IN THE SUPREME COURT OF TEXAS

NO. 08-0265

CITY OF DALLAS, PETITIONER,

v.

VSC, LLC, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

Argued January 8, 2010

CHIEF JUSTICE JEFFERSON delivered the opinion of the Court, joined by JUSTICE HECHT, JUSTICE MEDINA, JUSTICE GREEN, JUSTICE WILLETT, and JUSTICE LEHRMANN.

JUSTICE WAINWRIGHT delivered a dissenting opinion, joined by JUSTICE JOHNSON and JUSTICE GUZMAN.

We expect our government to retrieve stolen property and return it to the rightful owner. What happens, though, when a person claims an interest in property the government has seized? In this case, the City of Dallas seized vehicles, which it alleged were stolen, from a company that was entitled to petition for their return. *See* TEX. CODE CRIM. PROC. art. 47.01a(a). Instead of pursuing its statutory remedy, the company sued, alleging that its interest in those vehicles had been taken without just compensation. We hold that the availability of the statutory remedy precludes a takings claim. We reverse the court of appeals' judgment and render judgment dismissing this suit.

I. Background

Beginning in the summer of 2002 and continuing through 2004, the City's police department seized a number of vehicles from VSC, a licensed vehicle storage facility.[1] VSC initially alleged that the City seized 326 vehicles.[2] City police officers testified that all of the seized vehicles had been reported stolen or otherwise displayed indicia of theft, such as altered vehicle identification numbers. VSC's records confirmed that many of these vehicles had been reported stolen.

Several days after the initial seizure, VSC sued the City, asserting a lien for fees related to the vehicles' storage and contending that the City's actions amounted to an unconstitutional taking. The City removed the suit to federal court, which took jurisdiction over all but the takings claim,[3] which it remanded to state court along with the related declaratory judgment action.[4] The City filed a plea to the trial court's jurisdiction on several grounds, which that court denied. The court of

[1] *See* TEX. OCC. CODE ch. 2303. A vehicle storage facility is a parking facility that is used to store or park at least ten vehicles each year. *Id.* § 2303.002(8)(B). The chapter does not regulate vehicles parked with the consent of the owner. *Id.* § 2303.003(a). VSC's license to operate as a vehicle storage facility was revoked sometime after the occurrence of the facts that form the basis of this case.

[2] The precise total is disputed, with the City claiming that 324 vehicles were seized. In any event, VSC ultimately abandoned its claims to 47 of the seized vehicles and another 25 or 27 were either not seized or were the result of duplications or inaccuracies in VSC's records.

[3] VSC alleges a taking under both the Texas and United States Constitutions. Where the parties have not argued that there are any material differences between the state and federal versions of a constitutional provision, we typically treat the two clauses as congruent. *See New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 150 (Tex. 2004).

[4] *See VSC, LLC v. City of Dallas*, No. 3:04-CV-1046-D (N.D. Tex. Feb. 23, 2005) (order remanding some claims to state court and retaining jurisdiction over others). The federal court retained jurisdiction over VSC's constitutional claims alleging an unlawful search and seizure, as well as its pendent state-law tort claims. *See id.*

appeals affirmed with respect to all but one issue.[5] 242 S.W.3d 584, 599. We granted the petition for review. 53 Tex. Sup. Ct. J. 13, 15 (Oct. 23, 2009).[6]

II. VSC's Takings Claim

A. The Statutory Remedy

Texas law permits a police officer to seize, without a warrant, vehicles that reasonably appear to have been stolen. TEX. TRANSP. CODE § 501.158(a) (permitting the warrantless seizure of allegedly stolen vehicles if an officer has probable cause). Vehicles seized under that authority are treated as stolen for purposes of custody and disposition. *Id.* § 501.158(b). But it may turn out that the property was not stolen at all, that it has multiple owners, or that it is subject to other claims, like a lien or leasehold interest. For these and other reasons, the Legislature enacted chapter 47 of the Code of Criminal Procedure, which protects a person's claimed interest in seized property. When there is a dispute as to property ownership, an officer possessing allegedly stolen property must secure it until the court directs its disposition. TEX. CODE CRIM. PROC. art. 47.01(a). That officer must file with the court a schedule of the property and its value and must "notify the court of the names and addresses of each party known to the officer who has a claim to possession of the seized property." *Id.* art. 47.03.

