

# **Bond Case Briefs**

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## **INVERSE CONDEMNATION - MISSOURI**

### **Scott Family Properties, LP v. Missouri Highway and Transportation Commission**

**United States District Court, E.D. Missouri, Eastern Division - June 3, 2016 - F.Supp.3d - 2016 WL 3125880**

Landlord filed state court suit against Missouri Highway and Transportation Commission and individual commissioners, in their official capacities, asserting state law claim against Commission for inverse condemnation based on private nuisance and asserting § 1983 claims against commissioners for deprivation of procedural due process and equal protection, as well as claims for violation of state laws, arising from Commission's installation of sound wall between office building and highway that allegedly impaired landlord's ability to attract tenants and resulted in \$5 million reduction in value of building.

Following removal, Commission moved to dismiss for lack of subject matter jurisdiction and for failure to state claim.

The District Court held that:

- Commission waived Eleventh Amendment immunity from inverse condemnation claim;
- Claim for inverse condemnation based on private nuisance was not sufficiently alleged;
- Procedural due process claim was not actionable under Missouri constitution;
- State procedural due process claim was barred by Eleventh Amendment;
- § 1983 claims were not sufficiently alleged.

Missouri Highway and Transportation Commission waived Eleventh Amendment immunity from landlord's claim for inverse condemnation based on private nuisance, under Missouri law, due to Commission's installation of sound wall between office building and highway that allegedly impaired landlord's ability to attract tenants and resulted in \$5 million reduction in value of building, since Commission voluntarily invoked federal jurisdiction by removing landlord's lawsuit from state court, and inverse condemnation claim did not sound in tort.

Landlord lacked protected property interest in unobstructed view, of and from office building, that was damaged by Missouri Highway and Transportation Commission's installation of sound wall between building and highway, and thus, landlord failed to state claim against Commission for inverse condemnation based on private nuisance, under Missouri law.

Landlord's procedural due process claim against commissioners of Missouri Highway and Transportation Commission, for failing to provide landlord notice and opportunity to be heard in design of sound wall between office building and highway, was not actionable under Missouri constitution that did not provide cause of action for violation of state due process rights.

Commissioners of Missouri Highway and Transportation Commission did not waive Eleventh Amendment immunity from landlord's procedural due process claim, under Missouri constitution, for failing to provide landlord notice and opportunity to be heard in design of sound wall between office

building and highway, since commissioners did not participate in removal of landlord's action to federal court as would have waived sovereign immunity by voluntarily invoking federal jurisdiction.

Landlord's complaint failed to allege that commissioners of Missouri Highway and Transportation Commission, in their official capacities, had final policy-making authority or acted pursuant to official policy or custom in installing sound wall between landlord's office building and highway, and thus, landlord failed to state § 1983 claims against commissioners for alleged deprivation of procedural due process and equal protection.

A constitutional case involving land use is not ripe for federal adjudication unless the plaintiff has first exhausted available state remedies. The exhaustion requirement cannot be satisfied by simultaneously bringing federal and state takings claims.