



Property Rights in the Trenches – Two Recent Court Decisions

BY C. WILLIAM DAHLIN, Esq.

When the United States Supreme Court hears and decides cases involving property rights, it is, of course, national news. However, any and all cases that eventually make to the United States Supreme Court begin with a trial court decision.

Property rights have been an essential ingredient under the United States Constitution, but have changed dramatically in the last 50 years.

Two recent decisions by two different trial courts offer an interesting perspective on this phenomenon. Here is the setting:

1. The City of San Francisco adopted legislation that, according to the City, was designed to help facilitate the City's tight housing situation. Specifically, prices for housing in San Francisco, both to buy and to rent, have risen astronomically in the last five plus years. A number of property owners have elected to exit the residential housing market. Thus, the number of potential dwellings available for tenants to rent is small and declining. The City enacted legislation that requires a property owner to pay a relocation payment if the resident is being evicted. The 2005 Ordinance calls for an amount equal to 24 times the difference between the unit's current monthly rent and the fair market rent of a comparable unit in San Francisco. That difference is calculated by a schedule by the City. A property owner, wanting to exit the industry, was advised that in order to complete an eviction of the resident, it would require a payment of \$117,000. The property owner declined that "opportunity" and filed suit in the United States District Court in the Northern District of California.

In a decision filed on October 21, 2014, the District Court, Judge Charles Byer, held that the City's Ordinance requiring such payment was unconstitutional under the Fifth Amend-

ment.

The District Court judge explained that the statute enacted by the City and County of San Francisco was contrary to settled constitutional law as set forth by the United States Supreme Court. Specifically, the District Court cited the *Nollan v. California Coastal Commission*, *Dolan v. City of Tigert*, and *Koontz v. Saint John's River Water Management District* decisions as support. Those cases, which stretch from 1987 to 2013, set forth parameters analyzing when a statute or ordinance is unconstitutional under the Fifth Amendment. The *Nollan-Dolan* tests have been followed by many jurisdictions, although frequently more in name than in spirit.

The City of San Francisco will surely appeal this decision to the Ninth Circuit Court of Appeal and time will tell, within the next 18 to 24 months, whether the District Court's view will be affirmed or the Ninth Circuit will reverse. The Ninth Circuit, historically, has a very pro-regulation vantage point and thus if history is any indication, this new District Court decision could well be reversed on appeal.

2. On October 10, 2014, a decision was handed out in the Superior Court of the State of California, County of San Diego. This matter also involved property rights and arose under a rent control ordinance.

In the San Diego matter, the City of Oceanside adopted rent control decades ago. The property owner, who has owned the regulated property since before rent control was adopted, filed suit alleging that the ordinance, in conjunction with other actions of the City of Oceanside, had caused a taking as should be measured under the *Penn Central v. City of New York* United States Supreme Court decision from 1978. The *Penn Central* case holds that a regulation can be an unconstitutional taking of

property if after analyzing the economic impact of the regulation, the property owner's reasonable investment backed expectations, and the character of the government's action. The Superior Court judge concluded that the property owner did not prove a taking of property under the *Penn Central* test concluded that the property's value had increased over time, and that the property owner had earned a fair and reasonable return throughout its time of ownership. The property owner, according to the Superior Court, decided that those factors, considered collectively, meant that the rent control Ordinance has not worked a regulatory taking and therefore the property owner lost.

So are there any lessons to be learned from these two cases? This author thinks that the new cases illustrate that rent control, which has been enacted throughout California for the last 30 years, is almost impossible to overturn in a judicial setting. In contrast, new legislation that seeks to literally take money from a property owner, and have it transmitted to a third party (tenant) are subject to attack under *Nollan/Dolan*. Rent control and the legislation adopted by San Francisco are primarily, phenomenon impacting the East and West Coasts. Property owners in Tennessee and Mississippi, historically, have little worry about such dramatic legislation. However, the nature and scope of how governments seek to take property rights continues to grow and manufactured community owners need to be on their guard.

Bill Dahlin is an attorney with the Orange County law firm of Hart King, and is a member of the firm's manufactured housing practice group. He can be reached at 714.432.8700 or at bdahlin@hartkinglaw.com.