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EMINENT DOMAIN - UNITED STATES

Freeman v. United States

United States Court of Appeals, Federal Circuit - November 3, 2017 - F.3d - 2017 WL 5015182

Claimant filed amended complaint against United States, asserting Fifth Amendment takings claim. The United States filed motion to dismiss for lack of subject matter jurisdiction.

The United States Court of Federal Claims granted motion. Claimant moved for reconsideration. The Court of Federal Claims denied motion. Claimant appealed.

The Court of Appeals held that:

- Claimant's Fifth Amendment takings claim was not ripe for judicial review;
- Futility exception to ripeness requirement did not apply; and
- Court of Federal Claims did not abuse its discretion by denying claimant's request for discovery.

Claimant's Fifth Amendment takings claim, based on allegation that United States Forest Service had not approved claimant's plan of operations, as prerequisite to mining in national forest lands, was not ripe for judicial review, and thus, United States Court of Federal Claims lacked subject matter jurisdiction over claim. Forest Service did not disapprove claimant's proposed plan of operations, but rather sought additional information with regard to deficiencies in claimant's analyses with respect to air quality, water quality, and waste in evaluating impact of mining operations on forest land and effects of claimant's processing facility on managed lands adjacent to mining area.

Futility exception to ripeness requirement did not excuse claimant's failure to secure a final decision by the United States Forest Service before bringing action alleging Forest Service's failure to approve his plan of operations, as prerequisite to mining in national forest lands, constituted a Fifth Amendment takings, and thus United States Court of Federal Claims lacked subject matter jurisdiction over claim. Forest Service's communications with claimant nowhere implied or stated that pursuing administrative remedies would be fruitless, Forest Service explained additional steps for claimant to take to complete his application and receive final decision, and claimant failed to show that Forest Service's requests were merely pretext to extend process and prevent claimant from ever mining in national forest land.

Court of Federal Claims did not abuse its discretion by denying plaintiff's request for discovery, where neither the filing of an answer nor a conference had yet occurred.