

SUPREME COURT OF SOUTH CAROLINA

McQueen v. South Carolina Coastal Council, 354 S.C. 142

580 S.E.2d 116 (2003) · No. No. 25642 · Decided April 28, 2003

SUMMARY

The Supreme Court of South Carolina reconsidered a regulatory takings claim on remand from the United States Supreme Court in light of *Palazzolo v. Rhode Island*. It held that McQueen's lots had reverted to tidelands subject to South Carolina's public trust doctrine, and that his ownership rights therefore did not include the right to backfill or install bulkheads. Because the denial of permits did not take property rights belonging to McQueen, the court held that no compensation was due and reversed the Court of Appeals.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Moore; Chief Justice Toal; Justice Waller; Justice Burnett; Justice Pleicones
JURISDICTION	South Carolina
DECIDED	April 28, 2003
DOCKET	No. 25642
DISPOSITION	reversed
PROCEDURAL POSTURE	On remand from the United States Supreme Court to reconsider the South Carolina Supreme Court's prior regulatory-takings decision in light of <i>Palazzolo v. Rhode Island</i> . The court reconsidered the case and reversed the South Carolina Court of Appeals.
STANDARD OF REVIEW	The court reviewed the legal question whether background principles of South Carolina property law precluded a compensable taking. It accepted as uncontested the factual finding that the lots retained no economically beneficial use.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of South Carolina.
PARTIES	South Carolina Coastal Council, n/k/a South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management v. Sam B. McQueen

TOPICS

takings clause wetlands real estate environmental law judicial review of agency action

PRACTICE AREAS

constitutional law environmental law real estate administrative law remedies

QUESTIONS PRESENTED

1. Whether background principles of South Carolina property law, including the public trust doctrine and the State's presumptive title to tidelands, precluded a compensable regulatory taking.
2. Whether McQueen's ownership rights included the right to backfill or place bulkheads on tidelands created by the encroachment of navigable tidal water.

HOLDINGS

1. South Carolina's public trust doctrine and related property-law principles confined McQueen's ownership rights so that the tidelands on his lots were public trust property subject to State control. Because McQueen had no ownership right to backfill or place bulkheads on those tidelands, the denial of the permits did not constitute a compensable taking.
2. Any loss of value suffered by McQueen was not a taking effected by State regulation because the relevant restrictions arose from the natural reversion of the lots to tidelands and McQueen's failure to protect the property.

KEY QUOTATIONS

"McQueen's ownership rights do not include the right to backfill or place bulkheads on public trust land and the State need not compensate him for the denial of permits to do what he cannot otherwise do." (150)

"We find no compensation is due. After reconsideration in light of Palazzolo, we reach the same conclusion we originally reached in this case and reverse the Court of Appeals." (151)

FACTUAL BACKGROUND

McQueen purchased two unimproved lots on manmade saltwater canals in North Myrtle Beach in the early 1960s. By the time his permit applications were denied, continuous erosion had caused most of both lots to revert to tidelands or critical-area saltwater wetlands, leaving only irregular portions of high ground. McQueen sought permits to backfill the lots and construct bulkheads, but the coastal agency denied the permits because the lots were predominantly critical-area wetlands and the proposed backfill would permanently destroy the wetlands.

PROCEDURAL HISTORY

The coastal agency denied McQueen's permits to backfill two lots and construct bulkheads. A master-in-equity found a total regulatory taking and awarded compensation; the Court of Appeals affirmed the taking finding but remanded on the amount of compensation. The South Carolina Supreme Court previously reversed, finding no

taking because preexisting wetlands regulations defeated McQueen's reasonable investment-backed expectations. The United States Supreme Court summarily vacated and remanded for reconsideration in light of Palazzolo.

DISPOSITION

reversed

CASES CITED

- Palazzolo v. Rhode Island, 533 U.S. 606, 121 S. Ct. 2448, 150 L. Ed. 2d 592 (2001)
- McQueen v. South Carolina Coastal Council, 340 S.C. 65, 530 S.E.2d 628 (2000)
- Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992)
- Rick's Amusement, Inc. v. State, 351 S.C. 352, 570 S.E.2d 155 (2001)
- State v. Pacific Guano Co., 22 S.C. 50, 84 (1884)
- State v. Hardee, 259 S.C. 535, 193 S.E.2d 497 (1972)
- Rice Hope Plantation v. South Carolina Pub. Serv. Auth., 216 S.C. 500, 59 S.E.2d 132 (1950)
- McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985)
- Port Royal Mining Co. v. Hagood, 30 S.C. 519, 9 S.E. 686 (1889)
- Sierra Club v. Kiawah Resort Assocs., 318 S.C. 119, 456 S.E.2d 397 (1995)
- Heyward v. Farmers' Min. Co., 42 S.C. 138, 19 S.E. 963 (1884)
- Cape Romain Land & Improvement Co. v. Georgia-Carolina Canning Co., 148 S.C. 428, 146 S.E. 434 (1928)
- State v. Yelsen Land Co., 265 S.C. 78, 216 S.E.2d 876 (1975)
- Coburg Dairy, Inc. v. Lesser, 318 S.C. 510, 458 S.E.2d 547 (1995)
- State v. Fain, 273 S.C. 748, 259 S.E.2d 606 (1979)
- Esplanade Props., Inc. v. City of Seattle, 307 F.3d 978 (9th Cir. 2002)
- Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 252 S.E.2d 133 (1979)
- City of Folly Beach v. Atlantic House Props., Ltd., 318 S.C. 450, 458 S.E.2d 426 (1995)
- Hughes v. Nelson, 303 S.C. 102, 399 S.E.2d 24 (1990)
- Sea Cabins on Ocean IV Homeowners' Assoc., Inc. v. City of North Myrtle Beach, 345 S.C. 418, 548 S.E.2d 595 (2001)
- Good v. United States, 189 F.3d 1355 (Fed. Cir. 1999)
- Palm Beach Isles Assocs. v. United States, 231 F.3d 1354 (Fed. Cir. 2000)
- Westside Quik Shop, Inc. v. Stewart, 341 S.C. 297, 534 S.E.2d 270 (2000)
- Palazzolo v. State, 746 A.2d 707 (R.I. 2000)