Breaking: Mass. High Court Rules Municipality’s Acquisition of Prescriptive Easement Isn’t a Taking

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In a rescript opinion issued this morning in Gentili v. Town of Sturbridge (pdf), the Supreme Judicial Court (SJC) ruled that a municipality’s acquisition of a prescriptive easement over private property is not an eminent domain taking. In prior proceedings in Gentili, the Land Court ruled that the defendant town had acquired a prescriptive easement to discharge surface water through a culvert onto the plaintiffs’ property. Instead of appealing, the plaintiffs filed a Superior Court case seeking damages under M.G.L. c. 79, the state’s eminent domain statute. The Superior Court granted summary judgment to the town and the plaintiffs appealed. The SJC transferred the appeal to itself for decision.

In briskly affirming the Superior Court, the SJC said, “[t]he problem with the [plaintiff] trust’s argument is that the theories and laws of prescriptive easements and takings do not interact in the way that the trust suggests.” Citing the U.S. Supreme Court’s 1982 decision in Texaco, Inc. v. Short, the SJC noted that the town’s easement did not result from any affirmative action by the town, but rather from the plaintiffs’ inaction in failing to stop the town’s discharge of water for the statutory period of 20 years. In other words, the town hasn’t actually “taken” anything: the plaintiffs’ property rights were – to the extent of the easement – extinguished by operation of law.

This decision answers an open question and nips in the bud any notion that a
municipality's acquisition of a prescriptive easement over private property is a compensable taking. The court’s reasoning applies equally to a municipality’s acquisition of fee title to private property by adverse possession, since that related doctrine is also based on a property owner’s inaction and the running of a **20-year statute of limitations**.

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