

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

Mount Laurel Township v. Stanley (A-103/104-2004)

Argued September 27, 2005 -- Decided November 21, 2005

PER CURIAM.

In this appeal from a judgment in condemnation, the Court is required to consider when action of a condemning authority “substantially affects the use and enjoyment of the property” that triggers the date of valuation under N.J.S.A. 20:3-30(c).

In December 1997, a judgment of repose was entered in litigation challenging the exclusionary zoning of the plaintiff, Mount Laurel Township. The judgment designated lands owned by defendants, Richard and Lucia Stanley, as a future site of low and moderate income housing. Plaintiff did not file a complaint to condemn the property until five years later. During that period, the fair market value of defendants’ property rose significantly due solely to inflationary pressures.

One of the key components in determining what constitutes just compensation for a taking under the Eminent Domain Act of 1971 is the date of valuation of the property. N.J.S.A. 20:3-30 sets forth the temporal hierarchy for determining the date of valuation as the earliest of: (a) the date possession is taken by the condemnor; (b) the date of the filing of the condemnation complaint; (c) the date on which action is taken by the condemnor which substantially affects the use and enjoyment of the property; or (d) the date of the filing of the declaration of blight or, in the case of property maintained as abandoned, the date of expiration of the condemnee’s right to appeal from inclusion of the property on the abandoned property list.

Plaintiff asserts that the case is governed by N.J.S.A. 20:3-30(c), “the date on which action is taken by the condemnor which substantially affects the use and enjoyment of the property by the condemnee. . . .” It argues that under Twp. of West Windsor v. Nierenberg, 150 N.J. 111(1997), the proper date of valuation was December 3, 1997, when the judgment of repose was entered approving plaintiff’s fair share housing plan that included defendants’ property.

Defendants argue that the judgment of repose did not substantially affect their use and enjoyment of the property, because the later increase in value of the property was due solely to inflationary pressures and was not a result of any of plaintiff’s actions, and because they continued to live on, use, and enjoy their property unabated until November 2002. Thus, defendants urge that N.J.S.A. 20:3-30(b) provides the proper standard for determining the date of valuation, specifically, “the date of the commencement of the action.”

On motion, the trial court agreed with plaintiff. It cited to Nierenberg and held that the entry of the judgment of repose constituted a discrete and distinct act of the court confirming plaintiff’s obligation to condemn the property in question.

The Appellate Division reversed and remanded for a new valuation proceeding using instead the May 8, 2002 filing of the complaint in condemnation as the valuation date. The panel explained that a substantial effect upon the use and enjoyment of the property is occasioned when the condemnor takes action that directly and immediately stimulates an upward or downward fluctuation in value which is attributable to future condemnation. It noted that the emphasis in Nierenberg is not that the taking is certain, but rather whether the effect of that certainty causes an increase or decrease in the property’s value such that just compensation requires valuation as of the date of the effect.

The Supreme Court granted certification.

HELD: A property owner's use and enjoyment of the property is substantially affected within the meaning of N.J.S.A. 20:3-30(c) when the condemnor's action directly, unequivocally and immediately stimulates an upward or downward fluctuation in value that is directly attributable to future condemnation.

1. It is undisputed that the increase in the value of the defendants' property from the judgment of repose on December 3, 1997 until the filing of the complaint in condemnation on May 8, 2002 was "caused by inflationary circumstances," and was not the result of any act by plaintiff. Applying the hierarchy of the "earliest" events set forth in N.J.S.A. 20:3-30, the earliest event that defines the proper date of valuation for condemnation was May 8, 2002, the date of the filing of the complaint in condemnation. N.J.S.A. 20:3-30(b). (pp. 9-10)

The judgment of the Appellate Division is **AFFIRMED**.

CHIEF JUSTICE PORITZ and JUSTICES LONG, LaVECCHIA, ALBIN, ZAZZALI, WALLACE, and RIVERA-SOTO join in this opinion.

MOUNT LAUREL TOWNSHIP,

Plaintiff-Petitioner,

and

SOUTHERN BURLINGTON COUNTY
NAACP, CAMDEN COUNTY C.O.R.E,
CAMDEN COUNTY NAACP, ETHEL
LAWRENCE, THOMASINE LAWRENCE,
CATHERINE STILL, MARY E.
SMITH, SHIRLEY MORRIS,
JACQUELINE CURTIS, GLADYS
CLARK, BETTY WEAL, and ANGEL
PEREZ, on behalf of
themselves and others
similarly situated,

Plaintiffs/Intervenors-
Petitioners,

v.

