IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 93-3292
Summary Calendar

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ALLEN DUFRENE, ET AL.,

Plaintiffs,

versus

CITY OF GRETNA, ET AL.,

Defendants.

* *

RUSSLAND ENTERPRISES, INC. and
BRYAN LEDET,

Plaintiffs-Appellants,

versus

CITY OF GRETNA, ET AL.,

Defendants-Appellees.

* *

WARD L. McCLENDON,

Plaintiff,

versus

CITY OF GRETNA, ET AL.,

Defendants.

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Appeals from the United States District Court for the
Eastern District of Louisiana
(C.A. 90-3915 G, 90-3936 G & 90-3960 G)

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(March 31, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.[*]

PER CURIAM:

Plaintiffs-appellants Russland Enterprises, Inc. (Russland) and Bryan Ledet (Ledet), Russland's president, appeal the dismissal of their suit against defendants-appellees the City of Gretna, Louisiana (Gretna), its police department, and various individual Gretna police officers. We affirm.

Russland, Ledet, and others instituted this suit in the district court below in September 1990, seeking to recover damages under 42 U.S.C. § 1983. Relief was also sought under 42 U.S.C. §§ 1981, 1985, 1988, and 1997, but no complaint on appeal is made as to the obviously correct dismissal of claims under such sections. Pursuant to the written consent of the parties and the order of the district court, the matter was referred for adjudication to the magistrate judge. Defendants filed motions for summary judgment in December 1991 and again in August 1992. These motions were supported by affidavits and other documentary evidence. By orders dated April 21, 1992, and October 5, 1992, the magistrate judge effectively granted these motions insofar as concerned the claims of Russland and Ledet. The claims of the other plaintiffs ultimately settled, and the cause was accordingly dismissed in March 1993.

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

The claims of Russland and Ledet relate to the closing by Gretna of the adult bookstore and video store in Gretna owned and operated by Russland, a corporation. On September 25, 1989, Gretna filed in state court a petition for injunctive relief and order of abatement seeking to close the adult bookstore and video store as a nuisance under La. R.S. 13:4711 *et seq*. A preliminary injunction was also sought. A hearing on the preliminary injunction was held on September 26, 1989, and a preliminary injunction enjoining further conduct of the business entered on that date. Ledet, Russland's president, participated in the hearing and Russland was represented there by counsel. During the hearing the court fixed the hearing on a permanent injunction and order of abatement for October 5, 1989, without objection from Russland or Ledet or their counsel. On October 4, 1989, counsel for Russland filed a motion for continuance of the October 5 hearing date asserting conflict with another setting in an unrelated case in which counsel represented a third party not involved in these proceedings. The motion for continuance was denied and the preliminary injunction and order of abatement hearing was held on October 5, 1989. However, neither Russland nor Ledet appeared in person or by counsel. The state judge granted the permanent injunction and order of abatement and directed "the effectual closing of the premises . . . for a period of five (5) years unless sooner released."

Russland appealed the October 5, 1989, order to the Louisiana Court of Appeal, which affirmed. *City of Gretna v. Russland*

Enterprises, Inc., 564 So.2d 367 (La. Ct. App., June 25, 1990). Among other things, the Louisiana appellate court found that the injunction statue La. R.S. 13:4713 was constitutional under both the state and federal constitutions and that the trial court did not violate Russland's due process rights by denying its motion to continue the injunction hearing. The Louisiana Supreme Court denied Russland's petition for *certiorari* and/or review. *City of Gretna v. Russland Enterprises, Inc*., 568 So.2d 1078 (La. November 9, 1990).

The principal thrust of Russland and Ledet's present suit, and of the instant appeal, is that the state district court's October 5, 1989, order is invalid "due to the unconstitutional defect in the procedures used in the state court proceedings." Russland states in its brief that it is "seeking to have Federal Court declare the abatement order null and order a new trial because constitutionally-required procedures were not followed by the State Court and therefore the State Court procedure which allows such a procedure to occur is itself unconstitutional." Appellants' brief further says "Russland's basic argument is that it was denied due process when the State Court effectively refused to allow it a voice in the hearing to determine whether the abatement order should issue," this being explained as essentially a complaint of the denial of the continuance.

