

Bond Case Briefs

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EMINENT DOMAIN - TEXAS

El Dorado Land Co., L.P. v. City of McKinney

Supreme Court of Texas - March 29, 2013 - S.W.3d - 2013 WL 1276045

Supreme Court of Texas holds that reversionary interest retained by vendor in deed to city was property interest capable of being taken by condemnation under state Takings Clause.

Property owner that had sold land to city, pursuant to special warranty deed restricting city from using land for anything other than a community park, and providing owner with an option to repurchase the land in the event that city violated the restriction, brought inverse condemnation action against city, alleging that city had violated restriction and then wrongfully failed to reconvey the land to him or condemn his interest.

The Supreme Court of Texas held that reversionary interest retained by vendor in deed to city was property interest capable of being taken by condemnation under state Takings Clause, even though the interest was not a possibility of reverter, since the interest effectively functioned as a power of termination or a right of reentry, and vendor's deed conveyed a defeasible estate to the city with the vendor retaining a conditional future interest.

A "possibility of reverter" is a term of art for a future interest retained by a grantor that conveys a determinable fee; it is the grantor's right to fee ownership in the real property reverting to him if the condition terminating the determinable fee occurs. Under Texas law, the possibility of reverter and the right of reentry are both freely assignable like other property interests.