

CFC Grants Summary Judgment in Takings Case on Motion for Reconsideration

Anaheim Gardens v. United States involved plaintiffs who filed suit in the U.S. Court of Federal Claims claiming that the Government effected a taking of their contractual right to prepay government-insured mortgages on low-income housing. The case arose after the Government passed the Low Income Housing Preservation and Resident Homeownership Act, a statute that plaintiffs alleged was intended to “deter prepayment in order to avoid what loomed as a potentially significant reduction in the stock of affordable housing.” [See *Anaheim Gardens v. United States* (September 26, 2012).]

The decision on summary judgment in September 2012 came after the parties filed cross-motions for summary judgment on ripeness. The Government argued that the case was not ripe because plaintiffs, who were owners and developers of low income housing projects, “failed to exhaust their administrative remedies, that is, they failed to seek prepayment approval from the United States Department of Housing and Urban Development. . . .”

The plaintiffs argued that the case was ripe because exhausting their administrative remedies was futile. They presented expert testimony, which included data and calculations, to demonstrate that none of the properties in question could have been granted prepayment approval by HUD. But the CFC ruled that the calculations which demonstrated the futility of seeking prepayment approval were not properly raised. As a result, it granted the Government’s motion for summary judgment in part.

But the plaintiffs didn’t give up, and filed a motion for reconsideration. In support of the motion, they noted that the calculations at issue were part of a report that was specifically referenced in the Proposed Findings of Uncontroverted Facts. The factual findings were part of the record when the cross-motions for summary judgment were considered.

The CFC determined in its February 9, 2013 decision that it’s earlier decision had construed the Proposed Findings of Uncontroverted Facts too narrowly. This time out, based on the expert testimony, the CFC held that “[p]laintiffs properly met their prima facie burden of showing the absence of genuine issues of material fact and entitlement to judgment as a matter of law.”

The issue then became whether the Government had offered specific facts to counter the plaintiffs. Even though the Government challenged the methodology behind the expert’s report, it did not include any specific contradictions of the data in the calculations. As a result, the CFC granted summary judgment on the motion to reconsider with respect to properties that the expert concluded were “prepayment ineligible.”

There were, however, five properties that the expert was not able to classify as “prepayment ineligible,” using the data and calculations in his report. The motion for reconsideration was not granted with respect to these properties, which remained subject to summary judgment in favor of the Government.

The information and materials on this web site are provided for general informational purposes only and are not intended to be legal advice. The law changes frequently and varies from jurisdiction to jurisdiction. Being general in nature, the information and materials provided may not apply to any specific factual or legal set of circumstances or both.