

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 17-11196-GAO

EMPIRE DESIGN & DEVELOPMENT, LLC BY MICHAEL CORSETTI, PRESIDENT,
Plaintiff,

v.

EDWARD A. BETTENCOURT, JR., PETER M. MCGINN and THE CITY OF PEABODY,
Defendants.

ORDER

March 21, 2018

O'TOOLE, D.J.

The plaintiff, Empire Design & Development, LLC, brought suit against the defendants, Edward A. Bettencourt, Peter M. McGinn, and the City of Peabody, for violation of Empire's civil rights based on a municipal taking of the plaintiff's real property. Empire claims the defendants violated its federal civil rights under 42 U.S.C. § 1983, state civil rights under Massachusetts General Laws Chapter 12, Sections 11H–11I, equal protection under the Fourteenth Amendment, and lastly, procedural and substantive due process under the Fifth and Fourteenth Amendments. Separately, Empire has brought an eminent domain action in Massachusetts state court for damages suffered by reason of the taking.

Before the Court is the defendants' motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). The defendants argue that because the civil rights claims alleged here arise from the taking, they are subject to a state-remedy exhaustion requirement, see Marietta Realty, Inc. v. Springfield Redevelopment Auth., 902 F. Supp. 310, 313 (D. Mass. 1995), which Empire has not presently met. However, at this stage and on the present record, the Court is not persuaded that the civil rights claims so closely depend on the state claims that Empire must

either pursue the state claims exclusively or “exhaust” those claims before the civil rights claims may be brought here.

For these reasons, the defendants’ Motion to Dismiss (dkt. no. 7) is DENIED.

It is SO ORDERED.

/s/ George A. O’Toole, Jr.
United States District Judge