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Takings Claims

Decision May Effectively Bar Them in U.S. Courts

TWO decades ago, in *Williamson County Regional Planning Commission v. Hamilton Bank*,[1] the U.S. Supreme Court held that, because the Fifth Amendment proscribes takings "without just compensation," a takings claim brought in federal court is not ripe for federal jurisdictional purposes until the property owner has sought compensation through the procedures that the state provides. The Court indicated that, if state law permits a property owner to bring an inverse condemnation action[2] to obtain just compensation for an alleged taking, then the property owner must pursue such an action before bringing a Fifth Amendment takings claim under Section 1983.[3]

The *Williamson County* requirement that a property owner must pursue compensation through available state procedures, such as a state-law inverse condemnation action, before bringing a federal takings claim created a Catch-22. Under *Williamson County*, a plaintiff could not bring a Fifth Amendment takings claim without first having unsuccessfully pursued a state law takings claim. Under traditional notions of collateral estoppel and res judicata, however, the state court's adverse judgment often precluded the plaintiff's subsequent Fifth Amendment takings claim.[4] Though application of the preclusion doctrine may have deprived a large number of plaintiffs of the opportunity to pursue Fifth Amendment takings claims in federal court, most of the federal circuit courts of appeals that addressed this issue declined to create an exception to render collateral estoppel inapplicable in this situation.[5]

In 2003, in *Santini v. Conn. Hazardous Waste Mgmt. Serv.*,[6] the U.S. Court of Appeals for the Second Circuit recognized an exception to the applicability of collateral estoppel for plaintiffs who litigate state law takings claims in state court solely to comply with *Williamson County*'s ripeness requirement. The Second Circuit held that litigants who pursue inverse condemnation actions in state court to comply with *Williamson County* may reserve their federal takings claims for later resolution in federal court.

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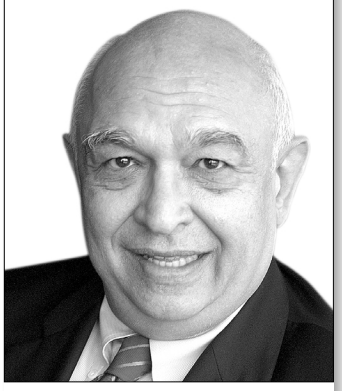
ZONING AND LAND USE PLANNING



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'San Remo'

Last year, however, the U.S. Court of Appeals for the Ninth Circuit, in *San Remo Hotel L.P. v. San Francisco*,[7] rejected the Second Circuit's reasoning and refused to recognize an exception to the *Williamson County* rule.

Then, on this past Dec. 10, the Supreme Court granted certiorari to review the Ninth Circuit's *San Remo* decision,[8] with oral argument scheduled for March. Although the issue seems theoretical, the Supreme Court's decision is likely to have a very significant practical effect on the litigation of takings claims in federal courts in terms of the forum that can be used, the extent of pre-trial discovery and the availability of intermediate appeals, among other things. If the Court affirms the Ninth Circuit's decision, it may completely close the federal doors to takings litigation in federal courts in the Second Circuit and elsewhere throughout the country — a federal right will exist that plaintiffs will be unable to enforce due to a judicially created procedural obstacle. Clearly, the Court's impending ruling will be a critical one in the land use area.

The Second Circuit's *Santini* case arose after Evandro S. Santini purchased land in Ellington, Conn. Mr. Santini obtained approval from the local planning and zoning commission to subdivide the parcel. He then built an access road to the development, installed storm drainage and sewer systems and, in all, spent approximately $500,000 developing infrastructure.

Thereafter, Mr. Santini purchased a large parcel of adjacent property, intending to develop the two parcels into a unified 75-acre residential village consisting of approximately 100 homes. He began building model homes and made other investments in the properties, including completing engineering studies and preliminary layouts and borrowing funds for insfrastructure construction.

The Connecticut Hazardous Waste Management Service, a quasi-public governmental agency established pursuant to Connecticut law and charged with siting a low-level radioactive waste disposal facility, announced that it was considering the Santini property as a potential site. Although the Santini property ultimately was not selected, it was economically idle for several years because of the possibility of selection. Mr. Santini then sued the Hazardous Waste Management Service in a state court in Connecticut, alleging that its siting announcement constituted a temporary taking of his property without just compensation in violation of the Connecticut Constitution. He brought only a state law takings claim because he believed that, under *Williamson County*, a federal takings claim would not be ripe until he had sought, and had been denied, just compensation in a state law inverse condemnation action.

