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EMINENT DOMAIN - HAWAII

Bridge Aina Le'a, LLC v. Land Use Commission

**United States Court of Appeals, Ninth Circuit - February 19, 2020 - F.3d - 2020 WL 812918
- 20 Cal. Daily Op. Serv. 1330 - 2020 Daily Journal D.A.R. 1230**

Property owner filed state court action against Hawai'i Land Use Commission, challenging reversion of 1,060 acres of land on island of Hawai'i from urban use classification to prior agricultural use classification, seeking declaratory, injunctive, and monetary relief, and raising federal and state constitutional due process, equal protection, and takings claims.

Following removal, the United States District Court partially granted Commission's motion to dismiss for lack of subject matter jurisdiction and for failure to state claim, subsequently entered judgment for owner on takings claim after jury trial and awarded \$1 in nominal damages and denied Commission's renewed motion for judgment as matter of law. Parties cross-appealed.

The Court of Appeals held that:

- Reversion did not effect regulatory taking under Lucas, 112 S.Ct. 2886;
- Reversion did not effect Penn Central regulatory taking; and
- Prior state court judgment barred owner from re-litigating equal protection issue.

Hawai'i Land Use Commission's reversion of 1,060 acres of land from urban use classification to prior agricultural use classification resulted in owner's land retaining substantial economic value of \$6.36 million in agricultural classification, and thus, reversion did not effect regulatory taking under Lucas, 112 S.Ct. 2886, even though value of land allegedly diminished by 83.4% from \$40 million in urban classification, since retained value of land was neither de minimis nor attributable to noneconomic uses.

Hawai'i Land Use Commission's reversion of 1,060 acres of land from urban use classification to prior agricultural use classification, that allegedly resulted in 83.4% diminution in value from \$40 million in urban classification to \$6.36 million in agricultural classification, did not deprive owner of all economically viable uses of land, and thus, reversion did not effect regulatory taking under Lucas, 112 S.Ct. 2886, since reversion did not prohibit all development or require leaving land in idle state.

Hawai'i Land Use Commission's reversion of 1,060 acres of land from urban use classification to prior agricultural use classification resulted in economic impact on property owner of only 16.8% diminution in value of land even applying 20% rate of return owner hoped to receive on its total investment, thus weighing strongly against Penn Central regulatory taking; owner's claimed damages overstated diminution in value from reversion that lasted only one year from Commission's issuance of reversion order until Hawai'i state circuit court's judgment vacated order.

Hawai'i Land Use Commission's reversion of 1,060 acres of land from urban use classification to prior agricultural use classification did not cause contractual defaults in property owner's land sale agreements, as would have resulted in economic impact to owner to support Penn Central regulatory taking claim, where one contractual default occurred two years before Commission issued reversion

order, and another default occurred several months before reversion order.

Hawai'i Land Use Commission's reversion of 1,060 acres of land from urban use classification to prior agricultural use classification did not meaningfully interfere with any reasonable investment-backed expectations of owner at time it acquired 1,060 acres, thus weighing strongly against finding Penn Central regulatory taking; reversion had only one-year duration, and owner did not expect any profit from its purchase of land unless and until Commission amended order's affordable housing condition, did not expect amendment would translate into immediate profits, and failed to comply with order's conditions that ran with title to land.

Hawai'i Land Use Commission's reversion of 1,060 acres of land from urban use classification to prior agricultural use classification was not of governmental character that established Penn Central regulatory taking, although Hawai'i Supreme Court invalidated reversion order as matter of Hawai'i statutory procedural requirements, since concentrated effect of reversion was reflective of confines of generally applicable Hawai'i law land use reclassification procedure, and Hawai'i Supreme Court found reversion was not arbitrary or unreasonable given that for 22 years landowners made unfulfilled representations to Commission to obtain and maintain urban use classification.

Prior proceeding, in which Hawai'i Supreme Court decided that Hawai'i Land Use Commission did not lack rational basis for treating owner differently than other property developers in violation of owner's equal protection rights in issuing reversion order reclassifying 1,060 acres of owner's land from urban use to prior agricultural use, concerned identical issue to owner's subsequent equal protection challenge in federal district court, in support of determining that owner was barred from re-litigating equal protection issue by alleging in federal court that Commission lacked rational basis to treat owner differently than other developers.