

# **Bond Case Briefs**

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## **EMINENT DOMAIN - CALIFORNIA**

### **Bank of New York Mellon v. City of Richmond**

**United States District Court, N.D. California - November 6, 2013 - Not Reported in F.Supp.2d - 2013 WL 5955699**

After the Court dismissed a nearly identical case filed by Wells Fargo, the City of Richmond and its “advisor,” a private company named Mortgage Resolution Partners LLC (collectively, “Defendants”), moved to dismiss this action on the same grounds, arguing that the issue was not yet ripe for determination for constitutional and prudential purposes. Here, Bank of New York Mellon and Wilmington Trust Company (collectively, “Plaintiffs”) challenge the Court’s prior determination regarding ripeness, and argue that this case presents unique issues—particularly related to the effect of its request for declaratory judgment—that the Court had not yet considered.

Defendants here are considering purchasing underwater mortgages from Richmond homeowners and refinancing the mortgages so that the homeowners would have lower payments and protection from foreclosure.

Plaintiffs filed suit for injunctive and declaratory relief, arguing that Defendants’ eminent domain plan is both unconstitutional and sufficiently imminent such that the case is ripe for determination. Plaintiffs argued that the Court should deny this motion, emphasizing that the case is ripe for determination and that the Court had not explicitly ruled on ripeness related to actions for declaratory judgment.

The Court once again found that the case is not yet ripe for determination and granted Defendants’ motion to dismiss without prejudice.

“To intervene before the Richmond City Council adopts an eminent domain program would stretch the role of the judiciary beyond what is contemplated by Article III and what is reasonable to maintain judicial efficiency. If the courts were expected to intervene in every legislative proposal that had potential constitutional ramifications, their dockets would be filled with prospective litigation. This is exactly the purpose of the ripeness doctrine; where, as here, factual contingencies could arise that would make litigation unnecessary, it is not reasonable to expect the courts to devote their resources to resolve undefined and potentially non-existent constitutional conflicts.”