

Staying Ahead

with Saul Ewing

1 | 05

Environmental Law

Supreme Court to Determine Extent to Which Plaintiffs' "Takings" Claims May be Barred by Federal Courts as a Result of Prior Litigation of the Claim in State Court

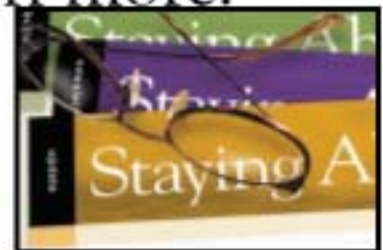
What happened?

On December 10, 2004, in a case of vast importance for land developers, private property owners, and governments, the United States Supreme Court granted a writ of certiorari to review a decision of the United States Court of Appeals for the Ninth Circuit arising under the Takings Clause of the Fifth Amendment to the United States Constitution. *San Remo Hotel LP v. San Francisco*, No. 04-340.

What does it mean?

In accepting this case for review, the Court has now decided to review three Takings Clause cases during this term—the highest number of Takings Clause cases reviewed by the Court since 1987.

Learn more.



Turn the page to find out more.

The Ninth Circuit's holding essentially creates a "gotcha" situation for plaintiffs. That court, following Supreme Court precedent, requires that takings claims against local or state defendants be litigated first in state courts, unless a state does not provide a remedy for a taking. Any federal takings claims brought in federal court against local or state defendants will be deferred until the plaintiff's state remedies are exhausted. The "gotcha" is that the state court decision will bar litigation of the takings claim under the United States Constitution in Federal court. Thus, if the Ninth Circuit's decision is allowed to stand, it is possible that there will never be any opportunity for property owners to be heard on their Takings Clause claims against local or state defendants in federal court.

In 1993, the owners of the San Remo Hotel instituted an action in California state court, asserting that a San Francisco ordinance restricting an owner's ability to convert "residential" hotel rooms to tourist use was a governmental taking under the California Constitution. Thereafter, but before the state case had concluded, the hotel owners sued in federal court, claiming that the ordinance also constituted a taking of the property under the Takings Clause of the Fifth Amendment, and that the hotel owners were therefore entitled to just compensation.

Based on Supreme Court precedent requiring a party to exhaust available state remedies before bringing a federal taking action, the Ninth Circuit previously decided that certain takings claims raised by the hotel owners were not ready for decision in the federal courts ("ripe") until analogous takings claims asserted under California law had been decided by the California state courts.

The hotel owners, following the Ninth Circuit's directive, proceeded in state court on their state law claims. In that proceeding, they specifically reserved their federal takings claims for decision in the federal case. The hotel owners lost in state court on their state law claims.

The hotel owners then returned to federal court to litigate the federal claims deferred by the Ninth Circuit and reserved in the state proceeding. The federal district court, however, held that the hotel owners were precluded from litigating their federal claims. On appeal, the Ninth Circuit agreed with the district court, holding that the hotel owners were precluded from asserting their claims in federal court because they had already litigated essentially the same issues in state court. *San Remo Hotel L.P. v. San Francisco*, 364 F.3d 1088 (9th Cir. 2004).

The Ninth Circuit reasoned that the California state courts' determination of the takings claims under the state constitution was an "equivalent determination" of the federal takings claims in the federal action. Thus, according to the court, the hotel owners could not relitigate their takings issues in federal court on account of the doctrine of issue preclusion, which prohibits relitigation of claims already decided. Citing prior Ninth Circuit decisions, the court also explained that the fact that the hotel owners had reserved their federal claims in the state action did not operate to circumvent the rule barring relitigation of claims, since parties are "precluded from taking a second bite of the apple."

In short, the Ninth Circuit's holding is that federal takings claims against local or state defendants brought in federal court will be deferred until the plaintiff has exhausted state remedies. The litigation of state-constitution based takings claims (or United States Constitutional claims) will bar litigation of similar issues in the federal courts. Thus, if the Ninth Circuit's decision is allowed to stand, there may

be no opportunity for a property owner to be heard on federal Takings Clause claims against local or state defendants in federal court.

Additionally, in reaching its decision, the Ninth Circuit expressly rejected the Second Circuit's pro-property owner decision in *Santini v. Connecticut Hazardous Waste Management Service*, 342 F.3d 118 (2d Cir. 2003), where that court allowed property owners access to federal court after state litigation where the plaintiff had reserved its rights to do so. The Second Circuit was already in conflict with a Third Circuit case on this issue in which the Third Circuit had previously adopted the same anti-property owner position taken by the Ninth Circuit in *San Remo Hotel. Peduto v. City of North Wildwood*, 878 F.2d 725 (3d Cir. 1989).

The San Remo Hotel owners filed a Petition for Certiorari to the United States Supreme Court, which was granted on December 10, 2004. The question presented for review by the Court is:

Did the Ninth Circuit err in holding that the doctrine of issue preclusion bars federal court litigation of Fifth Amendment takings claims based on a local law limiting the conversion of residential hotel rooms to tourist use, because the federal claims were necessarily decided in state court litigation that denied compensation to the hotel owners on their state law takings claims?

A decision in *San Remo Hotel* will establish one consistent standard for all of the federal courts regarding how and when a takings action may be brought against local or state defendants. Briefing in this case will finish in early 2005 and the Court is scheduled to hear oral argument in March 2005. A decision is expected by the end of June 2005.

This Update was prepared by Joel R. Burcat, Partner and Chair of Saul Ewing's Environmental Department and Karl S. Myers, an Associate in the Firm's Litigation Department. Mr. Burcat can be reached at (717) 257-7506 or jburcat@saul.com. Mr. Myers can be reached at (215) 972-7704 or kmyers@saul.com. The information in this Update is intended for informational purposes only, and its contents should not be considered legal advice.

© 2005 Saul Ewing LLP, a Delaware Limited Liability Partnership.