

# **Bond Case Briefs**

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## **EMINENT DOMAIN - TEXAS**

### **Thornton v. Northeast Harris County MUD 1**

**Court of Appeals of Texas, Houston (14th Dist.) - July 24, 2014 - S.W.3d - 2014 WL 3672897**

In connection with the construction of a drainage ditch, Northeast Harris County MUD 1 filed an eminent domain suit against Frank and Shelley Thornton. The Thorntons brought counterclaims for inverse condemnation, nuisance, trespass, and negligent trespass. MUD filed a plea to the jurisdiction, arguing that there was no legislative waiver of its governmental immunity and that the Thorntons' counterclaims did not give rise to a constitutional taking sufficient to waive immunity because they could not show that MUD intended to contaminate their property and that alleged contamination of their property served a public use.

The Court of Appeals held that:

- A claim for constitutional taking cannot be based on mere negligence, thus the MUD was immune from the Thornton's negligent trespass claim; and
- A trial courts subject matter jurisdiction cannot be challenged in a no-evidence motion for summary judgment, thus the trial court erred in granting MUD summary judgment as to the Thorntons' counterclaims for inverse condemnation, nuisance, and trespass.