities as
16 CDOC employees, initiated, conducted or directly oversaw the
17 investigation and disciplinary process regarding allegations from
18 investors that Plaintiffs were fraudulently taking money belonging
19 to the LCM High Income Fund, improperly managing that company and
20 improperly and illegally claiming management control of it.
21 Plaintiffs further allege that no evidence of such illegal activity
22 was found but that Drews and Valle constructed "claims based on
23 unrelated allegations in order to support a disciplinary action,
24 and did prosecute such disciplinary action in order to appease the
25 complaining investors." Plaintiffs allege that Drews appeared as a
26 witness for the investors in their civil action against LCM and
27 advocated for the appointment of a court-ordered receiver.

1 Plaintiffs also allege that Drews and Valle improperly assisted the
2 investors' prosecution and defense of the civil actions by
3 communicating with the receiver, making false statements about
4 Plaintiffs, and communicating and publishing confidential records
5 and information about Plaintiffs to the investors. Plaintiffs
6 allege that Drews' and Valle's improper conduct caused Plaintiffs
7 to lose their employment and businesses. Based on these
8 allegations, Plaintiffs assert that Drews and Valle have violated
9 their Fourteenth Amendment right to due process.

10 Because Plaintiffs have appealed the superior court's judgment
11 denying their petition for a writ of mandamus, their state case is
12 ongoing. Therefore, the Younger doctrine still applies and
13 requires that this Court abstain from adjudicating Plaintiffs'
14 amended complaint. On this basis, the Court denies the motion to
15 re-open the case. The case, therefore, remains administratively
16 closed, and Plaintiffs may move to reopen it once the state
17 proceedings are concluded.

18 However, the Court notes that in the February 10, 2010 Order,
19 it stated that the Rooker-Feldman doctrine, which bars federal
20 jurisdiction over state court decisions, might preclude the Court's
21 jurisdiction over Plaintiffs' case once it was adjudicated by the
22 state court. Therefore, if Plaintiffs decide to file a motion to
23 reopen after the conclusion of state proceedings, they must address
24 why the Rooker-Feldman doctrine would not preclude federal
25 jurisdiction over their case. Further, the Court notes that
26 Plaintiffs' amended complaint fails to remedy the deficiency noted
27 in the February 10, 2010 Order which explained that the due process

1 claim did not allege what process was due to them that they did not
2 receive.

3 CONCLUSION

4 For the foregoing reasons, Plaintiffs' motion to reopen this
5 case and to file an amended complaint is denied. The case remains
6 administratively closed.

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8 IT IS SO ORDERED.

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10 Dated: 3/3/2011


11 CLAUDIA WILKEN
12 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 SUZIE ZUPAN et al,

5 Plaintiff,

6 v.

7 CALIFORNIA DEPT OF CORPORATIONS et al,

8 Defendant.

Case Number: CV09-01014 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on March 3, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Paul Zupan
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17 Sausalito, CA 94966

18 Suzie Zupan
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21 Thomas Chester Taylor
22 Rifkind Law Group
23 100 B Drakes Landing Road
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26 Dated: March 3, 2011

27 Richard W. Wieking, Clerk
28 By: Nikki Riley, Deputy Clerk