
IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2003
No. 1127

GUS STAMOULIS, et al.,

Appellants

v.

CALLITHEA FARM, LLC, et al.,

Appellees

On Appeal from the Circuit Court for Montgomery County, Maryland

BRIEF OF APPELLEE MONTGOMERY COUNTY, MARYLAND

Charles W. Thompson, Jr.
County Attorney

Karen L. Federman Henry
Principal Counsel for Appeals

Vickie L. Gaul
Associate County Attorney

101 Monroe Street, Third Floor
Rockville, Maryland 20850
(240) 777-6700
Attorneys for Montgomery County,
Maryland

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE	1
QUESTION PRESENTED	1
STATEMENT OF ADDITIONAL FACTS	2
ARGUMENT	
Stamoulis did not have standing to claim inverse condemnation based on the master plan designation of the property as parkland	4
CONCLUSION	7
APPENDIX	Apx.

TABLE OF CITATIONS

<u>Cases</u>	<u>Page</u>
<i>Bradley v. Fisher</i> , 113 Md. App. 603, 688 A.2d 527 (1997)	3
<i>Ferrero Construction Company v. Dennis Rourke Corporation</i> , 311 Md. 560, 536 A.2d 1137 (1988)	6
<i>Millison v. Wilzack</i> , 77 Md. 676, 551 A.2d 899, <i>cert. denied</i> , 315 Md. 307, 554 A.2d 393 (1989)	5
<i>Nationwide Insurance Companies v. Rhodes</i> , 127 Md. App. 231, 732 A.2d 388 (1999)	3
<i>North Amber Meadows Homeowners Association v. Haut Enterprises</i> , 101 Md. App. 452, 647 A.2d 127 (1994)	5
<i>Park Station Limited Partnership v. Bosse</i> , 2003 Md. LEXIS 743 (November 13, 2003)	4
<i>Richmarr Holly Hills, Inc. v. American PCS</i> , 117 Md. App. 607, 701 A.2d 879 (1997)	6
<i>Rogers v. Maryland-National Capital Park and Planning Commission</i> , 253 Md. 687, 253 A.2d 713 (1969)	7
<i>Weinberg v. Kracke</i> , 189 Md. 275, 55 A.2d 797 (1947)	7
<u>Statutes</u>	
Md. Rule 2-501(e)	3

STATEMENT OF THE CASE

Gus Stamoulis and Ottis Triantis (collectively Stamoulis) filed this lawsuit against Callithea Farm, LLC; Helen Vournas; The Conservation Fund; Montgomery County, Maryland; and George Sengstack. (E. 2-8) The preliminary issue focused on whether the creation of Callithea Farm by Helen Vournas and the no-consideration transfer of the property to Callithea Farm triggered the right of first refusal granted to Stamoulis by an earlier deed. (E. 6) The County's involvement hinged on the District Council's exercise of its authority to amend the master plan to recommend that the property be used as parkland, followed by the County's offer to purchase the property in five phases.¹ (E. 7) After a series of motions for summary judgment, the circuit court heard and decided the County's motion for summary judgment and granted the motion. (E. 99-101, 123, 131, 157) Stamoulis appealed the orders granting summary judgment to Callithea Farm, Helen Vournas, and Montgomery County. (E. 1)

QUESTION PRESENTED

Did Stamoulis have standing to seek damages for inverse condemnation based upon the master plan designation of the property for parkland?

¹Originally the complaint mentioned the County in Count 3 and Count 5. (E. 7) The circuit court dismissed Count 3 with leave to amend, but Stamoulis did not amend the claim. (E. 100-101) After he filed his appeal, Stamoulis withdrew the appeal as to Count 3. (Apx. 1-2)

STATEMENT OF ADDITIONAL FACTS

The original owner of the disputed property, George Vournas, conveyed approximately 40 acres of land to Stamoulis in 1984. The deed included a right of first refusal to purchase adjoining property upon receipt of a bona fide offer to purchase the land. (E. 39-40) When Mr. Vournas died, his wife became the sole owner of the property subject to the right of first refusal. (E. 42-45) In 1999, Ms. Vournas created Callithea Farm LLC, becoming its sole proprietor and transferring title of the property to Callithea Farm for no consideration but subject to all existing liens and encumbrances. (E. 36)

