SUPREME COURT OF NEW HAMPSHIRE

Allianz Global Risks U.S. Insurance Co. v. State

161 N.H. 121 (2010) · Decided November 10, 2010

SUMMARY

The New Hampshire Supreme Court affirmed summary judgment for New Hampshire and Massachusetts in an inverse-condemnation action arising from flood damage to insured property. The court held that temporary flooding caused by a rare, non-recurring storm did not constitute a compensable taking of real property, and that destruction of personal property constituted consequential damage rather than a taking. The court did not decide whether New Hampshire recognizes inverse-condemnation claims for personal property.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Conboy, J.; Broderick, C.J.; Dalianis, J.; Duggan, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	November 10, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed from a superior court order denying their motion for summary judgment and granting summary judgment to the State of New Hampshire and the Commonwealth of Massachusetts on an inverse-condemnation claim.
STANDARD OF REVIEW	The court reviewed summary judgment evidence and reasonable inferences in the light most favorable to the nonmoving party, affirmed if no genuine issue of material fact existed and the moving party was entitled to judgment as a matter of law, and reviewed the trial court's application of law to facts de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Allianz Global Risks U.S. Insurance Company, Henkel Corporation v. State of New Hampshire, Commonwealth of Massachusetts

TOPICS

takings clause · constitutional law · remedies

PRACTICE AREAS

constitutional law | eminent domain | inverse condemnation | property damage | summary judgment

QUESTIONS PRESENTED

1. Whether temporary flooding and loss of use of Henkel's real property constituted a compensable taking under New Hampshire inverse-condemnation law.
2. Whether destruction of Henkel's personal property constituted a compensable taking rather than consequential damage.
3. Whether genuine issues of material fact concerning causation and an act of God precluded summary judgment.

HOLDINGS

1. Although temporary takings may be compensable under New Hampshire law, the plaintiffs did not establish a taking because they offered no evidence that the flooding conditions were inevitably recurring; the rare 2006 storm therefore produced, at most, consequential injury rather than a taking.
2. The destruction of Henkel's personal property constituted consequential damage resulting from alleged government conduct, not a compensable taking.
3. Summary judgment for the defendants was proper, and the court did not need to address the plaintiffs' remaining arguments in light of its conclusion that no compensable taking occurred.

KEY QUOTATIONS

> *"To prevail on an inverse condemnation claim, however, a plaintiff "must establish that treatment under takings law, as opposed to tort law, is appropriate under the circumstances.""* (124)

> *"Government-induced flooding not proved to be inevitably recurring occupies the category of mere consequential injury, or tort."* (125)

> *"We conclude that, as in Wamer/Elektra/Atlantic, the alleged destruction of Henkel's personalty constituted only consequential damage and, accordingly, is not compensable as a taking."* (126)

FACTUAL BACKGROUND

Henkel owned a sixteen-acre parcel in Seabrook, New Hampshire, adjacent to Interstate Route 95, and Allianz insured the property. Extraordinary rainfall in May 2006 flooded the property, causing extensive real and personal property damage; Allianz paid more than two million dollars and Henkel paid a $500,000 deductible. The plaintiffs' expert attributed the flooding in part to the highway embankment, the size and location of a culvert, and construction of a deceleration lane, while the State's expert attributed it to an inadequate culvert under Henkel's building. Both experts characterized the 1996 and 2006 storms as rare, unusual, approximately 100-year events.

PROCEDURAL HISTORY

The plaintiffs commenced the action in July 2007, alleging that the design and construction of Interstate Route 95 and a related deceleration lane caused flooding and constituted inverse condemnation. The Superior Court granted summary judgment to the defendants, concluding that the alleged loss of use was temporary, the flooding was caused by an act of God, and no reasonable jury could find that defendants' conduct caused or contributed to the flooding. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Big League Entm't v. Brox Indus., 149 N.H. 480, 482 (2003)
- Pennichuck Corp. v. City of Nashua, 152 N.H. 729, 733 (2005)
- Smith v. Town of Wolfeboro, 136 N.H. 337 (1992)
- Burrows v. City of Keene, 121 N.H. 590 (1981)
- Sundell v. Town of New London, 119 N.H. 839, 845 (1979)
- Ridge Line, Inc. v. United States, 346 F.3d 1346, 1355, 1357 (Fed. Cir. 2003)
- Cary v. United States, 552 F.3d 1373, 1376-77 (Fed. Cir. 2009)
- Barnes v. United States, 538 F.2d 865, 870 (Ct. Cl. 1976)
- Sanguinetti v. United States, 264 U.S. 146, 149 (1924)
- Capitol Plumbing & Heating Supply Co. v. State of New Hampshire, 116 N.H. 513 (1976)
- Hawkins v. City of La Grande, 843 P.2d 400 (Or. 1992)
- Sutfin v. State, 67 Cal. Rptr. 665, 666 (Cal. Ct. App. 1968)
- Flatt v. City of Brooksville, 368 So. 2d 631 (Fla. Dist. Ct. App. 1979)
- Holzenthal v. Sewerage & Water Bd. of New Orleans, 950 So. 2d 55 (La. Ct. App. 2007)
- Shade v. Missouri Highway & Transp. Comm'n, 69 S.W.3d 503 (Mo. Ct. App. 2002)
- South Florida Water Mgmt. Dist. v. Basore, 723 So. 2d 287, 289 (Fla. Dist. Ct. App. 1998)
- Broward County v. Rhodes, 624 So. 2d 319 (Fla. Dist. Ct. App. 1993)
- In re Forfeiture of 1976 Kenworth Truck, 576 So. 2d 261 (Fla. 1990)
- Warner/Elektra/Atlantic Corp. v. County of DuPage, 991 F.2d 1280, 1285 (7th Cir. 1993)