Because the officer may not know the identity of all persons with a claim to possession, the statute provides that any person with a property interest may assert that interest directly with the

[5] The court of appeals held that the trial court abused its discretion in denying the plea with respect to VSC's claim that the City took, damaged, or destroyed VSC's property for a private purpose. 242 S.W.3d 584, 596. VSC does not challenge that ruling here.

[6] We called for the views of the Solicitor General, who submitted a brief on behalf of the State of Texas as amicus curiae.

court.[7] *Id.* art. 47.01a(a) ("[U]pon the petition of an interested person" a judge "may hold a hearing to determine the right to possession of the property."). During that hearing "any interested person" may present evidence establishing ownership. *Id.* art. 47.01a(c). The individual proving the superior right to the property is entitled to its return, subject to the State's use of it in prosecuting related crimes.[8] *Id.* arts. 47.01a(a)(1)-(a)(2), 47.04. Occasionally—perhaps frequently—the property is never claimed and the government either sells or destroys it. *Id.* arts. 18.17, 47.06. If the property is sold, its true owner may recover the proceeds. *Id.* arts. 18.17(e), 47.07.[9]

Here, forty-seven of the seized vehicles were the subject of chapter 47 proceedings initiated by the City and adjudicated in municipal court. The court awarded some of the cars to VSC, some to the cars' owners, and others to the owners on the condition that VSC's fees were first satisfied. Thus, in many cases, VSC regained possession of the vehicles that the City had seized, and in others it was awarded compensation. VSC concedes that this procedure, when properly used, adequately protects its interests. As such, VSC has not brought takings claims with respect to the vehicles for which municipal court hearings were held.

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[7] Though chapter 47 proceedings are typically brought in municipal court, that venue is not exclusive. *See* TEX. CODE CRIM. PROC. § 47.01(d). Claims under chapter 47 may be brought in the same suit as other claims.

[8] A chapter 47 proceeding initiated in municipal or justice court may be appealed to a county court or statutory county court, where they are "governed by the applicable rules of procedure for appeals for civil cases in justice courts to a county court or statutory county court." TEX. CODE. CRIM. PROC. 47.12(b). Matters appealed to county court are tried de novo. TEX. R. CIV. P. 574b.

[9] The owner of property sold pursuant to chapter 47 may recover the proceeds of the sale under the same circumstances as may the owner of property sold under the abandoned and unclaimed property statute. TEX. CODE CRIM. PROC. art. 47.07. Thus, the real owner must file a claim for the proceeds "not later than the 30th day after the date of [the property's] disposition." *Id.* art. 18.17(e).

For the other 270 vehicles, VSC claims that it does not know how the City disposed of them—or if it did. Though VSC could have initiated chapter 47 proceedings to assert its interest in the vehicles, it argues here that if the City wished to dispose of the vehicles, it was required to give VSC notice prior to hearings on their disposition. Any failure to do so, VSC argues, amounts to an unconstitutional taking of its asserted lien interest.[10] We disagree and hold that because VSC had actual knowledge of the vehicles' seizure—VSC knew the cars were seized from its lot, and it knew who seized them—it was required to pursue the chapter 47 proceedings.[11] We hold further that VSC must have utilized those procedures before a takings suit can be viable.

The constitution waives immunity for suits brought under the Takings Clause,[12] but this does not mean that a constitutional suit may be brought in every instance. The Legislature's broad authority to prescribe compensatory remedies for takings is well-established, so long as those methods comply with due process and other constitutional requirements. *See, e.g., Secombe v. R.R. Co.*, 90 U.S. 108, 117-18 (1874) (holding that the Legislature has broad authority to create eminent

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[10] We assume without deciding that a licensed vehicle storage facility may have a garageman's lien in a stored vehicle and that a garageman's lien may exist in stolen property. *See* TEX. PROP. CODE § 70.003(c) (providing for a lien in vehicles "left for care" with a garageman). The City disputes both of these contentions.

[11] The dissent provides a number of quotations from VSC's pleadings to argue that VSC did ask for chapter 47 relief in the trial court. While VSC asked to be declared an interested party entitled to notice under chapter 47, it pointedly *did not* seek a hearing. To the contrary, VSC disclaimed any responsibility to file under chapter 47 and argued, as it continues to argue here, that it was the City's sole responsibility to seek such hearings. Likewise, VSC's response to the City's plea to the jurisdiction focused solely on its takings claim—the only claim asserted in its live pleading. This does not amount to a request for chapter 47 relief. VSC was required to protect its alleged property interest by seeking relief under chapter 47. The statute authorized VSC to seek such relief, and the reasons for its failure to do so are irrelevant. *Cf.* ___ S.W.3d at ___ (suggesting that VSC failed to request a hearing because it "did not believe that it could bring a claim under Chapter 47").

