

SUPREME COURT OF PENNSYLVANIA

Smolow v. Hafer, 598 Pa. 561

959 A.2d 298 (2008) · No. No. 32 MAP 2005 · Decided November 19, 2008

SUMMARY

The Supreme Court of Pennsylvania affirmed dismissal of Ronald J. Smolow’s class action challenging Pennsylvania’s Disposition of Abandoned and Unclaimed Property Act. The court held that an owner of abandoned property has no constitutional takings claim for interest earned while the Commonwealth held and later returned the property, reasoning that the statutory process was triggered by the owner’s neglect rather than an overt state taking. The court declined to address class-certification issues after rejecting Smolow’s individual claims.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Baer; Chief Justice Castille; Justice Saylor; Justice Eakin; Justice Todd; Justice McCaffery
JURISDICTION	Pennsylvania
DECIDED	November 19, 2008
DOCKET	No. 32 MAP 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal as of right from the Commonwealth Court's dismissal with prejudice of a class action complaint challenging Pennsylvania's abandoned-property statute and seeking damages and attorney fees under 42 U.S.C. § 1983.
STANDARD OF REVIEW	Review of the Commonwealth Court's order sustaining preliminary objections and dismissing the complaint as legally insufficient; the court treated the pleaded facts as true for purposes of determining whether the claims failed as a matter of law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Pennsylvania; majority opinion joined by the chief justice and four justices, with one dissent.
PARTIES	Ronald J. Smolow, individually and on behalf of all persons and entities similarly situated v. Barbara Hafer, Treasurer of the

TOPICS

takings clause constitutional law statutory interpretation section 1983 civil rights

PRACTICE AREAS

constitutional law civil rights administrative law unclaimed property

QUESTIONS PRESENTED

1. Whether Pennsylvania's retention of interest earned while presumptively abandoned property was held in the Commonwealth's custody constituted a taking of private property without just compensation under Article I, Section 10 of the Pennsylvania Constitution.
2. Whether the putative class claims could proceed when Smolow's individual takings claim failed.

HOLDINGS

1. Owners of presumptively abandoned property have no claim to interest earned while the property is held in the Commonwealth's perpetual temporary custody under DAUPA; the statutory procedures are triggered by the owner's neglect rather than an overt governmental taking, so the retention of the interest does not require just compensation under Article I, Section 10 of the Pennsylvania Constitution.

KEY QUOTATIONS

“The DAUPA procedures result not from a taking by overt act of the Commonwealth, but are triggered by the neglect of the owner.” (959 A.2d 304)

“owners of presumptively abandoned property have no claim to the interest earned while the abandoned property is held in perpetual temporary custody of the state.” (959 A.2d 304)

“It is the owner's failure to make any use of the property—and not the action of the State—that causes the lapse of the property right; there is no ‘taking’ that requires compensation.” (959 A.2d 304)

“The triggering event in the exercise of the state's power of eminent domain is the state's overt act of taking private property from an owner.” (959 A.2d 303)

FACTUAL BACKGROUND

In August 2002, the Pennsylvania Treasury took possession of Smolow's 300 shares of Parker Drilling Company stock as presumed abandoned property under the Disposition of Abandoned and Unclaimed Property Act. The Treasury sold the stock for \$586.47, retained the proceeds and earned interest for public purposes, and later paid Smolow the amount received from the sale after he established his ownership, but paid no interest. Smolow's subsequent claim for approximately \$30 in interest was denied, leading him to assert that retaining the interest constituted an uncompensated taking under the Pennsylvania Constitution and to seek related relief under 42 U.S.C. § 1983.

PROCEDURAL HISTORY

Smolow recovered the proceeds of stock that the Pennsylvania Treasury had treated as abandoned property but was denied interest earned while the property was in state custody. After the Department denied his separate interest claim, he filed a seven-count class action in the Commonwealth Court. The Commonwealth Court granted preliminary objections and dismissed the complaint with prejudice, concluding that the asserted taking failed as a matter of law and that the Department's refusal to pay interest was consistent with the statute. The Pennsylvania Supreme Court affirmed and declined to reach class-certification issues because Smolow's individual claims lacked merit.

DISPOSITION

affirmed

CASES CITED

- Texaco v. Short, 454 U.S. 516 (1982)
- Hooks v. Treasurer, 961 So. 2d 425 (La. Ct. App. 2007)
- Brown v. Legal Foundation of Washington, 538 U.S. 216 (2003)
- Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980)
- Phillips v. Washington Legal Foundation, 524 U.S. 156 (1998)
- Canel v. Topinka, 212 Ill. 2d 311, 818 N.E.2d 311 (2004)
- Simon v. Wiessman, 2007 WL 2461707 (E.D. Pa. Aug. 27, 2007)
- Suever v. Connell, 2007 WL 3010423 (N.D. Cal. Oct. 12, 2007)
- In re Folding Carton Antitrust Litigation, 744 F.2d 1252 (7th Cir. 1984)
- Fong v. Westly, 117 Cal. App. 4th 841, 12 Cal. Rptr. 3d 76 (2004)
- Howlett v. Rose, 496 U.S. 356 (1990)
- Machipongo Land and Coal Co., Inc. v. Commonwealth of Pennsylvania, Department of Environmental Protection, 569 Pa. 3, 799 A.2d 751 (2002)
- Commonwealth v. Edmunds, 526 Pa. 374, 586 A.2d 887 (1991)
- Commonwealth v. Hughes, 581 Pa. 274, 865 A.2d 761 (2004)