DOCKET NO.: X07-HHD-CV-16-6072009-S	:	SUPERIOR COURT
SCHAGHTICOKE TRIBAL NATION	:	COMPLEX LITIGATION
	:	
	:	JUDICIAL DISTRICT OF
v.	:	HARTFORD
	:	
STATE OF CONNECTICUT	:	MAY 22, 2019

Memorandum of Decision
Dismissing Takings Claims

Connecticut's highest courts take a dim view of claims of implied grants from the government. Typical of this is our Supreme Court's ruling in *Fennell v. Hartford* from 1996 where the court held that even affirmative promises from government officials are worthless unless they are supported by explicit contracts or laws. [1]

The Schaghticoke Tribal Nation (STN) claimed in this litigation that the Schaghticoke Tribe owned land that the state took from it. But STN couldn't allege a grant, and the court previously dismissed this claim. Now STN says it at least owned the mortgages on this land. Of course, a person can own a mortgage without having ever owned the underlying land. Mortgages are bought and sold all the time.

The trouble is that STN's claim to own the mortgages at issue suffers from the same flaw as its land claim: there is no express grant to the tribe of the ownership of the

[1] 238 Conn. 809 (1996).

mortgages, and without one the tribe has no property right it can allege was wrongly taken from it.

As previously held, the state allowed tribe members to live on state land it designated for their use. When they became destitute the state sold some of that land and took back mortgages. The idea was that the tribe's overseer would use the money from the mortgages to help the tribe. But this doesn't mean the tribe owned the mortgages or even had any irrevocable rights in the income stream from them. The state elected to help the tribe. It was not required by law or contract to help the tribe.

The root of the mortgage matter is an 1801 resolution from the General Assembly. Citing the tribe's debts and poverty, the resolution authorized a committee of sale to sell and take back mortgages on the land set aside for the Schaghticokes. The proceeds were intended to pay off the tribe's debts, then the state-appointed tribal overseer was to use the remaining proceeds to assist the tribe. The committee was then to account to the Assembly for its activities.

The resolution says nothing about giving the tribe ownership of these mortgages. The mortgages are in the hands of the committee and the money from them goes to the overseer who may then use the money to help the tribe. Unfortunately for the tribe — without any doubt about it—the resolution offered them nothing but the hope of future charity.

Without an express grant STN is forced to rely on suggestions and implications. Some of the mortgage deeds given by the land purchasers grant the mortgage to the overseer and name him in his official capacity as overseer for the tribe. The money was at various times in various places including by the General Assembly described by the state as "for the benefit" of the tribe or even one bureaucrat—not an overseer or a committee of sale member— informally described two mortgages in the "Leviness file" as "held by" the tribe. STN also relies on the overseer's charge which includes overseeing tribal funds and property. But none of this means that this property was a property of the tribe. For it to become so the state would have had to grant it expressly to the tribe, and it didn't.

The court has given STN every latitude to allege some legal right had been conferred on it. STN was permitted over a year to do jurisdictional discovery of the state's records and acts of the General Assembly to find somewhere in them a basis to allege it owned property that the state shouldn't have taken away.

Unfortunately for STN, it unquestionably hasn't found any, and this means the court's lack of jurisdiction has been conclusively established.

In 1992 in *Tamm v. Burns*, our Supreme Court said that a complaint for just compensation for a government taking of property must be dismissed on sovereign immunity grounds when it doesn't "allege sufficient facts to support a finding of a taking

of land in a constitutional sense."[2] As a matter of law, STN hasn't asserted a claim for violating the Schaghticoke's constitutional right against the government taking property without just compensation because that right can only have been conferred by law, but it has been unequivocally shown that it never was. Therefore, STN's claims for compensation over the alleged lost mortgages must be dismissed.

The claims STN asserted for the alleged lost mortgages are—like the lost real estate claims—barred by the doctrine of sovereign immunity and are dismissed. Judgment will enter for the defendants.

BY THE COURT

Moukawsher, J.

[2] 222 Conn. 280, 284.