



How One Misstep Resulted in a \$2.5 Million Lesson

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Every so often, a decision comes out that makes you stop for a second and take a breath. Generally, these decisions have two essential components: (1) they deal with a statute of limitations; and (2) they involve millions of dollars. The recent decision issued by the California Court of Appeal in *Honchariw v. County of Stanislaus* had both of these elements, and it certainly made us take a breath, as the Court affirmed the dismissal of an alleged \$2.5 million inverse claim because of a failure to comply with a 90-day statute of limitations.

The Facts

In order to facilitate the subdivision of a 33.7-acre parcel in Stanislaus County, the developer submitted a vesting tentative map application to the County. In 2009, after the County denied the application, the developer filed a timely petition for writ of mandate alleging that the County's denial failed to adhere to a specific requirement in the Government Code obligating the County to make certain findings necessary to support the denial. The petition did not allege that the County's denial resulted in an unconstitutional taking.

In 2011, the Court of Appeal held that the County had indeed failed to make the necessary findings, and it ordered the Superior Court to issue a writ of mandate. In 2012, pursuant to the writ, the County held another hearing on the application, this time approving the vesting tentative map.

The developer then filed a complaint against the County alleging that the initial wrongful denial resulted in a compensable temporary taking and violated his right to substantive due process. In 2013, the Superior Court sustained a demurrer without leave to amend, holding that the developer's claims were barred by the 90-day statute of limitations in Government Code section 66499.37. The developer appealed.

The Court of Appeal Decision

Ordinarily, when challenging a local agency decision, the plaintiff must pursue all available causes of action

at one time. The failure to follow this practice is referred to as "claim splitting," and the result is generally a waiver of all claims that were not asserted in the original action. In *Hensler v. City of Glendale* (1994) 8 Cal.4th, however, the California Supreme Court authorized a particular type of claim splitting for claims for damages caused by an unconstitutional taking.

In *Honchariw*, the developer argued that it had complied with the procedure laid out in *Hensler*, because *Hensler* authorized a subsequent takings claim if the original action resulted in a petition for writ of mandate reversing an agency decision. The Court rejected this interpretation of *Hensler*, finding that the *Hensler* procedure is available only if the original action resulted in a "*judgment establishing that there has been a compensable taking of the plaintiff's land.*" In other words, the mere fact that the developer's original action resulted in the issuance of a writ was not enough to avoid the general waiver associated with claim splitting.

In support of its decision, the *Honchariw* Court first explained that Government Code section 66499.37 requires that all applicable subdivision claims be filed and served within 90 days, "even [a claim] which does not expressly attack the validity of the ordinance or its application, and seeks only compensation for an alleged taking" Thus, unless the developer complied with the *Hensler* procedure, his claims would be barred by the statute of limitations.

Next, the Court explained that in *Hensler* "the Supreme Court stated that the exception to the statute of limitations applies only if the plaintiff in the inverse condemnation action 'alleges the existence of a final judgment establishing that there has been a compensable taking of the plaintiffs land.'" The Court thus concluded that under *Hensler*, a claim for damages caused by an unconstitutional taking can be alleged in a subsequent action only where the original action results in a "mandamus judgment or order establish[ing] an unconstitutional taking or due process violation."

Applying this rule to facts before it, the Court found that the developer had failed to comply with the *Hensler* procedure, because the original petition for writ of mandate did not allege an unconstitutional taking or due process violation; instead, it merely alleged the failure to comply with the finding requirement in the Government Code. Accordingly, the Court affirmed the dismissal of an alleged \$2.5 million temporary takings claim.

Takeaway

If you are challenging a local agency action via a petition for writ of mandate, and you plan to pursue a takings claim in the future, the takings claim should always be alleged with the petition for writ of mandate. Otherwise, you might just have to learn a \$2.5 million lesson.