[12] *See Steele v. City of Houston*, 603 S.W.2d 786, 791 (Tex. 1980) ("The Constitution itself is the authorization for compensation for the destruction of property and is a waiver of governmental immunity for the taking, damaging or destruction of property for public use.").

domain procedures). When the Legislature creates such a statutory procedure, recourse may be had to a constitutional suit only where the procedure proves inadequate, for it is not the taking of property, as such, that raises constitutional concerns, but the taking of property *without just compensation*. *See Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194 (1985) ("The [Takings Clause] does not proscribe the taking of property; it proscribes taking without just compensation.").[13] When there exists provision for compensation—or, as here, for the property's return—a constitutional claim is necessarily premature. *See id.* at 194-95 ("If the government has provided an adequate process for obtaining compensation, and if resort to that process '[yields] just compensation,' then the property owner 'has no claim against the Government' for a taking." (quoting *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1013, 1018 n.21 (1984)) (alteration in original)); *see also Yearsley v. W. A. Ross Constr. Co.*, 309 U.S. 18, 21 (1940) (refusing to pass upon a takings claim because of the existence of a statute "afford[ing] a plain and adequate remedy"); *Hurley v. Kincaid*, 285 U.S. 95, 104 (1932) (holding that governmental action

[13] The dissent contends that *Williamson County*'s state-court litigation requirement does not apply here because that decision was based on federalism concerns not present in this case. ___ S.W.3d at ___. We believe, though, that the Court's reasoning has direct relevance. *Williamson County* requires complainants alleging a taking to file inverse condemnation suits in state court before bringing suit in federal court. *Williamson Cnty. Reg'l Planning Comm'n v. Hamilton State Bank*, 473 U.S. 172, 186 (1985). The Court began with the basic proposition that the Takings Clause only prohibits takings without just compensation. *Id.* at 194. Citing *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), the Court explained that it had already interpreted this to mean that "taking claims against the Federal Government are premature until the property owner has availed itself of" remedial statutory procedures. *Williamson Cnty.*, 473 U.S. at 195. The Court further held that a state-court inverse condemnation claim *was* a *Ruckelshaus*-type remedial procedure, and that a property owner therefore could not bring a *federal* takings claim until he had proceeded in state court. *Id.* at 195-96. This second holding has been criticized, as it has made it more difficult for property owners to bring takings claims against state governments in federal courts. *See San Remo Hotel, L.P. v. City & Cnty. of San Francisco*, 545 U.S. 323, 348 (2005) (Rehnquist, C.J., concurring) (arguing that *Williamson County*'s state-court litigation rule should be reconsidered).

Our holding today, however, relies only on *Williamson County*'s primary observation that utilization of a remedial scheme for recovery of property logically precedes a takings claim. As the Court acknowledged, this is a proposition implicit in the Takings Clause and well-supported by precedent.

was not unconstitutional because "the complainant can recover just compensation under the Tucker Act in an action at law . . . [and t]he compensation which he may obtain in such a proceeding will be the same as that which he" is entitled to under the constitution); *Crozier v. Fried. Krupp Aktiengesell-Schaft*, 224 U.S. 290, 306-07 (1912) (rejecting a constitutional challenge on the basis of the Takings Clause because the relevant statute provided a compensatory mechanism).[14]

Immediately following the vehicles' seizure, however, when VSC filed its district court lawsuit, VSC had a legal avenue through which it could potentially regain possession or compensation. As the dissent acknowledges, operation of the chapter 47 procedure might have "moot[ed] VSC's takings claim." ___ S.W.3d at ___. This is significant, because if a remedial procedure might have obviated the need for a takings suit, then the property simply had not, prior to the procedure's use, been taken *without just compensation*. Because VSC could seek possession or compensation through a remedial statutory scheme, it could not ignore that scheme in favor of initiating a constitutional takings suit.

Hays v. Port of Seattle, 251 U.S. 233 (1920), is a good illustration of this rule. There, the Supreme Court refused to permit a claimant to bring a takings suit, despite the fact that the government had seized his property for a public purpose. *Hays*, 251 U.S. at 238. The Court emphasized that the state provided a procedure by which the claimant could seek just compensation. *Id.* ("[T]his statute constitutes an adequate provision for assured payment of any compensation due

[14] The Supreme Court later explained that the existence of a statutory remedy in *Crozier* made the government's taking of property in that case constitutionally unobjectionable. *See William Cramp & Sons Ship & Engine Bldg. Co. v. Int'l Curtis Marine Turbine Co.*, 246 U.S. 28, 44-45 (1918) ("[T]he provisions of the statute affording a right of action and compensation were adequate to justify the exercise" of the government's power.).

to complainant . . . ."). Thus, the Supreme Court held that there could be no taking because the claimant bypassed the compensatory procedure.