During 2002, the County Council sitting as the District Council approved an amendment to the master plan for the area recommending that the property become parkland, and also approved a sectional map amendment implementing the master plan.² (E. 4, 19) Callithea Farm then entered into an Option for Purchase of Real Estate (option agreement) with The Conservation Fund (TCF) and Montgomery County, which specified that TCF and the County could purchase the property in five phases. Each phase consisted of about 18.55 acres and remained subject to the right of first refusal for the purchase of the property held by Stamoulis. (E. 65)

During the same month, TCF assigned its right to purchase the first phase to the County. (E. 82-85) The County immediately exercised its right to purchase Phase I of the

²A sectional map amendment usually implements the zoning recommended in the master plan. Montgomery County does not have a park zone, so the property owned by Callithea Farm would retain its RC zoning even with the parkland designation. The property would not become parkland until the County purchased it and established the park use.

property. (E. 86) In accordance with the earlier deed, Callithea Farm notified Stamoulis that the purchase offer was received and the 15 days in which to exercise the right of first refusal as to Phase I of the property had begun. (E. 87-88) Another opportunity to exercise the right of first refusal followed, because Stamoulis' attorney refused to acknowledge the sufficiency of the first notice letter. (E. 89-93) Instead of exercising the right of first refusal to purchase the property, Stamoulis filed suit. (E. 2-8)

ARGUMENT

This Court reviews a grant of summary judgment solely to determine whether the trial court's decision was legally correct. *Nationwide Insurance Companies v. Rhodes*, 127 Md. App. 231, 235, 732 A.2d 388, 390 (1999) (citation omitted). Summary judgment is appropriate when the motion and response show that no genuine dispute as to any material fact exists and that the moving party is entitled to judgment as a matter of law. Md. Rule 2-501(e); *Bradley v. Fisher*, 113 Md. App. 603, 610, 688 A.2d 527, 530 (1997).

The facts in this case were undisputed. Ms. Vournas received the property by transfer from her husband's estate, and the transfer of the property to Callithea Farm involved no consideration and, of course, no offer to purchase. Stamoulis received notice of the offer to purchase that Callithea Farm received from the County, and declined to exercise the right to purchase the property. The sole basis for the claim against the County derives from the District Council's designation of the property as parkland in an amendment to the master plan for the area and approval of a sectional map amendment implementing the master plan.

Apparently, Stamoulis considers the County's subsequent exercise of the option to purchase Phase I under the option agreement to compound his injury. Yet, the record contains no evidence that the deed extending the right of first refusal to purchase the property somehow restricted the uses of the property or gave Stamoulis the ability to do so. Instead, Stamoulis had only the right to match any bona fide purchase offer received by the property owner. The right of first refusal did not give Stamoulis standing to challenge the change in the land use designation of the property, and the circuit court correctly entered summary judgment in favor of the County as a matter of law.

Stamoulis did not have standing to claim inverse condemnation based on the master plan designation of the property as parkland.

The illogic of Stamoulis' complaint appears in the series of contentions presented in the motions filed with the circuit court and reiterated in this appeal. The only issue relating to the County involves Stamoulis' claim that the County reduced the value of the property interest held through the right of first refusal.³ Nothing in the complaint or materials accompanying the motions for summary judgment established any standing in Stamoulis to sue the County for inverse condemnation.

The right of first refusal did not carry with it a right to restrict the use of the property, and the failure to exercise the right precluded any basis to attack the parkland designation.

³The no-consideration transfer of the property to Callithea Farm does not appear to have triggered the right of first refusal prior to the County's exercise of its purchase option. See e.g., *Park Station Limited Partnership v. Bosse*, 2003 Md. LEXIS 743 (November 13, 2003) (transfer of property as a gift to a third party did not meet terms of the right of first refusal, which arose if the owner decided to sell the property).

