

SECOND CIRCUIT REVIEW

Expert Analysis

Second Circuit Reexamines Supplemental Jurisdiction Over State Law Claims

There are limited circumstances in which a federal court may exercise supplemental jurisdiction over state law claims, even when the federal law claims have been dismissed. In *Cohen v. Postal Holdings*, the Second Circuit reversed a district court ruling that, having dismissed federal claims, the court properly exercised jurisdiction over the remaining related state law claims. 873 F.3d 394 (2d Cir. 2017). The circuit's ruling reaffirms the bias for state courts to decide state law claims, even when jurisdiction is constitutionally and statutorily permissible. The court's ruling emphasizes its preference for remanding and certifying state law claims to state courts.

'Cohen v. Postal Holdings'

In *Cohen*, Chad and Kristen Cohen brought a claim in Connecticut state court against Postal Holdings. Postal Holdings, in turn, filed a third-party complaint alleging violations of federal



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law against the U.S. Postal Service (USPS), which was leasing the relevant property. USPS removed the suit to federal court and moved to dismiss the third-party complaint against it for lack of subject-matter jurisdiction. *Id.* The district court granted USPS's motion, but retained jurisdiction over the Cohens' remaining state-law claims against Postal Holdings, granting summary judgment to Postal Holdings.

Although neither remaining party contested the court's exercise of jurisdiction over those claims, the Second Circuit nevertheless undertook an analysis of whether the district court properly exercised supplemental jurisdiction over the remaining state law claims. The court's analysis, in an opinion written by Judge Guido Calabresi, and joined by Judge Rosemary Pooler and Judge Brian Cogan (sitting by

designation), focused on whether the district court had properly dismissed the federal claim for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1).

This matters because "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action *within such original jurisdiction* that they form part of the same case or controversy" 28 U.S.C. §1367(a) (emphasis added). Accordingly, if the district court does

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not have original jurisdiction over any claims in a case or controversy, it cannot exercise supplemental jurisdiction over related claims. See *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1187-88 (2d Cir. 1996). In *Nowak*, the Second Circuit determined that the district court erroneously dismissed the relevant claims for lack of subject matter jurisdiction under Rule 12(b)

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(1), when the claims should have been dismissed for failure to state a claim under Rule 12(b)(6). While the distinction matters little in most contexts—in both instances the claims are ultimately dismissed—dismissal under Rule 12(b)(6) occurs after the court properly exercises original jurisdiction over the dismissed claims. This allows the federal court to retain jurisdiction over the related state-law claims, even if those are the only claims remaining. In contrast, dismissal under Rule 12(b)(1) signifies that the court never had original jurisdiction over any claims, so exercising supplemental jurisdiction would be improper.

The Second Circuit in *Cohen* considered whether the district court correctly dismissed the claims against USPS for lack of subject matter jurisdiction. If it did, then the district court would not have had original jurisdiction over the dismissed federal claims and thus could not properly have retained jurisdiction over the remaining claims under 28 U.S.C. §1367(a). *Cohen*, 873 F.3d at 398, 400. If, however, the district court had original jurisdiction over claims against USPS and those claims should have been dismissed under Rule 12(b)(6), then the court's exercise of jurisdiction over the state law claims would have been constitutionally and statutorily proper.

In analyzing this issue, the Second Circuit considered for the first time whether the Contracts Disputes Act (CDA), which gives exclusive jurisdiction to the Court of Federal Claims for certain contract disputes with the federal government, covers claims against USPS generally, and, if so, whether it covers the claims against USPS here. *Id.* at 400-02. Deciding both issues in the affirmative, the Court concluded that,

where the CDA bars certain claims in a federal district court, such claims are properly dismissed pursuant to Rule 12(b)(1). *Id.* at 401-03. Accordingly, the district court did not have supplemental jurisdiction over the related state-law claims. *Id.* at 404.

Judge Calabresi's Concurrence

Judge Calabresi, concurring in his own opinion, expanded on the propriety of a federal district court exercising supplemental jurisdiction over state law claims where it is within the judge's discretion, noting that "the default rule is that federal courts should not decide related state-law claims unless there is good reason for doing so." *Id.* This default rule, Judge Calabresi explained, should be applied by district court judges even in situations where the parties fail to ask the district court to decline to exercise supplemental jurisdiction, noting that the district court "ought not to exercise supplemental jurisdiction over purely state-law claims unless there are strong reasons for doing otherwise" and the circuit court may "choose to overlook the parties' forfeiture [of this issue] and order dismissal of the state-law claims." *Id.* at 405. Judge Calabresi went on to note that this rule would not apply to every situation, and noted that requiring district courts to "go out of their way to consider the question if it is not, in one way or another, called to their attention" would create "unnecessary and additional work" for the district courts. *Id.* at 406.

Indeed, just two months earlier, in a summary order, the Second Circuit disagreed with a district court's decision to exercise supplemental jurisdiction over state-law claims after dismissing related federal law claims "at the early

stage of the proceedings." *Horton v. Wells Fargo Bank, N.A.*, No. 16-4187, 2017 WL 3264019, at *1, n.2 (2d Cir. Aug. 1, 2017). Noting that "it may have been advisable" for the court to decline to exercise supplemental jurisdiction over state-law claims, the court noted that the appellant had not challenged jurisdiction for abuse of discretion. *Id.* The Second Circuit, having made its disagreement clear, nevertheless declined to rule that the district court had abused its discretion by failing to dismiss the state-law claims. *Id.*

Conclusion

The Second Circuit took the opportunity in *Cohen* to address whether and, if so, when it is desirable for a district court to exercise supplemental jurisdiction. Judge Calabresi's concurrence indicates the Second Circuit's willingness to dismiss state-law claims even where the district court is permitted to exercise supplemental jurisdiction over those claims and the parties failed to raise the issue below. By so doing, Judge Calabresi reminded district judges that it is not their job to decide issues of state law, and that in most instances they should refrain from doing so. Judge Calabresi also de-emphasized the relevant standard—abuse of discretion—presumably to avoid making such a harsh determination of a district court judge's decision to retain these claims, while warning that the Second Circuit will not always be so lenient in its review.