

Bond Case Briefs

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EMINENT DOMAIN - NEW YORK

In re South Richmond Bluebelt, Phase 3.

Supreme Court, Appellate Term, New York, Second Department - July 20, 2016 - N.Y.S.3d - 2016 WL 3910492 - 2016 N.Y. Slip Op. 05577

In eminent domain proceeding, the Supreme Court, Richmond County, granted condemnor's motion to strike claimant's appraisal report and adhered to its original determination. Claimant appealed.

The Supreme Court, Appellate Division, held that claimant's de facto taking claim was untimely.

Just compensation for property taken in condemnation proceeding is determined by property's market value at time of taking, which is ordinarily date that title vests in condemnor, but if owner can establish that de facto taking preceded formal one, he or she is entitled to compensation based on deprivation of his or her beneficial use of property from earlier date.

De facto taking claim is governed by three-year statute of limitations applicable to claims to recover damages for injury to property.

De facto taking claim accrues at time of taking or, at latest, when taking becomes apparent, regardless of time of discovery.

Property owner's de facto taking claim against city, based on city's construction of certain stormwater control devices that affected property, accrued, and statute of limitation commenced, when devices were constructed, rather than when owner discovered them.