United States Court of Appeals for the Federal Circuit

CALLAN CAMPBELL, JAMES H. CHADWICK, JUDITH STRODE CHADWICK, KEVIN C. CHADWICK, INDIVIDUALLY AND THROUGH HIS COURT-APPOINTED ADMINISTRATORS, JAMES H. CHADWICK AND JUDITH STRODE CHADWICK, KEVIN JUNSO, NIKI JUNSO, TYLER JUNSO ESTATE, THROUGH KEVIN JUNSO, ITS PERSONAL REPRESENTATIVE,
Plaintiffs-Appellants

v.

UNITED STATES,
Defendant-Appellee

2018-2014

Appeal from the United States Court of Federal Claims in No. 1:15-cv-00717-PEC, Judge Patricia E. Campbell-Smith.

Decided: August 1, 2019

STEVEN R. JAKUBOWSKI, Robbins Salomon & Patt, Ltd., Chicago, IL, argued for plaintiffs-appellants.

JOHN JACOB TODOR, Commercial Litigation Branch, Civil Division, United States Department of Justice,

DOCKET ALARM
Find authenticated court documents without watermarks at docketalarm.com.

Washington, DC, argued for defendant-appellee. Also represented by JOSEPH H. HUNT, ROBERT EDWARD KIRSCHMAN, JR., FRANKLIN E. WHITE, JR.

Before NEWMAN, LOURIE, and DYK, *Circuit Judges*.

DYK, *Circuit Judge*.

This case arises out of the 2009 bankruptcy of General Motors Corporation ("Old GM").[1] The plaintiffs compose a putative class of individuals who had asserted personal injury claims against Old GM, and whose successor liability claims were extinguished during bankruptcy. Relying on our decision in *A & D Auto Sales, Inc. v. United States*, 748 F.3d 1142 (Fed. Cir. 2014), the plaintiffs sued the United States on behalf of themselves and others similarly situated in the Court of Federal Claims ("Claims Court"), alleging that the extinguishment of their claims without just compensation violated the Takings Clause of the Fifth Amendment. The Claims Court dismissed the plaintiffs' claims, concluding that they were barred by the statute of limitations and that the plaintiffs had, in any event, failed to state a claim. Because we hold, as to the claims alleging coercion of Old GM, that the statute of limitations had run when the plaintiffs filed their complaint and, with respect to the plaintiffs' other claims, that the Claims Court also lacks jurisdiction, we affirm.

BACKGROUND

I

In *A & D*, a group of former automobile dealerships sued the United States, raising Fifth Amendment takings claims based on the extinguishment of the plaintiffs'

---

[1] "Old GM" refers to the GM entity in existence prior to the sale of assets pursuant to 11 U.S.C. § 363.

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

franchise agreements with Old GM in a bankruptcy sale pursuant to 11 U.S.C. § 363. 748 F.3d at 1147. That section gives a bankruptcy trustee the power to use, sell, or lease the property of a debtor in bankruptcy. In particular, § 363(f) (the provision at issue here) provides that "[t]he trustee may sell property . . . free and clear of any interest in such property of an entity other than the estate" under certain conditions. 11 U.S.C. § 363(f) (emphasis added).

In *A & D*, the plaintiffs alleged that the government had conditioned its continued financial assistance to Old GM on the company's submission for approval of a proposed sale order that terminated the plaintiffs' franchise agreements. 748 F.3d at 1148. The plaintiffs contended that this purported coercion effected a regulatory taking under the Fifth Amendment. *Id.* at 1149. The Claims Court denied the government's motion to dismiss for failure to state a claim but certified the case for interlocutory appeal pursuant to 28 U.S.C. § 1292(d)(2). *Id.* at 1150.

