

Bond Case Briefs

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EMINENT DOMAIN - MICHIGAN

Mays v. Governor of Michigan

Supreme Court of Michigan - July 29, 2020 - N.W.2d - 2020 WL 4360845

Water users and property owners brought putative class action against State and former city emergency managers for their role in switching city's water supply that allegedly resulted in Legionella bacteria and toxic levels of iron and lead, claiming inverse condemnation and a violation of their right to bodily integrity under state constitution's due process clause, among other claims.

The Court of Claims granted partial summary disposition to State and managers on the other claims, but denied summary disposition on the inverse condemnation and bodily integrity claims. State appealed, and managers and users and owners filed cross-appeals. The Court of Appeals affirmed. State's and managers' applications for leave to appeal were granted.

The Supreme Court held that:

- Allegations were sufficient to state a claim for inverse condemnation;
- For an equally divided court, genuine issue of material fact precluded summary disposition on bases of lack of subject-matter jurisdiction and immunity;
- For an equally divided court, recognizable due-process claim for violation of right to bodily integrity was pled; and
- For an equally divided court, damages remedy was not precluded as possible remedy for due-process claim.

Property owners sufficiently alleged that State's and city emergency managers' actions in changing city's water supply were substantial cause of decline of their property's value, as required to state claim for inverse condemnation; owners alleged that switching water source resulted in physical damage to pipes, service lines, and water heaters, and owners alleged that, after water crisis became public knowledge, lenders were hesitant to authorize loans for purchase of realty within city and property values plummeted.

Property owners sufficiently alleged that State and city emergency managers abused their powers in affirmative actions directly aimed at property, as required to state claim for inverse condemnation, based on their actions in changing city's water supply that allegedly damaged pipes, service lines, and water heaters; State allegedly authorized managers to use different river as interim water source while State and managers knew that using river could result in harm to property, and State and managers allegedly concealed or misrepresented data and made false statements about safety of river water in attempt to downplay risk of its use and consumption.

Property owners alleged that they suffered unique or special injury different in kind, not simply in degree, from harm suffered by all persons similarly situated, as required to state claim for inverse condemnation, based on State's and city emergency managers' actions in changing city's water supply that allegedly damaged pipes, service lines, and water heaters; comparison group was municipal water users generally, not water users within city, and owners alleged that State authorized managers to use interim water source despite knowing potential harm, which was

different from harms that municipal water users experienced generally, such as service disruptions and externalities associated with construction.

Genuine issue of material fact as to when water users' and property owners' constitutional-tort claims accrued, for purposes of timeliness of statutory notice under Court of Claims Act (COCA), precluded summary disposition for State and city emergency managers based on lack of subject-matter jurisdiction and immunity.

Water users alleged state custom or policy so egregious that it shocked contemporary conscience, and thus users pled recognizable due-process claim under state constitution for violation of their right to bodily integrity against State and city emergency managers; users alleged that decision to switch city's water source resulted in nonconsensual entry of water contaminated with bacteria and toxic levels of lead in users' bodies, that State and managers knew that city's water-treatment system was inadequate, and that State and managers concealed scientific data and made misleading statements about safety of water.

Damages remedy was not precluded as possible remedy for water users' due-process claim under state constitution for violation of their right to bodily integrity against State and city emergency managers, arising out of decision to switch city's water source that led to water contaminated with bacteria and toxic levels of lead; even though due process protections were not as "clear-cut" as other specific protections, users' allegations established clear violation of state constitution, users had no alternative recourse in light of immunity, and alleged conduct, involving one of the most troublesome breaches of public trust in state's history with catastrophic consequences for health, well-being, and property, was shocking and outrageous.