

SUPREME COURT OF TEXAS

City of Houston v. James & Elizabeth Carlson

451 S.W.3d 828 (Tex. 2014) · No. 13-0435 · Decided December 23, 2014

SUMMARY

The Supreme Court of Texas held that former condominium owners did not plead a viable inverse-condemnation claim based solely on the City of Houston’s allegedly improper procedure in ordering residents to vacate the complex. The court concluded that the owners challenged the enforcement process, rather than a property-use restriction or physical taking, so governmental immunity barred the suit. The court reversed the court of appeals and dismissed the case for want of jurisdiction.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Jeffrey V. Brown; Jeffrey S. Willett; Jeffrey S. Devine
JURISDICTION	Texas
DECIDED	December 23, 2014
DOCKET	13-0435
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The City of Houston sought review of the court of appeals' reversal of a trial court order sustaining the City's plea to the jurisdiction in an inverse-condemnation action.
STANDARD OF REVIEW	De novo review of jurisdiction and the sufficiency of the pleadings.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Texas; binding precedent within Texas.
PARTIES	City of Houston v. James & Elizabeth Carlson, Other respondent condominium owners

TOPICS

- eminent domain
- municipal liability
- subject matter jurisdiction
- procedural due process
- constitutional law

PRACTICE AREAS

- constitutional law
- municipal law
- real estate
- civil procedure
- remedies

QUESTIONS PRESENTED

1. Whether the owners adequately pleaded a taking supporting an inverse-condemnation claim when they challenged only the City's enforcement procedure and order to vacate, not any property-use restriction.
2. Whether the City's governmental immunity barred the inverse-condemnation action for want of a viable takings allegation.

HOLDINGS

1. A plaintiff does not allege a regulatory taking by objecting only to the infirmity of the government's enforcement process, penalty, or procedure; the plaintiff must challenge a physical taking or a property-use restriction that is sufficiently onerous to be tantamount to an appropriation or ouster.
2. Because the owners failed to plead a taking, the constitutional waiver of governmental immunity for inverse-condemnation claims did not apply, and the City retained immunity from suit. The plea to the jurisdiction therefore had to be sustained and the case dismissed for want of jurisdiction.
3. The inverse-condemnation claim failed because the owners did not allege a taking, not because they had prevailed on a due-process claim. Due-process claims and takings claims are not mutually exclusive.

KEY QUOTATIONS

“In the absence of a properly pled takings claim, the state retains immunity.” (451 S.W.3d at 829)

“To our knowledge, neither the U.S. Supreme Court nor this Court has ever recognized a purely procedural regulatory taking.” (451 S.W.3d at 832)

“Accordingly, where a party objects only to the “infirmity of the process,” no taking has been alleged.” (451 S.W.3d at 833)

“Consequently, the respondents’ inverse-condemnation claim fails not because they have already prevailed on a due-process claim, but because they simply have not alleged a taking.” (451 S.W.3d at 834)

FACTUAL BACKGROUND

Park Memorial was a 108-unit condominium complex with alleged structural, electrical, and plumbing problems, including concerns that an underground parking facility might fail. After investigating, the City of Houston declared the complex uninhabitable, ordered residents to vacate, and upheld that order after an administrative hearing. The owners later prevailed in a due-process action because the City had failed to provide constitutionally adequate notice and hearing, and they then sought inverse-condemnation compensation for the loss of use of their property.

PROCEDURAL HISTORY

The City ordered residents to vacate a condominium complex after an investigation identified alleged safety and building-code violations. In separate litigation, the property owners obtained an injunction based on denial of due process, and the order to vacate was reversed. The owners then brought an inverse-condemnation action seeking compensation for lost use and other damages. The trial court sustained the City's plea to the jurisdiction,

the court of appeals reversed, and the Supreme Court of Texas reversed the court of appeals and dismissed the case for want of jurisdiction.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court reversed the court of appeals and directed dismissal of the case for want of jurisdiction. It did not remand for further proceedings on the merits.

CASES CITED

- Reata Construction Corp. v. City of Dallas, 197 S.W.3d 371, 374 (Tex. 2006)
- City of Dallas v. VSC, LLC, 347 S.W.3d 231, 236 (Tex. 2011)
- Hearts Bluff Game Ranch, Inc. v. State, 381 S.W.3d 468, 476-77, 491-92 (Tex. 2012)
- Tex. Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC, 363 S.W.3d 192, 204 n.34 (Tex. 2012)
- Eggemeyer v. Eggemeyer, 554 S.W.2d 137, 140 (Tex. 1977)
- Kelley v. Johnson, 425 U.S. 238, 247 (1976)
- Penn Central Transportation Co. v. City of New York, 438 U.S. 104, 124-25 (1978)
- Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 413-16 (1922)
- State v. Hale, 146 S.W.2d 731, 735-36 (Tex. 1941)
- City of Abilene v. Burk Royalty Co., 470 S.W.2d 643, 647 (Tex. 1971)
- Mayhew v. Town of Sunnyvale, 964 S.W.2d 922, 933 (Tex. 1998)
- Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 537, 543 (2005)
- Nasierowski Bros. Investment Co. v. City of Sterling Heights, 949 F.2d 890, 893-94 (6th Cir. 1991)
- Hammond v. Baldwin, 866 F.2d 172, 176 (6th Cir. 1989)
- Dalon v. City of DeSoto, 852 S.W.2d 530, 538 (Tex. App.—Dallas 1992, writ denied)
- City of Houston v. Carlson, 393 S.W.3d 350 (Tex. App.—Houston [14th Dist.] 2012, no pet.)
- First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304 (1987)
- Kopplow Development, Inc. v. City of San Antonio, 399 S.W.3d 532 (Tex. 2013)
- Steele v. City of Houston, 603 S.W.2d 786 (Tex. 1980)
- Smith v. City of League City, 338 S.W.3d 114 (Tex. App.—Houston [14th Dist.] 2011, no pet.)
- City of San Antonio v. El Dorado Amusement Co., Inc., 195 S.W.3d 238 (Tex. App.—San Antonio 2006, pet. denied)
- Patel v. City of Everman, 179 S.W.3d 1 (Tex. App.—Tyler 2004, pet. denied)
- Texas Parks & Wildlife Department v. Callaway, 971 S.W.2d 145 (Tex. App.—Austin 1998, no pet.)
- González-Álvarez v. Rivero-Cubano, 426 F.3d 422, 430 (1st Cir. 2005)

