

SUPREME COURT OF NEW HAMPSHIRE

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

13 A.3d 256 (N.H. 2010) · No. 2009-745 · Decided November 10, 2010

SUMMARY

The Supreme Court of New Hampshire affirmed summary judgment for the State of New Hampshire and the Commonwealth of Massachusetts in an inverse condemnation action arising from flood damage to Henkel Corporation's property. The court held that the isolated, rare flooding event did not constitute a compensable taking of real property because inevitable recurrence was not shown, and that damage to personal property was consequential damage rather than a taking. The court did not reach the plaintiffs' remaining causation and act-of-God arguments.

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
DOCKET	2009-745
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiffs appealed the Superior Court's denial of their motion for summary judgment and grant of summary judgment to the defendants on an inverse-condemnation claim arising from flooding of the plaintiffs' property.
STANDARD OF REVIEW	The court reviewed the summary-judgment record and reasonable inferences in the light most favorable to the nonmoving party, reviewed the application of law to facts de novo, and affirmed if no genuine issue of material fact existed and the moving party was entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Allianz Global Risks U.S. Insurance Company, Henkel Corporation v. State of New Hampshire, Commonwealth of Massachusetts

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QUESTIONS PRESENTED

1. Whether a temporary interference with the use of real property can constitute a compensable taking under New Hampshire law.
2. Whether the flooding of Henkel's property constituted a taking when the plaintiffs did not show that the flooding was inevitably recurring.
3. Whether the destruction of Henkel's personal property in the flooding constituted compensable inverse condemnation rather than consequential damage.
4. Whether summary judgment was proper despite the plaintiffs' arguments concerning causation, act of God, and the nature of the alleged taking.

HOLDINGS

1. A temporary taking of real property may be compensable under New Hampshire law; governmental action that substantially interferes with or deprives a person of the use of property may constitute a taking even when the land itself is not permanently taken.
2. The plaintiffs' evidence did not establish an inverse condemnation taking of Henkel's real property because the flooding was not shown to be inevitably recurring and the relevant storms were rare events.
3. The destruction of Henkel's personal property constituted, at most, consequential damage from the alleged governmental conduct and was not compensable as a taking on the facts presented.

KEY QUOTATIONS

"Government-induced flooding not proved to be inevitably recurring occupies the category of mere consequential injury, or tort." (260)

"We conclude that, as in Warner/Elektra/Atlantic, the alleged destruction of Henkel's personalty constituted only consequential damage and, accordingly, is not compensable as a taking." (261)

FACTUAL BACKGROUND

Henkel owned a sixteen-acre parcel in Seabrook, New Hampshire, adjacent to Interstate 95, and Allianz insured the property. Extraordinary rainfall in May 2006 caused extensive flooding, after which Allianz paid Henkel more than two million dollars and Henkel paid its policy deductible. The plaintiffs' expert attributed the flooding 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 one-hundred-year events.

PROCEDURAL HISTORY

The plaintiffs commenced the action in July 2007, alleging that the construction and design of Interstate 95 and a related deceleration lane caused flooding of Henkel's property. The Superior Court denied the plaintiffs' motion for summary judgment and granted summary judgment to the State of New Hampshire and Commonwealth of Massachusetts. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Big League Entm't v. Brox Indus., 149 N.H. 480, 482, 821 A.2d 1054 (2003)
- Pennichuck Corp. v. City of Nashua, 152 N.H. 729, 733, 886 A.2d 1014 (2005)
- Smith v. Town of Wolfeboro, 136 N.H. 337, 615 A.2d 1252 (1992)
- Burrows v. City of Keene, 121 N.H. 590, 432 A.2d 15 (1981)
- Sundell v. Town of New London, 119 N.H. 839, 845, 409 A.2d 1315 (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, 44 S.Ct. 264, 68 L.Ed. 608 (1924)
- Capitol Plumbing & Heating Supply Co. v. State of New Hampshire, 116 N.H. 513, 363 A.2d 199 (1976)
- Hawkins v. City of La Grande, 315 Or. 57, 843 P.2d 400 (1992)
- Sutfin v. State, 261 Cal.App.2d 50, 67 Cal. Rptr. 665, 666 (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 and Transp. Comm'n, 69 S.W.3d 503 (Mo. Ct. App. 2001)
- South Florida Water v. Basore of Florida, 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)