RICHARD L. STANLEY AND LUCIA
STANLEY, his wife,

Defendants-Respondents.

and

HUDSON CITY SAVINGS BANK, and
McCURDY & RISKIN, P.A.,

Defendants.

Argued September 27, 2005 - Decided November 21, 2005

On certification to the Superior Court,
Appellate Division.

Kevin D. Walsh and Michael L. Mouber argued the cause for appellants Kevin D. Walsh, attorney for Southern Burlington County NAACP, Camden County C.O.R.E., Camden County NAACP, Ethel Lawrence, Thomasine Lawrence, Catherine Still, Mary E. Smith, Shirley Morris, Jacqueline Curtis, Gladys Clark, Betty Weal and Angel Perez and Michael L. Mouber, attorney for Mount Laurel Township; Mr. Walsh and Peter J. O'Connor, on the joint briefs).

Wendy F. Klein argued the cause for respondents (Cole, Schotz, Meisel, Forman & Leonard, attorneys; Thomas J. LaConte, of counsel; Ms Klein and Mr. LaConte, on the brief).

PER CURIAM.

Our State Constitution specifically provides that "[p]rivate property shall not be taken for public use without just compensation," N.J. Const. art. I, ¶ 20. That limitation on governmental power mirrors the restrictions present in the Fifth Amendment to the Federal Constitution: "[N]or shall private property be taken for public use without just compensation." U.S. Const. amend V. The procedural protections required to implement those constitutional mandates are set forth in the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 to -50. Thus, if a public or private entity seeks to condemn private property for a public purpose under the power of eminent domain, Section 29 of the Act, N.J.S.A. 20:3-29, makes clear that the owner of the private property being condemned -- the

condemnee -- "shall be entitled to compensation for the property and damages, if any, to any remaining property. . . ."

One of the key components in determining what constitutes just compensation in exchange for an eminent domain taking is the date of valuation of the private property subject to condemnation. Section 30 of the Act, N.J.S.A. 20:3-30, establishes four alternatives for determining the date at which just compensation for the condemned property is to be determined. Three describe readily and easily ascertainable events: (1) the date possession is taken by the condemnor, (2) the date of the filing of a condemnation complaint, or (3) the date of the filing of a declaration of blight or the expiration of the appeal period for removal of a designation of abandoned property. This appeal requires that we define and give context to the remaining alternative: "the date on which action is taken by the condemnor which substantially affects the use and enjoyment of the property by the condemnee. . . ." N.J.S.A. 20:3-30(c). More narrowly, this appeal requires that we address what the Legislature meant by the term "use and enjoyment" in the context of N.J.S.A. 20:3-30(c).

We hold that, consistent with Twp. of West Windsor v. Nierenberg, 150 N.J. 111 (1997), the question whether a property owner's "use and enjoyment" have been "substantially affect[ed]" requires a determination as to what effect, if any, the actions

of the condemnor, either directly or indirectly, had on the value of the property subject to condemnation. If the actions of the condemnor substantially affected the value of the condemnee's property and those actions precede any of the other triggering events listed in N.J.S.A. 20:3-30, then the date of those events shall be the date of valuation for just compensation purposes.

I.

A.

Almost five years after a judgment of repose¹ was entered concerning the home and adjoining farmland owned by defendants Richard and Lucia Stanley (Stanley), plaintiff Mount Laurel Township² (Township) filed its complaint in condemnation. During that same period, the fair market value of the Stanleys'

¹ This case arises from the Township's efforts to implement its obligations under Southern Burlington County NAACP v. Mount Laurel Twp., 67 N.J. 151, cert. denied and appeal dismissed, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975) (Mount Laurel I), and Southern Burlington County NAACP v. Twp. of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II), which prohibit the use of a municipality's zoning power to exclude low and moderate income housing and, instead, affirmatively require that municipalities provide, by land use regulation, realistic opportunity for low and moderate income housing.

² Intervenor status was granted to several individuals as well as to certain public interest advocacy organizations that seek to vindicate the purposes of Mount Laurel I and Mount Laurel II. Both the Township and the intervenors were granted certification, 183 N.J. 215 (2005), advance the same arguments, and seek the same relief; for brevity's sake, reference is made solely to the Township.

property rose significantly due solely to inflationary pressures. N.J.S.A. 20:3-30 sets forth a temporal hierarchy for determining the date of valuation of a property subject to condemnation:

Just compensation shall be determined as of the date of the earliest of the following events: (a) the date possession of the property being condemned is taken by the condemnor in whole or in part; (b) the date of the commencement of the action; (c) the date on which action is taken by the condemnor which substantially affects the use and enjoyment of the property by the condemnee; or (d) the date of the declaration of blight by the governing body . . . or, in the case of a property being maintained as an abandoned property for failure to remove the property from the abandoned property list, . . . the date of expiration of the condemnee's right to appeal inclusion of the property on the abandoned property list.