As in *Hays*, the claimant here alleges that a taking has occurred. As in *Hays*, the Legislature has provided a procedure capable of "constitut[ing] an adequate provision," *id.*, for compensation—here, actual possession. And, as in *Hays*, the claimant here has ignored the compensatory scheme in favor of a constitutional claim. Thus, we reject VSC's taking claim because it did not pursue an established remedy to recover its claimed interest in the seized property.[15]

B. Notice

VSC suggests, however, that chapter 47 is constitutionally infirm because it does not require that the City notify claimed owners of these proceedings. Disputes about proper notice invoke procedural due process, not the Takings Clause. In *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 543 (2005), the Supreme Court observed that takings and due process are distinct inquiries and held that due process claims must be addressed first because whether there has been proper notice is a question "logically prior to and distinct from" whether there has been a taking. The Takings Clause guarantees compensation "in the event of *otherwise proper interference* amounting to a taking." *Id.*

[15] *See also Ruckelshaus*, 467 U.S. at 1013 n.16 (holding that a statutory procedure that provides just compensation "nullif[ies] any claim against the Government for a taking"). In *Ruckelshaus*, Monsanto claimed that the Environmental Protection Agency (EPA) had taken without just compensation certain trade secrets that it was required to submit during the approval process for insecticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). *Id.* at 998. The alleged taking occurred when the EPA used some of Monsanto's trade secrets in assessing the permit applications of other companies' insecticides. *Id.* However, under FIFRA, Monsanto was entitled to compensation from the companies to whose benefit its trade secrets were applied, which it could seek through a statutory arbitration process. *Id.* at 995. The Court held that Monsanto's takings claims were unripe because it had not yet arbitrated its claims, noting that "[i]f a negotiation or arbitration pursuant to [FIFRA] were to yield just compensation . . ., then Monsanto would have no claim against the Government for a taking." *Id.* at 1013.

(internal quotations omitted). If due process is violated due to failure of notice, however, "that is the end of the inquiry" because "[n]o amount of compensation can authorize such action." *Id.* Thus, VSC's failure-of-notice claim is more properly considered as alleging a due process violation than a taking. Regardless, we believe that VSC's actual notice of the vehicles' seizures was constitutionally sufficient and that it therefore had the burden of pursuing the chapter 47 remedy.

In *Mullane v. Cent. Hannover Bank & Trust Co.*, 339 U.S. 306 (1950), the Supreme Court concluded that due process is satisfied if notice is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 314. The *Mullane* Court focused on the requirement that the parties be actually notified of an action that might affect their interests. *Id.* at 315 ("The chance of actual notice is further reduced when, as here, the notice required does not even name those whose attention it is supposed to attract . . . ."). The Supreme Court recognized "the impossibility of setting up a rigid formula as to the kind of notice that must be given," holding that the "notice required will vary with circumstances and conditions." *Walker v. City of Hutchinson*, 352 U.S. 112, 115 (1956).

In *City of West Covina v. Perkins*, 525 U.S. 234, 241 (1999), the Supreme Court held that actual notice is constitutionally sufficient notice of a remedial procedure when that procedure is easily discoverable. There, the police seized personal property from Perkins's home under a valid search warrant. *West Covina*, 525 U.S. at 236. The police did not suspect Perkins of a crime but, rather, were pursuing a former boarder who was purportedly involved in a homicide. *Id.* As required by statute, the police left Perkins a warrant that listed the seized property and named the

issuing magistrate and executing officer. *Id.* at 236-37. Rather than seek a court order, Perkins sued the officers and alleged that the remedies for the property's return did not satisfy due process. *Id.* at 237-38. The Supreme Court distinguished *Mullane*, writing that while individualized notice of the seizure itself is necessary,

> [n]o similar rationale justifies requiring individualized notice of state-law remedies which, like those at issue here, are established by published, generally available state statutes and case law. Once the property owner is informed that his property has been seized, he can turn to these public sources to learn about the remedial procedures available to him. The City need not take other steps to inform him of his options.