The sole basis for Stamoulis' inverse condemnation claim derives from the designation of the property as parkland by the County. Stamoulis contends that the recommendation diminished the value of the right of first refusal and, therefore, the County should pay the damages suffered. Although a right of first refusal is a recognized property right, the nature of the right gave Stamoulis no standing to challenge the parkland designation or its effect on the right.

An inverse condemnation proceeding requires the court to determine whether there has been a taking of private property by the government and what compensation, if any, must be paid by the government to the property owner. However, "to recover 'just compensation' for his property, the property owner must necessarily establish that his property has been taken." *Millison v. Wilzack*, 77 Md. 676, 683, 551 A.2d 899, 902, *cert. denied*, 315 Md. 307, 554 A.2d 393 (1989). Evidence of a taking usually requires "a destruction of all beneficial use of the property to merit compensation. . . ." *North Amber Meadows Homeowners Association v. Haut Enterprises*, 101 Md. App. 452, 464, 647 A.2d 127, 133 (1994). Mere diminution of value does not suffice. 101 Md. App. at 466, 647 A.2d at 134.

In this case, the property interest at stake is the right of first refusal—the opportunity to purchase the property by matching any bona fide purchase offer received by the owner. A right of first refusal is in the nature of an equitable interest that vests only when the condition triggering the right occurs. *See Ferrero Construction Company v. Dennis Rourke Corporation*, 311 Md. 560, 565, 536 A.2d 1137, 1139 (1988). The activating condition in

this case was the receipt of the County's bona fide offer to purchase Phase I under the option agreement. When Stamoulis failed to exercise the right of first refusal, the property interest in the first phase terminated. Stamoulis no longer owned a property interest relating to the first parcel and had no standing to sue the County for inverse condemnation.

Even if Stamoulis continued to hold an interest in the first phase, the District Council's actions to designate the property as parkland and to implement the master plan through a sectional map amendment provided no basis for a claim. *See Richmarr Holly Hills, Inc. v. American PCS*, 117 Md. App. 607, 636 n.22, 701 A.2d 879, 893 n.22 (1997) (master plan recommendations are no more than a guide to zoning). The zoning of the property did not change and it would not be used as parkland until the County purchased it. Moreover, the County offered to pay compensation based on the highest and best use of the property—the purchase price was not reduced based on the parkland designation. (E. 132-133) The deed granting the right of first refusal did not limit the owner's uses of the property, and the purported diminution in value does not suffice to state a claim for a taking.

For a complainant “to redress a public wrong, he has no standing in court unless he has also suffered some special damage from such wrong differing in character and kind from that suffered by the general public.” *Rogers v. Maryland-National Capital Park and Planning Commission*, 253 Md. 687, 691, 253 A.2d 713, 715 (1969) (quoting *Weinberg v. Kracke*, 189 Md. 275, 280, 55 A.2d 797, 799 (1947)). The undisputed facts simply do not

show that Stamoulis suffered any special damage by virtue of the District Council's actions. Stamoulis could have exercised the right to purchase, but chose not to do so, opting to pursue litigation instead. Stamoulis' property interest terminated after 15 days, leaving Stamoulis with no standing to challenge the change in use of the property sold to the County in Phase I of the option agreement.

CONCLUSION

Stamoulis chose not to exercise the right of first refusal triggered by the County's offer to purchase Phase I of Callithea Farm. The failure to exercise the right resulted in the termination of Stamoulis' property interest as to that parcel, leaving Stamoulis with no

standing to sue the County for inverse condemnation. The circuit court properly entered summary judgment in favor of the County and this Court should affirm that decision.

Respectfully submitted,

Charles W. Thompson, Jr.
County Attorney

Karen L. Federman Henry
Principal Counsel for Appeals

Vickie L. Gaul
Associate County Attorney

Statement pursuant to Maryland Rule 8-504(a)(8): This brief was prepared with proportionally spaced type, using Times New Roman font and 13pt type size.

APPENDIX

Notice of Withdrawal	Apx. 1
----------------------------	--------