
TAX - NEBRASKA

Continental Resources v. Fair

Supreme Court of Nebraska - August 23, 2024 - N.W.3d - 317 Neb. 391 - 2024 WL 3908797

Tax-certificate holder, which obtained tax deed from county treasurer, brought quiet-title action against property owner. Property owner filed counterclaim and also filed third-party complaint against county and county treasurer in her official capacity, alleging that tax certificate sale process violated property owner's constitutional rights.

Attorney General exercised right to be heard on constitutional claims.

The District Court granted purchaser's motion for summary judgment. Property owner appealed, and the Supreme Court moved case to its own docket. The Supreme Court affirmed.

Property owner petitioned for writ of certiorari to United States Supreme Court. The Supreme Court granted petition, vacated judgment, and remanded to Supreme Court of Nebraska.

On remand, the Supreme Court held that:

- County's issuance of tax deed to purchaser of tax-sale certificate to collect delinquent real property taxes did not constitute taking for private use;
- Property owner had protected interest in property to extent value of property exceeded his tax debt, thereby potentially entitling him to just compensation under Takings Clauses;
- Holder was potentially liable to pay just compensation to property owner; and
- Factual issues precluded summary judgment for holder on owner's claim seeking compensation due to taking.

County's issuance of tax deed to purchaser of tax-sale certificate to collect delinquent real property taxes did not constitute taking for private use violative of either Federal or Nebraska Constitutions, as Nebraska's tax sale certificate process served undoubtedly public purpose of tax collection.

Property owner had protected interest in property to extent that value of the property exceeded his tax debt, thereby potentially entitling him to just compensation under Takings Clauses of Federal and Nebraska Constitutions upon issuance of tax deed to property and certificate holder's pursuit of strict foreclosure option that resulted in owner's loss of equitable title.

Tax certificate holder, rather than county, was potentially liable to pay just compensation to property owner, under Taking Clauses of Federal and Nebraska Constitution, to extent that value of the property exceeded owner's tax debt; holder pursued strict foreclosure option that resulted in owner's loss of equitable title.

Tax certificate holder was potentially liable to pay just compensation to property owner, under Taking Clauses of Federal and Nebraska Constitution, to extent that value of the property exceeded owner's tax debt, despite contention that county took owner's interest in property, and holder merely purchased it via the sale of tax certificate; holder did not purchase a property the county had

already taken, as county did not have authority to take property when it sold certificate but, instead, merely had lien on property in amount of tax debt, such that it lacked power to take “absolute title” to property, and as result of state statutes pertaining to tax deeds, holder obtained right to obtain such a deed and, with it, owner’s equitable interest in property.

Tax certificate holder was potentially liable to pay just compensation to property owner, under Taking Clauses of Federal and Nebraska Constitution, to extent that value of the property exceeded owner’s tax debt, despite contention that county was also potentially liable for because its issuance of tax deed was also essential to loss of protected property interest; county never obtained title to property, and county treasurer was obligated by statute to issue deed to holder.

Genuine issues of material fact as to amount of compensation property owner was owed by tax certificate holder due to issuance of tax deed on property, as well as the amount of equity that existed in property in excess of tax debt, precluded summary judgment for holder on owner’s claim seeking compensation due to taking in violation of Federal and Nebraska Constitutions.

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