Following a trial, the court found that, although Mr. Santini had suffered an economic loss as a result of the siting announcement, the announcement "was part of the state's planning process," and was "not actionable." It found no evidence that the state's intent to condemn Mr. Santini's property had ever become "fixed and irreversible," and concluded that "there was no unconstitutional taking of any kind." Accordingly, the court entered judgment for the service.

After the Supreme Court of Connecticut affirmed, Mr. Santini sued the service in federal district court, alleging a takings claim under the Fifth and Fourteenth amendments to the U.S. Constitution and Section 1983. The district court dismissed the complaint, concluding among other things that collateral estoppel barred Santini's federal takings claim. The case reached the Second Circuit.

At the Circuit

The Second Circuit declined to apply collateral estoppel in this case. It pointed out that although Mr. Santini had initiated his action in state court,

he was not in state court voluntarily.[9] Moreover, the Second Circuit continued, because of *Williamson County*, Mr. Santini had not presented — and could not have presented — his federal claim to the state court and could not have litigated his federal takings claim in federal court before proceeding to state court, as it would have been dismissed as premature, i.e., not ripe.

The circuit court then held that parties such as Mr. Santini, who litigate state law takings claims in state court involuntarily, may reserve their federal takings claims for determination by a federal court by making clear to the state court and adverse parties that they intend to bring a federal takings claim in federal court once the litigation of the state law claim has been completed. The Second Circuit stated that this "Santini reservation" would mean that the state court's judgment on the state law claim would not have preclusive collateral estoppel or res judicata effect in the subsequent federal action.

In the Second Circuit's view, it would be "both ironic and unfair" if the procedure that the Supreme Court required Mr. Santini to follow before bringing a federal takings claim — a state court inverse condemnation action — also precluded him from ever bringing a federal takings claim. In short, the Second Circuit stated that it would not interpret *Williamson County* "in such a way as to deprive a large class of prospective plaintiffs of federal forums for their federal takings claims."

Behind 'San Remo'

Recently, the Ninth Circuit, in *San Remo*, rejected the Second Circuit's approach. The *San Remo* case arose when the owners of the San Remo Hotel challenged the constitutionality of a San Francisco ordinance that restricted an owner's ability to convert "residential" hotel rooms to tourist use. After losing their state takings claims in the California courts, and specifically reserving their federal claims for adjudication in a federal action, the plaintiffs sought to assert their federal takings claims in federal court. The district court held, however, that the California Supreme Court's adjudication of the plaintiffs' state takings claims was an "equivalent determination" of the federal takings claims, and that the plaintiffs therefore were barred from relitigating the takings issues in federal court.

The Ninth Circuit affirmed. It rejected the plaintiffs' argument that their reservation of rights permitted them to proceed in federal court. Moreover, the Ninth Circuit refused to follow the Second Circuit's *Santini* ruling, pointing out that that opinion expressly conflicted with another Ninth Circuit decision,[10] which held that a plaintiff can be precluded from proceeding in federal court even where *Williamson County* requires a plaintiff to first seek compensation in state court. The Ninth Circuit declared that it was compelled to follow its earlier opinion, and it affirmed the district court's ruling.

Conclusion

As interpreted by the Ninth Circuit, the *Williamson County* rule creates the problem of plaintiffs' being barred from federal court before the federal cause of action even matures. In *Santini*, the Second Circuit found a middle ground: a reservation of rights. Such a solution is not without precedent. Indeed, more than 40 years ago, in *England v. Louisiana State Board of Medical Examiners*,[11] the U.S. Supreme Court recognized a procedure whereby parties who are involuntarily litigating state law claims in state court may "reserve" their federal claims for a later determination by a federal court. The plaintiffs in *England* filed a complaint in federal court raising claims under both federal and state law, and the district court abstained to permit the Louisiana state courts to resolve issues of state law. The plaintiffs then brought an action in state court, raising the federal and state claims. After losing in state court, plaintiffs returned to federal court, where they sought to pursue their federal claims anew. The district court dismissed the claims as precluded by the state court judgment, and the plaintiffs appealed directly to the Supreme Court.

