

## Takings Claim Unripe Where Property Owner Knowingly Failed to Seek Exemption from City Requirements



*del v. City*

The City

of San Francisco allows conversion of property owned as a tenancy-in-common to condominium ownership on condition that the owner agree to offer any existing tenants lifetime leases in units within the converted property. Plaintiffs purchased an interest in a tenancy-in-common property and rented their portion of the property to a tenant. When they later applied to convert their property to condominium ownership, plaintiffs initially agreed to offer their tenant a lifetime lease as a condition of receiving final conversion approval from the City. In November 2016, they signed an agreement with the City committing to offer the lifetime lease and specifically "covenant[ed] and agree[d] that [they] w[ould] not seek a waiver of the provisions of the [applicable ordinance] after that stage of the approval process." In exchange, plaintiffs sought and received a partial refund of the permit conversion application fee. Plaintiffs' final conversion map was approved in December 2016. Six months later, they requested that the City either not require them to execute the lifetime lease or compensate them for the value of the lease interest. When the City refused to do either, plaintiffs sued, contending that the lifetime lease requirement violated the Takings Clause of the Fifth Amendment. Under these circumstances, the Ninth Circuit held, plaintiff's takings claim was unripe because they had not obtained a final decision regarding application of the lifetime lease requirement to their property. The court acknowledged that part of the decision imposing the finality requirement — *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*,

473 U.S. 172 (1985) — had recently been overruled by the Supreme Court in *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019). However, it observed that the finality requirement overruled in *Knick* pertained to seeking just compensation in state court. By contrast, the principle in *Williamson County* that prohibited a plaintiff from filing suit "until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue" was left untouched in *Knick* and hence remained good law. Under this principle, plaintiffs' claim was unripe because they had not timely sought an exemption from the lifetime lease requirement for their property. The court noted that plaintiffs could have sought an exemption at any time up to or during the public hearing on their conversion application before the Director of Public Works. The tentative conversion map itself included a promise to extend lifetime leases to existing tenants without noting any objection from plaintiffs to that condition. Plaintiffs could also have objected to the lease requirement by appealing the Director's decision to the Board of Supervisors. Instead, they let each opportunity to object to the lease requirement lapse and only after they had obtained final approval of the conversion made the request that the City waive the requirement or compensate them for the value of the lease. Additionally, the court found that plaintiffs had knowingly waived their right to seek a post-approval exemption from the lifetime lease requirement by signing an agreement with that express waiver and accepting a partial refund of the application fee—a refund only available to property owners who offered lifetime leases to their tenants. It was not until six months after plaintiffs had obtained final approval of their conversion map that they finally asked for the waiver or compensation. Allowing a takings claim to proceed under these circumstances, the court said, would undermine the core purposes of the finality requirement by eliminating local officials' opportunities to exercise discretion and by presenting federal courts with ill-defined controversies.

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