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TAKINGS - CONNECTICUT

Wellwood Columbia, LLC v. Town of Hebron

United States District Court, D. Connecticut - September 30, 2013 - Not Reported in F.Supp.2d - 2013 WL 5435532

Plaintiff brought an action against the Town of Hebron in recompense for injuries allegedly sustained as a result of Hebron's closure of a public road that provided the only access to real property owned by Plaintiff.

The court initially concluded that the Plaintiff's takings claims (counts one and three) under the Fifth Amendment were not ripe for adjudication in this pursuant to the U.S. Supreme Court's decision in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). The parties agreed that *Williamson County* precluded the court from considering count three, alleging a violation of the just compensation requirement of the Fifth Amendment.

Plaintiff argued, though, that it had brought two distinct takings claims under the Fifth Amendment, of which count one must remain within this court's jurisdiction. Specifically, Plaintiff stated that count three sought just compensation for the temporary taking of plaintiff's property (a so-called "uncompensated taking" claim), and is thus not ripe in federal court, but that count one asserted that the Town's ultra vires temporary taking of plaintiff's property for an improper purpose violated the Fifth Amendment's public use dictate (a so-called "bad faith taking" claim)," which is not proscribed by *Williamson County*.

Thus, a plaintiff alleging a bad faith exercise of a municipality's eminent domain power pursuant to the public use requirement of the Fifth Amendment need not exhaust *Williamson County*'s ripeness requirements. The District Court agreed, retaining jurisdiction.