On appeal, we held that the government may, in some circumstances, be liable for a regulatory taking of property where the government pressures a third party (there, allegedly Old GM) to take an "action that affects or eliminates the property rights of the plaintiff." *Id.* at 1153. We determined that such conduct may give rise to a taking where the government's action was "direct and intended" and where the "the third party is acting as the government's agent or the government's influence over the third party was coercive rather than merely persuasive." *Id.* at 1154. We did not decide whether the government's actions with respect to Old GM were coercive or otherwise satisfied the conditions for takings liability.[2] *Id.* at 1155–56. We

---

[2] Even if coercion had been established, that would merely make the third party's action the equivalent of government action. The plaintiffs would still be required to engage in the *Penn Central* analysis and to establish a

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

explained that to state a claim, the plaintiffs needed to have pled that their "property suffered a diminution in value or a deprivation of economically beneficial use" as a result of the government's action. *Id.* at 1157. We determined that the plaintiffs' allegations were insufficient to show that their franchise agreements had value absent the government action and remanded to the Claims Court to permit the plaintiffs to amend their complaint "to include specific allegations establishing loss of value" and thereafter to determine whether a compensable taking had occurred. *Id.* at 1158–59.

II

Relying on *A & D*, on July 9, 2015, the plaintiffs here sued the government in the Claims Court alleging that the government had coerced Old GM to include in its proposed bankruptcy sale order provisions extinguishing the plaintiffs' property interests pursuant to § 363 of the Bankruptcy Code.

The plaintiffs are a group of individuals who alleged that they are victims of accidents involving GM vehicles (or are the family members or estates of such individuals), and had personal injury claims against Old GM. The plaintiffs alleged that under Michigan law they possessed successor liability claims at the time the § 363 sale closed. Michigan law provides that where there is a sale of assets from one entity to another such that there exists "a continuity of enterprise between a successor and its predecessor[,] . . . a successor [may be forced] to 'accept the liability with the benefits' of such continuity." *Foster v. Cone-Blanchard Mach. Co.*, 597 N.W.2d 506, 510 (Mich. 1999) (quoting *Turner v. Bituminous Cas. Co.*, 244 N.W.2d 873, 883 (Mich. 1976)).

---

diminution in the value of their property. *See Penn. Cent. Transp. Co. v. New York City*, 438 U.S. 104 (1978).

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

Under Michigan law,

> a prima facie case of continuity of enterprise exists where the plaintiff establishes the following facts: (1) there is continuation of the seller corporation, so that there is a continuity of management, personnel, physical location, assets, and general business operations of the predecessor corporation; (2) the predecessor corporation ceases its ordinary business operations, liquidates, and dissolves as soon as legally and practically possible; and (3) the purchasing corporation assumes those liabilities and obligations of the seller ordinarily necessary for the uninterrupted continuation of normal business operations of the selling corporation.

Id. The plaintiffs' complaint here sets out facts supporting each of these factors. Though the government disputes whether the plaintiffs' successor liability claims constitute a cognizable property interest for the purposes of a Fifth Amendment taking, we assume, without deciding, that they do.

Here, Old GM filed for bankruptcy on June 1, 2009, and filed a motion seeking court approval to sell substantially all its assets to a new corporation, referred to as "New GM," pursuant to 11 U.S.C. § 363. *In re Gen. Motors Corp.*, 407 B.R. 463, 479–80, 483 (Bankr. S.D.N.Y. 2009). To facilitate the sale, the government provided financing to Old GM for the bankruptcy and the company's ongoing operations. *See id.* at 473, 479. In return, the government received $8.8 billion in debt and preferred stock of New GM and approximately 60 percent of its equity. *Id.* at 482. According to the bankruptcy court, without the government's financing, Old GM would have "face[d] immediate liquidation." *Id.* at 484. According to the plaintiffs' complaint, "on the eve of Old GM's bankruptcy filing, the [g]overnment . . . condition[ed] the closing of the [s]ale on the . . . inclusion of . . .

DOCKET ALARM Find authenticated court documents without watermarks at docketalarm.com.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.