

CFC Rules That Date of Taking is When Government Sells Cattle, Not Impounds Them

In *Martinez v. United States*, the plaintiff claimed a taking by the federal government of his cattle when the Forest Service of the Department of Agriculture sold several hundred head after seizing them for allegedly trespassing on federal land.

The Government filed a motion to dismiss the action, claiming that the six-year statute of limitations had run before the case was filed. The Government based its argument on the fact that it had taken possession of the cattle more than six years before the suit. But the plaintiff argued that the limitations period should not begin to run until the sale of his cattle began.

Prior to the current suit, filed in the U.S. Court of Federal Claims, the parties had been engaged for several years in a battle as to whether the cattle had trespassed. The plaintiff even filed for an injunction in municipal court to prevent the sale of the cattle, an action that was removed to the U.S. District Court for the District of Arizona.

Eventually the Government sold the cattle, but because the proceeds did not cover “asserted debts of plaintiff for impoundment costs and unauthorized grazing fees” it filed suit in the U.S. District Court for the District of New Mexico for the balance. After the Government received a default judgment, it successfully garnished accounts owned by the plaintiff for the amount due, approximately \$133,000.

After plaintiff’s objections to the garnishments were rejected by the district court and court of appeals, it filed the current suit in the CFC, seeking just compensation under the Fifth Amendment on a takings theory.

The Government in *Martinez* argued that “a takings claim accrues when the government takes possession of private property.” But ruling on the statute of limitations issue, the CFC held that impoundment did not constitute a taking because the Government’s interest in doing so was to get the cattle off government land, not to take the cattle for its own use. As the court noted, “there are numerous communications from the Forest Service to plaintiff to the effect, ‘come pick up your cattle.’”

If no taking had occurred when the cattle were impounded, the statute of limitations on the takings claim could not begin to run. By contrast, the plaintiff claimed that the taking did not occur until sale of the cattle. Based on that date, the court held that plaintiff’s suit was filed timely in the CFC.

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