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Mountain Pure (Petitioner) v. NTVGCD (Respondent)
Summary of Arguments

Background

Mountain Pure TX, LLC, (“Mountain Pure”) owns and operates a water bottling plant in Palestine, Anderson County, Texas. The water is recovered from an excavated spring that Neches and Trinity Valley Groundwater Conservation District (“NTVGCD”) argues is a well requiring a permit. NTVGCD notified Mountain Pure and their water bottling company tenant of the permit requirement and the possible civil penalties for failure to comply. Neither company applied for the permit so NTVGCD filed suit against both entities. The tenant then canceled the lease and abandoned the property. In answer to the suit, Mountain Pure filed a counter-claim against NTVGCD claiming had tortuously interfered with the contract with the tenant and later amended the counter claim to include a “takings” claim based on the loss of the tenant’s contract. NTVGCD filed a plea to the jurisdiction as to both claims; the trial court granted the pleas as to the tortuous interference claim and denied the plea on the takings claim. NTVGCD filed an interlocutory appeal on the denial of the plea on the takings claim.

Petitioner’s Argument:

Mountain Pure claims the following actions resulted in an uncompensated taking of private property:

1. The suit filed by NTVGCD caused the tenant to abandon the property and terminate the lease/purchase agreement.
2. The requirement to obtain a permit to produce the “spring water” is an unreasonable restriction on the use of the property. They further argue that the permit requirement “exceeds the scope of authority” of the District.

The petition attempts to equate the District’s decision to file suit with a city’s decision to issue a stop-work order and rescind a previously granted permit to drill for natural gas. They also argue the appellate courts have provided conflicting interpretations of Supreme Court case law that should be addressed in this case.

District’s argument:

The District argues that Mountain Pure failed to make a viable takings claim because they didn’t allege either a physical invasion nor did they allege a regulatory taking. They also pointed out that Mountain Pure did not allege any loss of value or investment-backed expectations. The District pointed out the differences between filing an enforcement action and issuing a stop-work order or rescinding a permit. Finally, the District argues that Mountain Pure failed to present any facts to support its allegation that the District took some action (other than filing an enforcement suit) nor were any facts presented on how an action of the District interfered with Mountain Pure’s use of its property.

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Recommendation:

This case could potentially set a bad precedent for groundwater conservation districts across the State. Should Mountain Pure prevail, future enforcement actions up to and including sending a single enforcement letter could possibly subject the District to a takings claim. An amicus curiae brief in support of NTVGCD should address two points:

- 1) Filing an enforcement suit is not the same as taking specific action such as issuing a stop-work order or denying a permit; and
- 2) The perceived differences in appellate court interpretations of recent Supreme Court cases are based on different sets of facts, not misinterpretation of the law.

The facts in this case do not warrant review by the Supreme Court and the 12th Court of Appeals opinion should be upheld.

The brief does not need to address the underlying dispute of whether an improved spring is a well that requires an operating permit. The issue has not been addressed by the lower court and is not at issue in the current petition to the Supreme Court.