Report on Public Policy Position

Name of section:
Real Property Law Section

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Regarding:
Amicus Brief for Agripost, LLC vs. Miami-Dade County, Florida

Date position was adopted:
November 5, 2008

Process used to take the ideological position:
Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:
18

Number who voted in favor and opposed to the position:
16 Voted for position
0 Voted against position
2 Did not vote

Position:
Support

Explanation of the position, including any recommended amendments:
Agripost, LLC v Miami-Dade County, Florida. (United States Supreme Court Writ of Certiorari sought to appeal decision of United States Court of Appeals, Eleventh Circuit Case No. 05-16499 dated April 22, 2008, DC Docket No. 04-CV-21743).

The case involves an inverse condemnation action and the application of the ripeness doctrine in light of the US Supreme Court's decision in Williamson County Regional Planning Commission v Hamilton Bank of Johnson City, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed. 126 (1985)

The Section supports the petition filed with the U.S. Supreme Court seeking review of an 11th Circuit decision, Agripost v Miami Dade County. Agripost typifies the procedural quagmire that arose from the Court's decision in Williamson County Regional Planning Commission v Hamilton Bank. In Williamson, the Court held that a property

owner could not file a federal taking claim in federal court without first seeking just compensation through available state procedures.

Although Williamson suggests that the landowner can return to federal court upon ripening its federal claims, in practice, Williamson instead has barred property owners from asserting a federal takings claim not only in federal court, but also in a state judicial forum. The Williamson court apparently did not foresee that the process of ripening a federal takings claim by seeking compensation in state court leads to its extinguishment.

The property owner first seeks compensation in the state proceeding. If compensation is denied, the plaintiff then brings a claim that the state has taken its property without compensation in violation of the Fifth Amendment, giving rise to a claim under 42 USC § 1983. By application of issue and claim preclusion, the Rooker-Feldman doctrine, and the full faith and credit clause of the United States Constitution, however, the federal courts then dismiss the federal constitutional claim.

Moreover, the Michigan Supreme Court has held that Williamson also bars a landowner from litigating a federal taking claim in state court without first litigating an inverse condemnation action under the state constitution. The property owner has no forum then in which to assert a violation of the Fifth Amendment.

On the other hand, in City of Chicago v Int'l College of Surgeons, the Court, without any mention of Williamson, held that a government defendant not only could remove a § 1983 case that contained a taking claim to federal court, but the federal court also could exercise supplemental jurisdiction over a state administrative proceeding. Following that holding, when a landowner has dutifully filed in Michigan state court to satisfy the Williamson ripeness rules, local government attorneys may remove the case to federal court, only to then file a motion to dismiss the claims for failure of the landowner to pursue a state compensation remedy. In more than one case, the federal district court has found that the government has the right to remove, and the court has no choice but to dismiss the claims for lack of ripeness.

In 2005, the protracted procedural nightmare in San Remo Hotel v San Francisco, which arose from the application of Williamson, moved Justice Rehnquist to write a concurring opinion questioning the soundness of Williamson and suggesting the need to revisit its holding in a future case; the plaintiffs in San Remo had not challenged Williamson.

Williamson has adversely affected Michigan landowners in many ways. First, Michigan litigants have been hurt by losing a federal forum for their constitutionally-based land use claims. There is no principled reason to deny landowners a federal forum to vindicate federal constitutional rights in a forum that could provide respite from local political pressure, which may play a role in land use cases. The purpose of federal courts, in part, is to provide a more neutral forum in which litigants may vindicate federal rights.

Second, the use of Williamson and Chicago Surgeons to remove and then dismiss cases from federal court appears unique to Michigan land use cases. We have found few similar cases in other parts of the country. For this reason, Michigan real property attorneys can give the Court a unique perspective on the impact of Williamson on litigation tactics, which Williamson has fostered.

The Section in the past has authorized amicus briefs in the Michigan Court of Appeals on ripeness issues. See, e.g., Hendee v Putnam Township, Paragon Properties v Novi, 452 Mich 568, 576; 550 NW2d 900 (1996). While the

Agripost case does not directly involve Michigan property or Michigan litigants, the Williams County case which is at the heart of the ripeness issue, directly effects Michigan takings litigation.

As the Agripost decision evidences, the Williamson ripeness rule has forced property owners who seek to vindicate their property rights protected by the Constitution of the United States by challenging invalid zoning regulations, through a maze which terminates in a dead end. This is especially true in Michigan. Williamson has sown confusion. One test of the efficacy of an appellate decision, whether one agrees with the ruling or not, is, does it resolve more problems than it creates? Williamson falls far short of meeting that test.