

NEW YORK COURT OF APPEALS

Corseello v. Verizon New York, Inc.

18 N.Y.3d 777, 967 N.E.2d 1177, 944 N.Y.S.2d 732 (N.Y. 2012) · No. No. 51 · Decided March 29, 2012

SUMMARY

The New York Court of Appeals held that property owners stated a timely inverse condemnation claim based on Verizon's alleged continuous and permanent attachment of telecommunications equipment to their building. The court held that Real Property Law § 261 prevented the inverse condemnation claim from becoming time-barred, but dismissed the General Business Law § 349 and unjust enrichment claims. The court also affirmed denial of class certification because individualized property-specific evidence defeated commonality and typicality.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Smith, J.; Chief Judge Lippman; Judge Ciparick; Judge Graffeo; Judge Read; Judge Pigott; Judge Jones
JURISDICTION	New York
DECIDED	March 29, 2012
DOCKET	No. 51
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from Appellate Division orders modifying an order on Verizon's motion to dismiss and affirming denial of class certification.
STANDARD OF REVIEW	Class-certification decisions are reviewed for abuse of discretion. The sufficiency of the pleaded causes of action and statute-of-limitations issues were reviewed as legal questions on the motion to dismiss.
PRECEDENTIAL VALUE	Published Court of Appeals opinion; precedential New York authority.
PARTIES	Verizon New York, Inc., formerly known as New York Telephone Company v. William Corseello et al.

TOPICS

[eminent domain](#)[takings clause](#)[trespass](#)[class actions](#)[statute of limitations](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiffs stated a legally sufficient inverse condemnation claim based on Verizon's alleged continuous and permanent occupation of their property under its eminent-domain authority.
2. Whether Real Property Law § 261 prevented the inverse condemnation claim from becoming time-barred through lapse of time.
3. Whether plaintiffs' General Business Law § 349 claim was barred by the statute of limitations and whether Verizon was equitably estopped from asserting that defense.
4. Whether plaintiffs stated an unjust enrichment claim or whether that claim duplicated their tort and property-taking theories.
5. Whether the denial of class certification constituted an abuse of discretion.

HOLDINGS

1. A complaint alleging that an entity possessing eminent-domain power continuously and permanently occupied private property by attaching equipment to it states a legally sufficient inverse condemnation claim, even if the entity did not expressly invoke its eminent-domain power.
2. Real Property Law § 261 applies to plaintiffs' inverse condemnation claim and prevents the claim from being barred solely by the lapse of time.
3. The General Business Law § 349 claim was time-barred, and Verizon was not equitably estopped from asserting the statute of limitations because plaintiffs alleged no separate, subsequent deceptive act that prevented timely suit.
4. Plaintiffs' unjust enrichment claim was legally insufficient because it duplicated or attempted to replace their conventional property and tort claims.
5. The denial of class certification was not an abuse of discretion because individualized, building-specific evidence predominated and plaintiffs' claims were not shown to be typical of the proposed class.

KEY QUOTATIONS

"Inverse condemnation" is a term relatively new to the law of eminent domain." (18 N.Y.3d 786)

"In a modern inverse condemnation action, an owner whose property has been taken de facto may sue the entity that took it to obtain just compensation, and if the action is successful the defendant has no choice in the matter—the compensation must be paid." (18 N.Y.3d 786)

"Unjust enrichment is not a catchall cause of action to be used when others fail." (18 N.Y.3d 790)

"The courts below were clearly justified, on this record, in finding that at least two of the prerequisites to a class action were not met." (18 N.Y.3d 792)

FACTUAL BACKGROUND

Plaintiffs owned an apartment building in Brooklyn to which Verizon or its predecessor had attached a terminal box. The box connected a block cable to station-connection wires serving Verizon customers in multiple buildings, allegedly allowing Verizon to use plaintiffs' building in place of a telephone pole. Plaintiffs alleged that Verizon failed to disclose their right to compensation and represented that it had a right to attach the box without payment.

PROCEDURAL HISTORY

Plaintiffs sued Verizon under theories of inverse condemnation, unjust enrichment, trespass, and General Business Law § 349, seeking damages and injunctive relief for Verizon's attachment of a terminal box to their building. Supreme Court dismissed the unjust enrichment claim, sustained the inverse condemnation, trespass, and General Business Law claims, and later denied class certification. The Appellate Division dismissed the inverse condemnation claim as time-barred, reinstated unjust enrichment, sustained the General Business Law claim, and affirmed denial of class certification. The Court of Appeals reinstated the inverse condemnation claim, dismissed the General Business Law and unjust enrichment claims, and affirmed denial of class certification.

DISPOSITION

other

CASES CITED

- *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)
- *Dietzel v. City of New York*, 218 N.Y. 270, 272 (1916)
- *Pappenheim v. Metropolitan Elevated Railway Co.*, 128 N.Y. 436, 444 (1891)
- *Ferguson v. Village of Hamburg*, 272 N.Y. 234, 240 (1936)
- *Trippe v. Port of New York Authority*, 17 A.D.2d 472, 474 (2d Dep't 1962), rev'd on other grounds, 14 N.Y.2d 119 (1964)
- *Boomer v. Atlantic Cement Co.*, 26 N.Y.2d 219, 230 (1970)
- *Heyert v. Orange & Rockland Utilities*, 24 A.D.2d 592 (2d Dep't 1965), aff'd, 17 N.Y.2d 352 (1966)
- *New York Telephone Co. v. Town of North Hempstead*, 41 N.Y.2d 691, 696 (1977)
- *United States v. Clarke*, 445 U.S. 253, 257 (1980)
- *Tuffley v. City of Syracuse*, 82 A.D.2d 110, 116 (4th Dep't 1981)
- *Gaidon v. Guardian Life Insurance Co. of America*, 96 N.Y.2d 201, 208, 210-212 (2001)
- *General Stencils v. Chiappa*, 18 N.Y.2d 125 (1966)
- *Simcuski v. Saeli*, 44 N.Y.2d 442, 447 (1978)
- *Ross v. Louise Wise Services, Inc.*, 8 N.Y.3d 478, 491-492 (2007)
- *Zumpano v. Quinn*, 6 N.Y.3d 666, 674 (2006)
- *Mandarin Trading Ltd. v. Wildenstein*, 16 N.Y.3d 173, 182 (2011)
- *Paramount Film Distributing Corp. v. State of New York*, 30 N.Y.2d 415, 421 (1972)

- Markwica v. Davis, 64 N.Y.2d 38 (1984)
- Kirby McInerney & Squire, LLP v. Hall Charne Burce & Olson, S.C., 15 A.D.3d 233 (1st Dep't 2005)
- Clark-Fitzpatrick, Inc. v. Long Island Rail Road Co., 70 N.Y.2d 382, 388-389 (1987)
- Samient[o] v. World Yacht Inc., 10 N.Y.3d 70, 81 (2008)
- Town of Wallkill v. Rosenstein, 40 A.D.3d 972, 974 (2d Dep't 2007)
- City of New York v. Maul, 14 N.Y.3d 499, 509 (2010)
- Small v. Lorillard Tobacco Co., 94 N.Y.2d 43, 52-53 (1999)

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