[(emphasis supplied.)]

Of these statutory alternatives, we must determine which applies, and thus which is the proper valuation date for the property subject to condemnation.

B.

The Township asserts that this case is governed by N.J.S.A. 20:3-30(c), which provides that "[j]ust compensation shall be determined as of the date of the earliest of the following events: . . . the date on which action is taken by the condemnor which substantially affects the use and enjoyment of

the property by the condemnee. . . ." According to the Township, under Twp. of West Windsor v. Nierenberg, 150 N.J. 111 (1997), the proper date of valuation of the property owned and occupied by the Stanleys is December 3, 1997, when a judgment of repose was entered approving the Township's fair share housing plan that included the Stanleys' property. The Stanleys, on the other hand, argue that the judgment of repose did not substantially affect their use and enjoyment of the property, because the later increase in value of their property was due solely to inflationary pressures and was not a result of any of the Township's actions as condemnor, and because they continued to live on, use, and enjoy their property unabated until November 2002. Thus, the Stanleys urge that N.J.S.A. 20:3-30(b) provides the proper standard for determining the date of valuation, specifically, "the date of the commencement of the action." The action in condemnation was not filed by the Township until May 8, 2002. The Stanleys assert, therefore, that that date, and not the December 3, 1997 date of the judgment of repose, is the proper valuation date.

On motion, the trial court agreed with the Township. Finding that the material facts in this case were not disputed, the trial court concluded that Nierenberg, supra, "is . . . factually indistinguishable from [this] case," and held that

the date of valuation must be December 3, 1997, the date of the Judgment of Repose which clearly and unmistakably identified the Stanley property as a property to be acquired by the Township of Mount Laurel to be thereafter immediately conveyed to FSHD [Fair Share Housing Development, the intervenors' designated non-profit developer] for a 180 unit senior citizen project to partially satisfy the Township's Mt. Laurel obligation to provide low and moderate income housing. The entry of the Judgment of Repose constituted a discernable, [discrete] and distinct act by the court confirming the Township's obligation to condemn the property in question.

Addressing the Stanleys' claim that their continued use and enjoyment were not "substantially affect[ed]" by the December 3, 1997 judgment of repose, the trial court concluded that

It is evident that a landowner will have some use and enjoyment of the property sought to be taken until possession is yielded to the condemning authority. However, some use and enjoyment of the property is inconsistent with unfettered ownership with all of its attendant rights to sell, rent, develop, subdivide or simply give the property away.

The Appellate Division reversed and remanded for a new valuation proceeding using instead the May 8, 2002 filing of the complaint in condemnation as the valuation date. The panel underscored that, under Nierenberg, "one of the objectives of subsection (c) [of N.J.S.A. 20:3-30] is to protect the condemnee from a diminution in value resulting from 'the cloud of condemnation' being placed on the property by a potential

condemnor; another objective is to insulate the condemnor from 'the ravages of an inflationary spiral.'" Supra, 150 N.J. at 129 (quoting New Jersey Sports & Exposition Auth. v. Giant Realty Assoc., 143 N.J. Super. 338, 348 (Law Div. 1976)). Explaining the contours of N.J.S.A. 20:3-30(c) -- that the "action [] taken by the condemnor [] substantially affect[] the use and enjoyment of the property by the condemnee" -- the Appellate Division again relied on Nierenberg: "A substantial effect upon the use and enjoyment of property is occasioned when the condemnor takes action which directly, unequivocally and immediately stimulates an upward or downward fluctuation in value and which is directly attributable to future condemnation." Id. at 129-30 (quoting New Jersey Sports & Exposition Auth. v. Giant Realty Assoc., supra, 143 N.J. Super. at 353). The Appellate Division noted that

the emphasis in Nierenberg is not that the taking is certain, but rather whether the effect of that certainty causes an increase or decrease in the property's value such that just compensation requires valuation as of the date of that effect. The focus is on an "action which directly, unequivocally and immediately stimulates an upward or downward fluctuation in value and which is directly attributable to future condemnation." Tp. of West Windsor v. Nierenberg, supra, 150 N.J. at 129-30 (quoting New Jersey Sports & Exposition Auth. v. Giant Realty Assoc., supra, 143 N.J. Super. at 353). It is only under those circumstances that subsection (c) represents just compensation.

