

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

JACK W. LAWSON and MARY ANN)	
LAWSON,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. N14C-01-020 MMJ
)	
STATE OF DELAWARE,)	
DEPARTMENT OF)	
TRANSPORTATION, and SHAILEN P.)	
BHATT,)	
)	
Defendants.)	

Submitted: May 5, 2014
Decided: June 11, 2014

Upon Defendant Shailen P. Bhatt’s Motion to Dismiss or, in the Alternative,
Motion to Stay Count II of Amended Complaint
GRANTED IN PART, DENIED IN PART

ORDER

Richard L. Abbott, Esquire (Argued), Abbott Law Firm, Attorney for Plaintiffs

Gregory B. Williams, Esquire (Argued), Wali W. Rushdan II, Esquire, Fox Rothschild LLP, Attorneys for Defendants

JOHNSTON, J.

FACTUAL AND PROCEDURAL CONTEXT

Plaintiffs Jack W. Lawson and Mary Ann Lawson are Delaware residents who own 10 acres of property in Middletown, Delaware. On January 12, 2012, Delaware Department of Transportation (“DelDOT”) originated a condemnation action to take approximately 1.5 acres in fee simple and 0.1435 acres as a temporary construction easement. In May 2012, DelDOT obtained an Order of Possession granting it access to the Lawson’s property. The Lawsons immediately appealed. The Lawsons filed a Motion to Stay the Order of Possession, which the Superior Court granted on April 15, 2013. On July 22, 2013, the Delaware Supreme Court issued an Order reversing and remanding the Order of Possession.

While the Order of Possession was in place, DelDOT relocated one electric utility service pole.

On January 4, 2013, the Lawsons filed a complaint in the Delaware Superior Court asserting two claims: (I) inverse condemnation; and (II) a civil rights violation pursuant to 42 U.S.C. § 1983. Defendant Shailen P. Bhatt filed a Motion to Dismiss, or in the Alternative, to Stay Count II of the Amended Complaint pursuant to Superior Court Civil Rule 12(b)(6).

STANDARD OF REVIEW

When reviewing a motion to dismiss pursuant to Rule 12(b)(6), the Court must determine whether the claimant “may recover under any reasonably

conceivable set of circumstances susceptible of proof.”¹ The Court must accept as true all non-conclusory, well-plead allegations.² Every reasonable factual inference will be drawn in favor of the non-moving party.³ If the claimant may recover under that standard of review, the Court must deny the motion to dismiss.⁴

ANALYSIS

The Court must decide if the inverse condemnation action has to be resolved before an action under 42 U.S.C. § 1983 can be brought. Inverse condemnation “is a shorthand description of the manner in which a landowner recovers just compensation for a taking of his property when condemnation proceedings have not been instituted.”⁵ In an inverse condemnation proceeding, the court may render a judgment for the plaintiff and award compensation for the taking of property.⁶

The Lawsons’ Section 1983 claim is based on the Just Compensation Clause of the Fifth Amendment of the United States Constitution, made applicable to the

¹ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

² *Id.*

³ *Wilmington Sav. Fund. Soc’y, F.S.B. v. Anderson*, 2009 WL 597268, at *2 (Del. Super.) (citing *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005)).

⁴ *Spence v. Funk*, 396 A.2d at 968.

⁵ *Brandywine Transmission Servs., Inc. v. Justice*, 1991 WL 35695, at *1 (Del. Super.).

⁶ 29 *Del. C.* § 9504.

States by the Fourteenth Amendment, which provides: “. . . nor shall private property be taken for public use, without just compensation.”⁷

In *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City* the United States Supreme Court held that “if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation.”⁸ The property owner in *Williamson* “[had] not shown that the inverse condemnation procedure is unavailable or inadequate, and until it has utilized that procedure, its taking claim is premature.”⁹

In *In re 244.5 Acres of Land*,¹⁰ the plaintiff brought an inverse condemnation claim as well as a Section 1983 takings claim. The Delaware Superior Court stayed the Section 1983 claim, finding that it was premature prior to the adjudication of the inverse condemnation claim.¹¹ The Court found that to succeed on the Section 1983 claim, the plaintiffs “must first show that they have been deprived of a right secured by the constitution or laws of the United States.”¹² The

⁷ U.S. Const. amend. V.

⁸ 473 U.S. 172, 195 (1985).

⁹ *Id.* at 196-97.

¹⁰ 2000 WL 303345 (Del. Super.).

¹¹ *Id.* at *3.

¹² *Id.* at *2 (citing *Abbiss v. Del. Dept. of Transp.*, 712 F.Supp. 1159, 1164 (D. Del. 1989)).

Court held that the plaintiffs could not meet this first requirement until the completion of the inverse condemnation proceeding.¹³

The Lawsons argue that the inverse condemnation claim and Section 1983 claim can proceed in tandem. The Lawsons assert that a taking has already occurred. The Lawsons characterize the fact that they have not yet received compensation to mean that just compensation has been denied. Based on these assertions, the Lawsons argue that the Section 1983 claim is ripe.

The Court finds that this argument fails to recognize the significance of the completion of inverse condemnation proceedings as outlined in *29 Del. C. § 9504*. “If the government has provided an adequate process for obtaining compensation, and if resort to that process ‘yields just compensation,’ then the property owner ‘has no claim against the Government’ for a taking.”¹⁴ In the event that the Lawsons obtain just compensation for the alleged taking through inverse condemnation proceedings, the Section 1983 claim likely is moot.

In other types of proceedings, Section 1983 claims have been adjudicated concurrently with additional claims. In *Hall v. McGuigan*,¹⁵ the plaintiff brought a Section 1983 claim and a claim alleging First Amendment violations. The First

¹³ *Id.*

¹⁴ *Williamson Cnty. Reg’l Planning Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. at 194-95 (citing *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1013, 1018 n.21 (1984)).

¹⁵ 743 A.2d 1197 (Del. Super. 1999).

Amendment claim and the portion of the Section 1983 claim that survived summary judgment were allowed to proceed in the same action.¹⁶ In *Deputy v. Roy*,¹⁷ summary judgment was granted on the plaintiff's Section 1983 claim while a negligence claim survived the motion for summary judgment.

Nonetheless, the Court finds that where an inverse condemnation claim is brought in tandem with a Section 1983 claim, specific precedent supports the Court's decision to stay the Section 1983 claim until the inverse condemnation claim proceeds to conclusion.

CONCLUSION

The Court holds that the Lawsons' inverse condemnation claim must be adjudicated before the Section 1983 claim can proceed.

THEREFORE, Defendant Bhatt's Motion to Dismiss, or in the Alternative, to Stay, is hereby **GRANTED IN PART, DENIED IN PART**. Defendant Bhatt's Motion to Dismiss is hereby **DENIED**. The alternative Motion to Stay Count II is hereby **GRANTED**. The Lawsons' Section 1983 claim is stayed pending the resolution of the inverse condemnation claim.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston

¹⁶ *Id.* at 1202, 1206.

¹⁷ 2003 WL 367827, at **2-3 (Del. Super.).