

Bond Case Briefs

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NUISANCE ABATEMENT - TEXAS

RBIII, L.P. v. City of San Antonio

United States Court of Appeals, Fifth Circuit - April 23, 2013 - F.3d - 2013 WL 1748056

State's determination that it is faced with an emergency requiring a summary abatement is entitled to deference on the property owner's procedural due process challenge; relevant inquiry is not whether an emergency actually existed, but whether the state acted arbitrarily or otherwise abused its discretion in concluding that there was an emergency requiring summary action.

Property owner brought action against city, asserting Fourteenth Amendment procedural due process claim and Fourth Amendment unreasonable search and seizure claim arising from city's demolition of building on its property without prior notice to owner.

The court of appeals held that:

- District court abused its discretion when instructing jury on due process claim, and
- Erroneous jury instruction on due process claim also constituted abuse of discretion with respect to Fourth Amendment claim.

Government's abatement of nuisance by summary demolition of building, when carried out in accordance with procedural due process, is a reasonable seizure under the Fourth Amendment in the absence of any factors that outweigh governmental interests, and factors favoring the property owner will generally not outweigh the government's interest when it effects a procedurally adequate summary deprivation.

Fourth Amendment reasonableness of city's seizure and demolition of nuisance property will ordinarily be established when the substantive and procedural safeguards inherent in state and municipal property standards ordinances have been fulfilled.

If the State acts pursuant to a valid summary-action ordinance in effecting a pre-notice deprivation of property, the State's determination that it was faced with an emergency requiring a summary abatement is entitled to deference on the property owner's procedural due process challenge. In such cases, the relevant inquiry is not whether an emergency actually existed, but whether the State acted arbitrarily or otherwise abused its discretion in concluding that there was an emergency requiring summary action.

But the district court abused its discretion, when instructing jury on property owner's procedural due process challenge to city's demolition of building without prior notice, by instructing jury that city was excused from providing notice to owner only if there was "immediate danger to the public" and making no mention of city's compliance with valid summary-demolition ordinance. The instruction improperly cast central factual dispute as whether or not building posed immediate danger to public, when issue should have been whether city acted arbitrarily or abused its discretion in determining that the building presented immediate danger.

Reversed and remanded.