Id. at 241. The notice contained in the search warrant was sufficient process and Perkins was then required to initiate proceedings for the property's return. *Id.* at 242-44.

The facts in this case mirror those in *West Covina*. The police legally seized VSC's property, and VSC was aware of what property was seized and by whom. The Legislature provided a statutory remedy for the return of the property that was easily discoverable from public sources. *See* TEX. CODE CRIM. P. ch. 47.[16] Having given constitutionally sufficient notice of the seizures, the City was under no obligation to invite VSC to initiate chapter 47 proceedings.[17]

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[16] Even if it failed to participate in the chapter 47 proceedings, VSC might have had, in certain cases, a second post-deprivation option available to it. *See* TEX. CODE CRIM. PROC. arts. 18.17(e), 47.07.

[17] VSC, having notice of the vehicles' seizure, should have initiated chapter 47 proceedings, both to notify the government that it was asserting an interest in the vehicles and to determine its interest in them. VSC failed to do so. After *West Covina*, federal courts have held that where a claimant fails to take advantage of a State's post-deprivation procedures, that claimant cannot then complain of the State's subsequent disposition of the property. *See, e.g.*, *Revell v. Port Auth. of N.Y. & N.J.*, 598 F.3d 128, 139 (3rd Cir. 2010) (affirming summary judgment against the claimant because "he did not take advantage of state procedures available to him for the return of his property"); *Mora v. City of Gaithersburg*, 519 F.3d 216, 230 (4th Cir. 2008) ("Mora has had, and continues to have, notice and an opportunity to be heard in Maryland, and he cannot plausibly claim that Maryland's procedures are unfair when he has not tried to avail himself of them."); *McKinney v. Chidley*, 87 F. App'x 615, 617 (9th Cir. 2003) (memo. op.) (affirming summary judgment against claimant because he admitted that he did not follow State procedures for recovering property).

We also note that the dissent's position on notice could severely hamper law enforcement. We assume for the

III. Declaratory Judgments

The City filed a plea to the trial court's jurisdiction as to several declarations requested by VSC.[18] The trial court denied the plea, and the court of appeals affirmed despite the fact that VSC had by then lost its license to operate a vehicle storage facility and therefore could no longer store the type of vehicles involved in this suit. The court of appeals noted that VSC's requested declarations were not by their terms limited to nonconsensually-towed vehicles, and on this basis it refused to grant the plea. 242 S.W.3d at 597. This, however, conflicts with our rule that a declaratory judgment action may lie only where there is a "substantial controversy involving genuine conflict of tangible interests."[19] *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995) (internal quotations omitted). But with regard to the sort of vehicles VSC may still store, there is no apparent conflict at all, and as such the relief sought is highly speculative and theoretical, incapable of settling any actual controversy between the parties. *See id.*; *State ex rel. McKie v. Bullock*, 491 S.W.2d 659, 660 (Tex. 1973) (holding that there could be no declaratory judgment action where a declaration would not settle an actual controversy between the parties).

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purposes of this case that VSC does in fact have a property interest in its alleged liens on the seized vehicles, although the State strenuously disputes this proposition. But in a case like this, where the precise contours of property rights are unclear, it is difficult to charge the government with the duty of notice. The dissent's rule would subject political subdivisions to takings liability in cases in which they did not even know property rights existed. Because VSC's actual notice was sufficient here, however, we need not reach this issue.

[18] VSC sought declarations that (1) it was entitled to fees for stolen vehicles, (2) the City lacked authority to seize allegedly stolen vehicles from VSC, and (3) VSC was entitled to notice and a hearing under chapter 47.

[19] We have conflicts jurisdiction over this case based on section 22.225(c) of the Government Code as it existed at the time this action was filed, which grants us jurisdiction where the court of appeals' decision would overrule a decision of this Court if both had been decided by the same court. *Tex. Natural Res. Conservation Comm'n v. White*, 46 S.W.3d 864, 867 (Tex. 2001); *see also* Act of June 2, 2003, 78th Leg., R.S., ch. 204, § 1.02, 2003 Tex. Gen. Laws 847, 848 (codified at TEX. GOV'T CODE § 22.225).

IV. Conclusion

VSC received all of the process to which it was entitled. A party cannot claim a lack of just compensation based on its own failure to invoke a law designed to adjudicate such a claim. We reverse the court of appeals' judgment and render judgment dismissing the case. TEX. R. APP. P. 60.2(c).

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Wallace B. Jefferson
Chief Justice

OPINION DELIVERED: July 1, 2011