For the reasons that follow, we affirm the judgment of the Appellate Division.

II.

Hewing to the mandate of Twp. of West Windsor v. Nierenberg, 150 N.J. 111 (1997), the Appellate Division focused on any change in value to the Stanleys' property attributable to the Township's actions and concluded that the filing of the judgment of repose on December 3, 1997 did not "directly, unequivocally and immediately stimulate[] an upward or downward fluctuation in value [] which is directly attributable to a future condemnation." We agree. In the panel's terms, it is "undisputed" that the increase in the value of the Stanleys' property from the entry of the judgment of repose on December 3, 1997 until the filing of the complaint in condemnation on May 8, 2002 was "caused by inflationary circumstances," and was not the result of any act by the condemnor. Therefore, because the December 3, 1997 judgment of repose did not "directly, unequivocally and immediately stimulate[] an upward or downward fluctuation in value [] which is directly attributable to future condemnation," the trial court erred when it applied N.J.S.A. 20:3-30(c) -- the date on which the "action [] taken by the condemnor [] substantially affects the use and enjoyment of the property by the condemnee" -- in determining the proper

valuation date.³ The value of the Stanleys' property admittedly was not affected by the Township's actions. Therefore, we must apply the hierarchy of "earliest" events set forth in N.J.S.A. 20:3-30. That application discloses that the "earliest" event that defines the proper date of valuation for condemnation was May 8, 2002, the date of the filing of the complaint in condemnation or, in the words of the controlling statute, "the date of the commencement of the action." N.J.S.A. 20:3-30(b).⁴

III.

The judgment of the Appellate Division is affirmed.

³ Although the language used in inverse condemnation cases may appear similar, the theme of N.J.S.A. 20:3-30(c) -- the date on which the "action [] taken by the condemnor [] substantially affects the use and enjoyment of the property by the condemnee" -- must be distinguished from the benchmark for a taking in inverse condemnation proceedings. Casino Reinv. Dev. Auth. v. Hauck, 317 N.J. Super. 584, 592 (App. Div. 1999) ("[T]he standard for fixing the valuation date as set forth in N.J.S.A. 20:3-30(c) is not nearly as rigorous as that applicable to claims of inverse condemnation."), aff'd, 162 N.J. 576 (2000) (per curiam); Washington Mkt. Enter., Inc. v. Trenton, 68 N.J. 107, 123 (1975) ("[T]he plaintiff [in an inverse condemnation action] will be required to show that there has been a substantial destruction of the value of its property and that defendant's activities have been a substantial factor in bringing this about.").

⁴ Because we have determined that the value of the Stanleys' property was not "substantially affect[ed]" as required to trigger N.J.S.A. 20:3-30(c) and that the proper date for valuation was the date of the filing of the condemnation complaint under N.J.S.A. 20:3-30(b), we need not and do not address whether, other than in respect of its value, the Stanleys' "use and enjoyment" of their property was "substantially affect[ed]" by the entry of the judgment of repose.

SUPREME COURT OF NEW JERSEY

NO. A-103/104

SEPTEMBER TERM 2004

ON CERTIFICATION TO Appellate Division, Superior Court

MOUNT LAUREL TOWNSHIP,

Plaintiff-Petitioner,

and

SOUTHERN BURLINGTON COUNTY NAACP,
CAMDEN COUNTY C.O.R.E., CAMDEN COUNTY
NAACP, ETHEL LAWRENCE, THOMASINE LAWRENCE,
CATHERINE STILL, MARY E. SMITH, SHIRLEY
MORRIS, JACQUELINE CURTIS, GLADYS CLARK,
BETTY WEAL, and ANGEL PEREZ, on behalf of
themselves and others similarly situated,

Plaintiffs/Intervenors-Petitioners,

v.

RICHARD L. STANLEY AND
LUCIA STANLEY, his wife,

Defendants-Respondents.

and

HUDSON CITY SAVINGS BANK, and
McCURDY & RISKIN, P.A.,

Defendants.

DECIDED November 21, 2005

Chief Justice Poritz

PRESIDING

OPINION BY Per Curiam

CONCURRING/DISSENTING OPINIONS BY _____

DISSENTING OPINION BY _____

CHECKLIST	AFFIRM		
CHIEF JUSTICE PORITZ	X		
JUSTICE LONG	X		
JUSTICE LaVECCHIA	X		
JUSTICE ZAZZALI	X		
JUSTICE ALBIN	X		
JUSTICE WALLACE	X		
JUSTICE RIVERA-SOTO	X		
TOTALS	7		