

Pakdel v. City and County of San Francisco—Divided Ninth Circuit panel declines to exercise discretion to excuse noncompliance with *Williamson County* finality requirement

Last Term, a five-Justice majority of the United States Supreme Court held that a “property owner has suffered a violation of his Fifth Amendment rights when the government takes his property without just compensation[] and therefore may bring his claim in federal court under [42 U.S.C.] § 1983 at that time.” *Knick v. Township of Scott, Pa.*, 139 S. Ct. 2162 (2019). The majority thus eliminated what it characterized as a judicial “Catch 22”—i.e., a litigant “cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court.” The Court therefore overruled *Williamson County Regional Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), to the extent that it imposed a “state-litigation requirement” for federal court taking actions. The Court, however, did not overrule *Williamson County*’s rule that a taking claim does not prudentially ripen until the governmental actor has finally denied compensation. The distinction between state remedy exhaustion eliminated by *Knick* and the need for finality still adhering under *Williamson County* was the focus the Ninth Circuit’s divided panel opinion in *Pakdel v. City and County of San Francisco*, ___ F.3d ___, 2020 WL 1270732 (9th Cir. Mar. 17, 2020). Given the dissent and the issue’s general importance to local governments, this litigation warrants monitoring even though § 1983 does not extend to States and their agencies. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58 (1989) (State agency lacks “person” status under § 1983.).

The City of San Francisco established an Expedited Conversion Program in 2013 under which multi-unit buildings held by persons as tenants-in-common are converted to condominiums. One condition of conversion requires co-owners to offer any tenant a lifetime lease. Here, the plaintiffs engaged in the conversion process but “at the eleventh hour, they balked” by “[r]efusing to execute the lifetime lease they had offered to their tenant.” They “instead sued the City, contending under various theories that the lifetime lease requirement violates the Takings Clause of the Fifth Amendment.” The district court granted the City’s motion to dismiss as to taking and several other constitutional claims, reasoning as to the former that the plaintiffs had failed to exhaust their state remedies. *Pakdel v. City and County of San Francisco*, No. 17-cv-03638-RS, 2017 WL 6403074 (N.D. Cal. Nov. 20, 2017).

A majority of a Ninth Circuit panel affirmed the judgment as to dismissal of the taking claim. Recognizing that the intervening *Knick* had removed the stated basis for the district court’s decision, the majority entertained the City’s contention “that Plaintiffs’ takings claim is unripe under the first *Williamson County* requirement, which prohibits 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.’” It agreed:

Plaintiffs do not dispute that they gave no indication of any reservations about the Lifetime Lease Requirement despite having had these opportunities to request an exemption. To the contrary, after allowing each objection period to lapse, they forged ahead with the conversion process and entered into a written agreement with the City to provide a lifetime lease to their tenant, in which they expressly waived their right to thereafter seek an exemption from the Lifetime Lease Requirement. Plaintiffs also applied for and received from the City a partial refund of the ECP 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, and seven months after they had committed to offering a lifetime lease in exchange for the benefits of conversion, that they finally asked “the City not [to] require them to execute and record the lifetime lease.”

The majority rejected the dissent’s assertion “that Plaintiffs’ belated attempts to request an exemption satisfied the finality requirement” on waiver grounds, observing that “[t]akings plaintiffs cannot make an end run around the finality requirement by sitting on their hands until every applicable deadline has expired before lodging a token exemption request that they know the relevant agency can no longer grant.” It later added that “[b]y allowing property owners to bypass state and local governments’ processes for making land use decisions, the dissent’s approach would subvert principles of comity and federalism.” The majority also declined to exercise its discretion to excuse the finality requirement for several reasons, including (1) “there are no concerns in this case about different claims proceeding simultaneously in state and federal court[;]” (2) “the City here raised the ripeness issue at the first opportunity[;]” and (3) the merits of the plaintiffs’ taking claim was not before the panel unlike in the lead circuit opinion, *Guggenheim v. City of Goleta*, 638 F.3d 1111 (9th Cir. 2010) (en banc), where the court exercised such discretion because “it would [have been] a waste of the parties’ and the courts’ resources to bounce the case through more rounds of litigation.”

The dissent reasoned that “[t]he majority dismisses the City’s rejection of the Plaintiffs’ requests to be excused from the lifetime lease requirement and the unavoidable conclusion that this was a final decision by the City, because the majority finds the Plaintiffs’ requests were ‘untimely and expressly waived.’” But in its view, “such a holding is a merits ruling, rather than one about ripeness. The proper venue for evaluating, in the first instance, whether the Plaintiffs’ claim may be defeated by waiver, equitable estoppel, or any other defense is in the district court on remand.” The dissent further argued that “[t]he majority ignores the Plaintiffs’ requests for variances from the lifetime lease requirement because of when they were made, and elevates adherence to administrative procedure above the question of whether the City has reached a final decision.”

In a separate nonpublished memorandum, the panel rejected the plaintiffs’ Fourth Amendment, substantive due process and equal protection claims. *Pakdel v. City and County of San Francisco*, ___ Fed. App’x ___, 2020 WL 1278313 (9th Cir. Mar. 17, 2020).

Decision link (published opinion)

<https://cdn.ca9.uscourts.gov/datastore/opinions/2020/03/17/17-17504.pdf>

Decision link (nonpublished memorandum)

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