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Main Street v. Hackensack: A Signal of a Possible Revival of Urban Redevelopment in New Jersey?

Anthony F. DellaPelle and Daniel Kim – January 26, 2016

In 2007, after the New Jersey Supreme Court's landmark decision in *Gallenthin Realty Development v. Paulsboro*, 924 A. 2d 447 (N.J. 2007), local redevelopment in New Jersey slowed, and many municipalities and property developers were left uncertain as to the scope of *Gallenthin's* limitation on a municipality's authority to exercise eminent domain powers for redevelopment purposes. The fact that it curtailed some aspects of the municipality's authority to exercise eminent domain powers for redevelopment purposes made *Gallenthin* a powerful decision for property owners in New Jersey. The *Gallenthin* court declared that designation of an area "in need of redevelopment" under subsection (e) pursuant to *N.J.S.A.* 40A:12A-5 of the Local Redevelopment and Housing Law (LRHL) was unconstitutional, and to overcome the constitutional muster, municipalities must provide additional evidence that the condition in the area resulted in "deterioration or stagnation that negatively affects surrounding areas."

Last year, the New Jersey Supreme Court decided *62-64 Main Street, LLC v. Hackensack*, 110 A.3d 877 (N.J. 2015), which effectively clarified the parameters of *Gallenthin* and offered some much needed clarity on the issue of eminent domain authority. The City of Hackensack designated a two-block area that included plaintiffs' property as "in need of redevelopment" under subsections (a), (b) and (d) under *N.J.S.A.* 40A:12A-5. Within the city's designated area, the plaintiffs owned five contiguous lots consisting of two dilapidated buildings and several poorly maintained parking lots. In light of various factors that rendered the properties substandard, unsafe, and debilitating, the city justified its determination that the properties satisfied subsections (a), (b), and (d) as an area in need of redevelopment pursuant to

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the LRHL. The plaintiffs argued that the city must show additional evidence of “deterioration or stagnation that negatively affects surrounding areas” as prescribed by *Gallenthin*.

The trial court disagreed with plaintiffs’ argument, reasoning that *Gallenthin* applied only to redevelopment designations determined under subsection (e), which applies to “underutilized” properties, and not subsections (a), (b), and (d). However, on appeal, the Appellate Division reversed the trial court and concluded that the required constitutional standard for blight expressed in *Gallenthin* applied to every subsection of *N.J.S.A.* 40A:12A-5.

In *Hackensack*, with a 3–2 majority decision, the New Jersey Supreme Court overturned the Appellate Division and rejected the notion that *Gallenthin* established a blight standard to be superimposed onto every subsection of *N.J.S.A.* 40A:12A-5. The *Hackensack* court distinguished subsection (e) from subsections (a), (b), and (d), in that the former underwent “a significant change with passage of the Redevelopment Law in 1992,” and this change “empowered a municipality’s governing body to declare property blighted in a way never authorized before—merely because the property was not put to its optimal use.” The *Hackensack* court made it explicitly clear that subsections (a), (b), and (d) did not suffer the same constitutional infirmities and that, accordingly, the *Gallenthin* holding was limited to subsection (e).

Chief Justice Stuart Rabner issued a blistering dissent, indicating that “none of the subsections expressly satisfies the constitutional standard,” and thus “the majority had taken a step backward from *Gallenthin*.” Justice Rabner suggested that “[t]he majority’s narrow reading of *Gallenthin* . . . leaves open the possibility of countless future challenges.” He also cautioned that “officials of governing bodies will be empowered to proceed down the road toward taking private property on less than a meaningful showing of actual blight.”

Less than a decade after the court’s unanimous decision in *Gallenthin*, the *Hackensack* decision may make fighting a redevelopment designation more difficult for property owners. Redevelopment activity was sluggish in the aftermath of the *Gallenthin*, a trend exacerbated by the economic recession. The *Hackensack* court’s decision, however, may help reverse that trend as municipalities and developers will no longer have to second-guess the scope of *Gallenthin*. Time will tell whether a more lenient legal standard, together with an improving urban development market, will yield more local redevelopment activity in the coming years in New Jersey and any other states that choose to follow the lead of the *Hackensack* decision.

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