NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No: 02-2748/2813

ATE KAYS COMPANY,

Appellant in 02-2748

v.

PENNSYLVANIA CONVENTION CENTER, et al,

Appellants in 02-2813

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(Civ. No. 00-cv-3693)
District Court: Honorable Clifford Scott Green

Submitted Pursuant to Third Circuit LAR 34.1(a)
November 6, 2003

Before: McKEE and SMITH, Circuit Judges,
and GREENBERG, Senior Circuit Judge.

OPINION

(Filed: March 30, 2004)

McKEE, Circuit Judge.

ATE Kays Company ("ATE") argues that the district court erred in granting judgment as a matter of law in favor of defendant, the Pennsylvania Convention Center

("Convention Center"). For the reasons that follow, we will affirm.[1]

I.

Because we write only for the parties, it is not necessary to recite the facts of this case in detail. It is sufficient to note that ATE owns an eleven story office building located at 121 North Broad Street in Philadelphia, and leases office space to commercial tenants. ATE alleged that agents of the Convention Center violated their constitutional rights in violation of 42 U.S.C. § 1983 by making public statements concerning the possible condemnation of ATE's property and thereby impairing ATE's ability to rent space in its building. Specifically, agents of the Convention Center allegedly made public statements that, subject to obtaining necessary financing, the Convention Center would expand westward, necessarily resulting in the condemnation and demolition of ATE's property. ATE claimed that the agents of the Convention Center made these statements knowing the expansion plan was neither approved nor funded but nevertheless continued making statements in order to lower property values in the area in case expansion was approved. ATE claimed that as a result of these statements, it lost its three largest tenants and its ability to find new tenants was impaired.

At the close of ATE's evidence at trial, the district court granted the Convention Center's motion for judgment as a matter of law pursuant to Federal Rule of Civil

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[1] We have jurisdiction pursuant to 28 U.S.C. § 1291, based on the May 22, 2002 final order of the district court granting judgment as a matter of law in favor of the Pennsylvania Convention Center. We review a district court's grant of judgment as a matter of law *de novo*.

Procedure 50(a). This appeal followed.

II.

At the time of the trial, in order to establish a substantive due process violation, a plaintiff had to prove: (1) the government's actions were not rationally related to a legitimate government interest; or (2) the government's actions in a particular case were motivated by bias, bad faith, or improper motive. Parkway Garage, Inc. v. City of Philadelphia, 5 F.3d 685, 692 (3d Cir. 1993). The district court applied this standard at trial in granting judgment as a matter of law in favor of the Convention Center. While ATE's appeal was pending, however, we concluded that, in light of the Supreme Court's decision in County of Sacramento v. Lewis, 523 U.S. 833 (1998), such a plaintiff had to show that the government's conduct "shocked the conscience." United Artists Theater Circuit v. Township of Warrington, 316 F.3d 392, 394 (3d Cir. 2003). This "shock the conscience" standard is obviously higher than the previous standard requiring only bad faith or improper motive. See Lewis, 523 U.S. at 846 (the "shocks the conscience" standard encompasses "only the most egregious official conduct.").

ATE does not argue that the Convention Center's actions in making public statements about the proposed expansion were not rationally related to a legitimate government interest. Rather, ATE claims that the Convention Center's actions "shock the conscience because it engaged in a reckless campaign to publicize its intention to condemn ATE's property... . even though such statements were knowingly premature and false." (Appellant Brief, 12). However, ATE admits that any statement made by a representative of the Convention Center regarding the proposed expansion was accompanied by an acknowledgment that the expansion project had not yet received approval or the necessary funding. ATE offered no evidence at trial, other than its own accusation, that the actions of the Convention Center were motivated by an improper economic motive. For these reasons, the district court properly concluded that no reasonable jury could infer from the evidence that the Convention Center was motivated by bias, bad faith, or improper motive, and thus the court granted the Convention Center's motion for judgment as a matter of law. Since ATE could not establish a claim under the "improper motive standard", ATE necessarily cannot now meet the higher standard of showing that the conduct "shocks the conscience."

Furthermore, ATE failed to prove causation. At trial, not a single tenant testified that they failed to renew their lease because of the Convention Center's statements. Moreover, a real estate agent who showed ATE's building to prospective tenants testified that prospective tenants declined to rent because of factors unrelated to the proposed Convention Center expansion, such as the condition of the building and the neighborhood. (Appellant's App., 62A). Thus, the district court properly concluded there was insufficient evidence to submit the issue of causation, to the jury.

III.

For all of the above reasons, we will affirm the district court's order granting judgment as a matter of law in favor of the Convention Center.