Appellants' complaints in this respect are nothing more than, in substance, an attempt to use section 1983 to procure review or revision of a final state court judgment, contrary to the rule of

such cases as *District of Columbia Court of Appeals v. Feldman*, 103 S.Ct. 1303 (1983); *Howell v. Supreme Court of Texas*, 885 F.2d 308, 311 (5th Cir. 1989), *cert. denied*, 496 U.S. 936 (1990); *Hale v. Harney*, 786 F.2d 688, 691 (5th Cir. 1986); *Hagerty v. Succession of Clement*, 749 F.2d 217, 219 (5th Cir. 1984). We reject appellants' attempts to avoid the *Feldman* doctrine on the basis of the assertion that the denial of the requested continuance was a procedural constitutional violation that furnishes an exception to the *Feldman* doctrine. To the extent, if any, that this argument finds support in *Thomas v. Bible*, 694 F.Supp. 750, 758 (D. Nev. 1988), we decline to apply that decision, which is not binding on us and relies on the dissenting opinion in *Feldman*.

To the extent that appellants claim the October 5, 1989, state court order was void and subject to collateral attack in another court as a matter of Louisiana law, we reject this contention. In the first place, it was not raised below, and we will not consider issues raised for the first time on appeal. *Fransaw v. Lynaugh*, 810 F.2d 518, 523 (5th Cir.), *cert. denied*, 483 U.S. 1008 (1987). Furthermore, the only defect alleged in this connection as a basis for the asserted state law nullity of the order in question is the denial of the motion for continuance, a matter that was specifically addressed by the Louisiana Court of Appeal and held to be not improper as not being an abuse of the trial court's discretion. None of the authorities cited by appellants support their argument that under Louisiana law the October 5, 1989, order was a nullity subject to collateral attack in another court.

With respect to the remaining complaints, which relate to seizure of the property, the undisputed summary judgment evidence shows that the only seizure was padlocking the premises pursuant to the court order. The magistrate judge correctly found that "The initial seizure of the business premises and the assets was authorized by a court order" and "Plaintiff has not shown that there has been any seizure other than the original one, except for the taking of movable assets for safekeeping after a burglary." The magistrate judge also correctly found that

> "Defendants have submitted affidavits and correspondence from Russland's former attorney indicating that Russland was advised by defendants of the disposition of its property and, on advice of counsel, did not retrieve it. In its response to this motion, Russland has not disputed, nor addressed, these assertions."

And

> "Further, it has been acknowledged by Russland and is not contested that Russland's movable assets were stored for safety at the police department after a burglary and were made available to Russland. These assets are still available at the police department. Also, by following state procedures Russland has obtained possession of the immovable property."

Gretna's summary judgment evidence is uncontroverted in these respects. This evidence also shows that all that was taken to the police department was thirty-two boxes of magazines, after appellants refused to pick this material up from the store, and that they subsequently refused to pick the material up from the police department. The fact that, as Ledet claims, a Gretna police officer informed him on the telephone on the evening of October 5, 1989, "that it was in by [sic] best interest not to set foot on the West Bank" does not establish an unconstitutional seizure or other

constitutional violation.

Moreover, an intentional deprivation of property through the random action of a state employee is not actionable under section 1983 when an adequate state post-deprivation remedy exists. *Hudson v. Palmer*, 104 S.Ct. 3194 (1984). Here Louisiana law provides a post-deprivation remedy, see La. R.S. 13:4713 *et seq*., 4716, and indeed appellants availed themselves of this remedy. There is no allegation or showing that the remedy is inadequate. Moreover, Ledet does not suggest that he attempted to retrieve his property or sent an agent in his place to obtain it. Finally, Ledet's allegation on appeal that he personally owned the two units in the building adjoining the video store and bookstore is raised for the first time on appeal and is without support in the record (we note the complaint asks for damages "for Russland Enterprises, Inc.: wrongful seizure of *its* building . . ."; emphasis added). We therefore will not consider it. *Fransaw*.

None of appellants' contentions on appeal demonstrate any reversible error, and accordingly the judgment of the district court is

AFFIRMED.