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EMINENT DOMAIN - OHIO

State ex rel. AWMS Water Solutions, L.L.C. v. Mertz

Supreme Court of Ohio - December 2, 2020 - N.E.3d - 2020 WL 7213816 - 2020 -Ohio- 5482

Saltwater injection well operator filed petition for writ of mandamus to compel state to commence property-appropriation proceedings, alleging that state's suspension order with respect to one of its two wells effected a governmental total or partial taking of property requiring state to pay it just compensation.

State moved for summary judgment. The Eleventh District Court of Appeals granted the motion. Operator appealed.

On reconsideration, the Supreme Court held that:

- Operator's failure to submit third restart plan did not render its takings claim unripe;
- Fact issues precluded summary judgment on determination that state effected a total regulatory taking;
- State waived its nuisance defense to total takings claim;
- Fact issues precluded summary judgment on economic-impact factor of test for partial takings;
- Fact issues precluded summary judgment on reasonable-backed expectations factor of test for partial takings;
- Character of state's regulation weighed against finding a partial taking.

Saltwater injection well operator's failure to submit third restart plan did not render its takings claim, arising from state's suspension of operation of one of its wells due to potential seismicity problem, unripe for judicial resolution; state suggested that if operator submitted plan that met its standards, then operator would be able to restart operations, but operator had twice tried, and failed, to persuade state to allow it to restart operations at the well, and there was no indication state's standards, if met, would be binding on state, as it could change the standards at any time and create another opportunity to say all that operator had to do was submit another plan.

State's suspension of saltwater injection well for potential seismicity problem could not be characterized as temporary, for purposes of determining analysis of total or partial taking applied in assessing well operator's takings claim arising from state's suspension of operation of one of its wells, where suspension would remain in effect unless and until Department of Natural Resources' Division of Oil and Gas Resources Management decided that operations at the well could be restarted.

Genuine issue of material fact as to whether state's suspension of operations of second of two saltwater injection wells due to potential seismicity problems deprived operator of all economically beneficial use of its leasehold precluded summary judgment determination that state effected a total regulatory taking of operator's property.

State waived its nuisance defense to saltwater injection well operator's total takings claim, arising from state's suspensions of operations at one of two wells due to potential seismicity problems, for

purposes of summary judgment and appeal of that judgment, where, even though its amended answer to the complaint clearly set forth the defense, state supplied no argument regarding whether relevant case law, applied to the facts of the case, justified decision in its favor.

Genuine issue of material fact as to value of operator's investment in the leasehold after state suspended operation on one of operator's two saltwater injection wells due to potential seismicity problem precluded summary judgment determination on economic-impact factor of test for determining whether state's regulation effected a partial taking.

Genuine issues of material fact existed as to whether operator was aware of the potential seismicity problem with its saltwater injection wells and whether operator could have anticipated that state would waver between case-by-case approach and statewide approach to addressing induced seismicity while rebuffing operator's attempt to meet state's regulatory expectations precluded summary judgment on reasonable investment-backed expectations factor for determining whether state's suspension of one of operator's two wells effected a partial taking.

Character of state's suspension of operations at one of two saltwater injection wells was to protect the public's health and safety, weighing against finding that the regulation was a temporary, partial taking of well operator's property, where state did not single out the well for unfair treatment, as well's injection volumes contributed to seismicity in the surrounding area and differed geologically, and was closer in proximity to densely populated areas, than the other well, well's operations posed imminent threat to public safety, and there was no showing that there was extraordinary delay in decisionmaking process with respect to operator's restart plan for the well.