

## RECENT FEDERAL PROPERTY RIGHTS DECISIONS CONFIRM VIABILITY OF TAKINGS CHALLENGES

In recent weeks, two significant property rights decisions were handed down by Federal appellate courts. First, in *Guggenheim v. City of Goleta* (9th Cir. September 28, 2009; No. 06-56306) (“*City of Goleta*”), the Ninth Circuit Court of Appeals held that a rent control ordinance applicable to mobile home parks effected a taking of private property because it resulted in an uncompensated transfer of value – the difference over time between controlled and market-rate rents – from the mobile home park owners to the park’s tenants. Second, in *Stockton East Water District v. United States* (Fed. Cir. September 30, 2009; No. 2007-5142) (“*Stockton East*”), the Federal Circuit Court of Appeals held that the government may be subject to a takings challenge when it curtails contracted water deliveries for environmental purposes. In both cases, the reviewing courts reaffirmed the principle that government regulations causing substantial economic hardship to private property owners may give rise to liability under the Fifth Amendment’s takings clause.

At issue in *City of Goleta* was a rent control ordinance that limited annual rent increases on pads within mobile home parks to 75 percent of the increase in the local Consumer Price Index. The *City of Goleta* plaintiffs purchased the mobile home park after the rent control ordinance was adopted. The plaintiffs sued the City on the basis that the rent control ordinance was an uncompensated taking of private property. The district court entered summary judgment in favor of the City, finding that the plaintiffs had submitted insufficient relevant evidence to support its takings claim, and the plaintiffs timely appealed.

On appeal, the Ninth Circuit applied the three-pronged balancing test set forth in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978) (“*Penn Central*”), to determine whether the rent control ordinance effected a regulatory taking of the plaintiffs’ private property even though its enactment did not physically invade, nor totally eliminate the economic value of, the mobile home park. Under *Penn Central*, to determine whether a taking has occurred when a regulation diminishes some, but not all, property value, the reviewing court is required to engage in “an essentially *ad hoc*, factual inquiry” that considers and weighs together: (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation interferes with the claimant’s investment-backed expectations; and (3) the character of the governmental action. When these factors are weighed together, if it appears on balance that the regulation “forces some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole,” then the reviewing court is permitted to find that the regulation “goes too far” and effects a compensable taking of private property.

In applying the *Penn Central* test to the facts in *City of Goleta*, the Court of Appeals determined that the economic impact of the regulation on the plaintiffs’ property rights was severe because it reduced rents of the mobile home park’s individual pads by approximately 80 percent below-market rate while simultaneously increasing the sale price of their tenant’s mobile home units by almost 90 percent. In the court’s view, the rent control ordinance resulted in a “naked transfer” of wealth whereby the below-market rent savings were transferred from the park owners to the park tenants, who were then able to sell their mobile home units sitting atop the rent-controlled pads for almost ten times their purchase price. Moreover, the court concluded that the character of the governmental action looked like a classic taking because, in enacting the ordinance, the government singled out mobile home park owners and forced them to bear the burden of providing affordable housing in the city, a burden that, in the court’s view, should fairly be born by the taxpayers as a whole. Since the park owners bought the mobile home park after the rent control ordinance was adopted, the court determined that the ordinance did not substantially interfere with the plaintiffs’ investment-backed expectations. Nevertheless, the court held that the mere fact that the plaintiffs purchased the mobile home park in its regulated state did not mean that the ordinance did not result in a taking or that the plaintiffs were otherwise barred from bringing such a claim. Indeed, the court concluded that, when the three *Penn Central* factors are considered together, the city’s rent control ordinance “goes too far” and effects a regulatory taking that requires payment of just compensation.

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In *Stockton East*, the Federal Circuit found that water districts with contracts obligating the Federal Government to deliver water can recover damages when the government decides not to deliver all the water specified in the contract. In this case, two water districts had contracts with the Bureau of Reclamation for a specified minimum number of acre feet of water from the New Melones Unit of the Central Valley Project. In 1992, Congress passed legislation requiring certain amounts of water to be set aside for fish, wildlife and habitat restoration. As a consequence, the Bureau could not provide the water it was obligated to provide to the districts. The districts sued, asserting breach of contract and takings claims. The Court of Federal Claims ruled against the districts, concluding that the failure to deliver the water was excused by specific provisions in the contract relating to water shortages. The lower court also dismissed the takings claims because, in its view, the appropriate remedy arose out of the contracts themselves rather than the Fifth Amendment.

The Court of Appeals reversed. With respect to the contract claims, the court rejected the Governments arguments: (1) that changes in the law (including the 1992 legislation) were incorporated into the contracts; (2) that the contract provisions themselves excused performance; and (3) that the “sovereign acts” doctrine was a defense to a breach of contracts action. The court held that the districts were entitled to damages for breach of the contracts. With respect to the takings claims, the court held that, while the ruling on the takings claims could be deferred until after the contracts claims were decided, it was improper to dismiss the takings claim simply because the districts had also asserted a breach of contract claim. The court held that, although a party can obtain only one recovery for a single harm, a party is entitled to plead a claim as both a taking and a breach of contract. In other words, asserting a breach of contract claim does not preclude an alternate claim for a taking.

Taken together, these two cases are significant because they reaffirm the viability of regulatory takings challenges under the Fifth Amendment when a government rule or regulation substantially reduces, but does not eliminate, the value of private property. The *City of Goleta* case is particularly notable, not only because it represents a relatively rare example of a successful regulatory takings challenge of a rent control ordinance, but also because of its detailed examination of standing and ripeness requirements applicable to regulatory takings challenges in state and federal courts. Also of note is the Ninth Circuit’s recent decision in *Los Altos El Granada Investors v. City of Capitola* (9th Cir. October 7, 2009; No. 07-16888) (“*City of Capitola*”), a case that makes it easier for claimants to pursue takings challenges in federal court when they do not voluntarily first seek redress of a federal takings claim in state court. At a minimum, the *City of Goleta* and *City of Capitola* cases together suggest that the Ninth Circuit is now more amenable to considering Fifth Amendment takings challenges arising out of actions taken by local governments.

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