A Ninth Circuit decision, if upheld, could establish a procedural obstacle to enforcement of a federal right in federal courts.

Creating a Mechanism

Concerned that litigants would otherwise be deprived of the opportunity to litigate their federal claims in federal court, the *England* Court created a mechanism whereby state court litigants could reserve their federal claims and deprive the state court's judgment of preclusive effect in federal court. The Court stated, "There are fundamental objections to any conclusion that a litigant who has properly invoked the jurisdiction of a Federal District Court to consider federal constitutional claims can be compelled, without his consent and through no fault of his own, to accept instead a state court's determination of those claims." The Court held that "if a party freely and without reservation submits his federal claims for decision by the state courts, litigates them there, and has them decided there, then … he has elected to forgo his right to return to the District Court." The Court also held that "a party may readily forestall any conclusion that he has elected not to return to the District Court" by "informing the state courts that he is exposing his federal claims there only for [a limited] purpose … and that he intends, should the state courts hold against him on the question of state law, to return to the District Court for disposition of his federal contentions."

As the Second Circuit recognized, the *England* rationale would appear to apply quite well to plaintiffs facing the *Williamson County* rule (although, admittedly, the plaintiff in *Santini*, unlike the plaintiffs in *England*, had not originated his case in federal court). Certainly, it remains to be seen whether the Supreme Court will accept the Second Circuit's rationale, or will decide *San Remo* on other grounds.[12] This ruling in *San Remo* will hopefully establish a national rule on the federal takings procedure.

1. 473 U.S. 172 (1985).

2. "Inverse condemnation" should be distinguished from eminent domain. Eminent domain refers to a legal proceeding in which a government asserts its authority to condemn property. Inverse condemnation is a shorthand description of the manner in which a landowner recovers just compensation for a taking of his or her property when condemnation proceedings have not been instituted. See *Agins v. City of Tiburon*, 447 U.S. 255 (1980).

3. 42 U.S.C. §1983.

4. See, e.g., *Dodd v. Hood River County*, 59 F.3d 852 (9th Cir. 1995) (collateral estoppel bars federal takings claim if state court's earlier decision on state-law takings claim was "an equivalent determination under the federal taking clause").

5. See, e.g. *Wilkinson v. Pitkin County Bd. of County Comm'rs*, 142 F.3d 1319 (10th Cir. 1998); *Palomar Mobilehome Park Ass'n v. City of San Marcos*, 989 F.2d 362 (9th Cir. 1993); *Peduto v. City of N. Wildwood*, 878 F.2d 725 (3d Cir. 1989); see also *Barefoot v. City of Wilmington*, 306 F.3d 113 (4th Cir. 2002) (holding that *Rooker-Feldman* doctrine deprived district court of jurisdiction over federal takings claim); but see *Anderson v. Charter Township of Ypsilanti*, 266 F.3d 487 (6th Cir. 2001) (holding that *Rooker-Feldman* doctrine bars federal takings claim brought by plaintiff who had initially brought both state and federal takings claims in state court and, after removal and remand, failed to reserve federal claim in state court); *Fields v. Sarasota Manatee Airport Auth.*, 953 F.2d 1299 (11th Cir. 1992) (recognizing a limited exception to the applicability of res judicata and collateral estoppel to federal takings claims).

6. 342 F.3d 118 (2d Cir. 2003).

7. 364 F.3d 1088 (9th Cir. 2004).

8. *San Remo Hotel, L.P. v. City & County of San Francisco*, 2004 U.S. Lexis 8172 (U.S., Dec. 10, 2004).

9. See *Fields*, supra (holding that "would-be federal court litigants who are forced to pursue state court proceedings in order to satisfy exhaustion requirements imposed by federal law incident to a takings clause claim are 'involuntarily' in the state courts, and therefore qualify for the exception to generally applicable res judicata principles").

10. *Palomar Mobilehome Park Ass'n*, supra.

11. 375 U.S. 411 (1964).

12. The Court may decide, as some have argued, that it overruled *Williamson County* sub silentio in *City of Chicago v. International College of Surgeons*, 522 U.S. 156 (1997), where it held that defendants can remove takings cases to federal court even though the removal statute only allows removal of cases that could have been brought originally in federal court.