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Ninth Circuit Finds Substantive Due Process Claims Aren't Always Subsumed by Takings Clause

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In 1996, the Ninth Circuit ruled in *Armendariz v. Penman*, 75 F3d 1311 (9th Cir 1996), that substantive due process claims arising from land use permit applications were “subsumed” by the takings clause. The import of *Armendariz* was to effectively preclude substantive due process claims where a land use decision did not effect a taking. In 2005, however, the United States Supreme Court in *Lingle v. Chevron U.S.A., Inc.*, 544 US 528, 125 S Ct 2074, 161 L Ed2d 876 (2005), found that a land owner’s challenge to a regulation that does not substantially advance legitimate interests invokes due process, not necessarily the takings clause. The Ninth Circuit in *CrownPointDevelopment, Inc. v. City of Sun Valley*, 506 F3d 851, 855 (9th Cir 2007), acknowledged *Lingle* “pulls the rug out from under our rationale [in *Armendariz*] for totally precluding substantive due process claims based on arbitrary or unreasonable conduct.”

CrownPoint involved a multi-phase development in Sun Valley, Idaho. In the initial approval for the project, Sun Valley required CrownPoint to build 39 units overall in an anticipated five phases to meet minimum density requirements. Sun Valley later required CrownPoint to reduce the number of units planned for the fourth phase of the project, which, in turn, meant that the fifth and final phase contained more units than originally anticipated to meet the

overall 39-unit total. The Sun Valley Planning Commission approved the fifth phase, but, following an objection by one of the current residents and the homeowners association to the increased units in the fifth phase, the Sun Valley City Council denied the application for that final phase notwithstanding the fact that CrownPoint had simply been doing what Sun Valley had required it to do. Litigation followed, including a federal civil rights claim under 42 USC § 1983. In the federal case, CrownPoint alleged a single substantive due process claim based on Sun Valley's shifting positions. The district court dismissed, citing *Armendariz*. CrownPoint appealed, citing *Lingle*. The Ninth Circuit, acknowledging the impact of the Supreme Court's intervening decision in *Lingle*, reversed and remanded.

In doing so, the Ninth Circuit traced both the origins of *Armendariz* and *Lingle*'s subsequent impact on *Armendariz*. Noting *Lingle* and another post-*Armendariz* Supreme Court decision, *County of Sacramento v. Lewis*, 523 US 833, 118 S Ct 1708, 140 L Ed2d 1043 (1998), the Ninth Circuit found that, as applied to land use regulations, "the Fifth Amendment would preclude a due process challenge only if the alleged conduct is actually covered by the Takings Clause." 506 F3d at 855. Because the Ninth Circuit had *CrownPoint* on appeal from a motion to dismiss (*i.e.*, on the initial pleadings rather than a factually developed summary judgment or trial record), it remanded to the trial court—

allowing the case to go forward but expressing no further view on the specific factual merits of the claim alleged.

ABOUT THE AUTHOR

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