

Bond Case Briefs

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EMINENT DOMAIN - TEXAS

City of Grapevine v. Muns

Court of Appeals of Texas, Fort Worth - December 23, 2021 - S.W.3d - 2021 WL 6068952

Homeowners brought action requesting declaration that city's municipal ordinance that banned short-term rentals violated their substantive due course of law rights, was preempted, and was unconstitutionally retroactive.

The 17th District Court denied city's motion for summary judgment and plea to the jurisdiction. City filed interlocutory appeal.

On rehearing, the Court of Appeals held that:

- Homeowners were not required to exhaust all administrative remedies before they brought action;
- Homeowners had vested property right sufficient to allege regulatory-takings claim;
- Passage of ordinance was cause in fact of alleged taking;
- Homeowners presented sufficient evidence that ordinance had economic impact on value of their property;
- Homeowners presented sufficient evidence that ordinance interfered with their distinct investment-backed expectations;
- Homeowners had vested right to lease their properties; and
- City did not have immunity from request for injunctive relief.

Homeowners were not required to exhaust all administrative remedies before they brought action challenging municipal ordinance that banned short-term rentals; action challenged ordinance's constitutionality and would not have been mooted by an administrative decision, and adjustment board lacked power to declare whether zoning ordinance or ordinance banning short term-rentals violated state constitution.

Term "single-family detached dwelling" as defined in zoning ordinance did not prohibit short-term rentals in zoning districts in which homeowners' properties were located, so long as renters met zoning ordinance's definition of "family"; zoning ordinance did not have any occupancy-duration requirements, and "single-family detached dwelling" did not address leasing, whether short- or long-term.

Homeowners' failure to expressly challenge zoning ordinance did not render their action seeking declaration that ordinance banning short-term rentals was unconstitutional a request for advisory opinion; homeowners' retroactivity, due-course-of-law, and takings claims turned on whether existing zoning ordinance allowed short term rentals, and existing zoning ordinance did allow short-term rentals.

Homeowners had vested property right sufficient to allege regulatory-takings claim against city following ordinance that banned short-term rentals; homeowners had vested property interest in properties themselves, and homeowners' claimed that city had unreasonably interfered with their rights to use and enjoy their properties.

City's passage of ordinance that banned short-term rentals was cause in fact of alleged taking of homeowners' properties; existing zoning ordinance allowed leasing unrestricted by duration.

Homeowners presented sufficient evidence that municipal ordinance banning short-term rentals in zoning districts in which homeowners' properties were located had economic impact on value of their property, as required to show probable right of recovery on regulatory taking claim; homeowners were earning rental income from their short-term rentals, short-term rentals generated higher revenues than long-term leasing did, and over ten-year period, combined potential gross-rental differential between typical market rents for long-term versus short-term leases for homeowners' properties exceeded \$4.2 million.

Homeowners presented sufficient evidence that municipal ordinance banning short-term rentals in zoning districts in which homeowners' properties were located interfered with homeowners' distinct investment-backed expectations, as required to show probable right of recovery on regulatory taking claim; homeowners had reasonable investment-backed expectations in purchasing and improving their properties for use as short-term rentals based on existing zoning ordinance and on city employees' representations that short-term rentals were allowed under zoning ordinance.

Homeowners failed to plead viable claim that municipal ordinance banning short-term rentals in zoning districts in which homeowners' properties were located was impliedly preempted by tax code or property code, and thus city was entitled to grant of its amended plea to the jurisdiction as to preemption claim; homeowners did not point to any provision in either tax code or property code that implied that legislature meant to limit or forbid local regulations banning short-term rentals.

Homeowners pleaded facially valid claim that municipal ordinance banning short-term rentals in zoning districts in which homeowners' properties were located was unconstitutionally retroactive; homeowners pleaded that ordinance impaired their settled property rights under common law and under existing zoning ordinance to lease their properties on short-term basis.

Homeowners had vested right to lease their properties, as supported claim that municipal ordinance banning short-term rentals violated their substantive-due-course-of-law rights, although homeowners did not have vested right under existing ordinance to use their properties as short-term rentals, where private property ownership was fundamental right, and property ownership included right to lease to others.

City did not have immunity from homeowners' request for injunctive relief against city, in which they asked trial court to enjoining city from enforcing municipal ordinance banning short-term rentals in zoning districts in which homeowners' properties were located; homeowners pleaded valid claims challenging constitutionality of ordinance, homeowners did not alleged that any city officials were violating the law or exceeding their powers under the law, and homeowners' claims were not substantively ultra vires claims.