

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **EMINENT DOMAIN - CALIFORNIA**

### **Pakdel v. City and County of San Francisco**

**United States Court of Appeals, Ninth Circuit - March 17, 2020 - F.3d - 2020 WL 1270732 - 20 Cal. Daily Op. Serv. 2369 - 2020 Daily Journal D.A.R. 2350**

Co-owners of multi-unit building owned through tenancies-in-common brought § 1983 action asserting federal regulatory takings claim against city/county, its board of supervisors, and its department of public works, relating to city/county ordinance's requirement, for expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property, that conversion applicants agree to offer any existing tenants lifetime leases in converted property.

The United States District Court granted defendants' motions to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Plaintiffs appealed.

The Court of Appeals held that:

- Co-owners' belated request for exemption did not satisfy finality requirement for ripeness for federal court's adjudication of federal regulatory takings claim, and
- Discretion to excuse noncompliance with prudential finality requirement would not be exercised.

City/county ordinance imposing requirement, for city/county's expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property, that conversion applicants agree to offer any existing tenants lifetime leases in converted property, was not an "exaction," as would be subject to rough proportionality test for Fifth Amendment taking; lifetime lease requirement was a general requirement imposed through legislation, rather than an individualized requirement to grant property rights to the public imposed as a condition for approving a specific property development.

City/county ordinance imposing requirement, for city/county's expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property, that conversion applicants agree to offer any existing tenants lifetime leases in converted property, was not a physical taking, for purposes of Fifth Amendment taking claim asserted by plaintiff co-owners of multi-unit building owned as tenancies-in-common, where plaintiffs voluntarily applied for conversion under the program.

Co-owners of multi-unit building owned through tenancies-in-common failed to show final decision by city/county applying the challenged ordinance to co-owners' property, as would be required for ripeness for adjudication, in federal court, of federal regulatory takings claim asserted in § 1983 action against city/county, where a final decision was made before co-owners belatedly sought an exemption, from city's department of public works, from being required under the ordinance to offer any existing tenants post-conversion lifetime leases, which requirement was part of city/county's expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property.

Federal court of appeals would not exercise its discretion to excuse co-owners of multi-unit building owned through tenancies-in-common from nonjurisdictional prudential requirement, for ripeness for federal court's adjudication of federal regulatory takings claim, of showing final decision by city/county applying challenged ordinance to co-owners' property, on co-owners' appeal from dismissal of § 1983 action challenging ordinance's requirement, for expedited conversion program to clear a backlog in lottery system for converting tenancy-in-common property to condominium property, that conversion applicants agree to offer any existing tenants lifetime leases in converted property, where there were no concerns about different claims proceeding simultaneously in state and federal court, and city/county raised ripeness issue at first opportunity.