

Bond Case Briefs

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EMINENT DOMAIN - TEXAS

DM Arbor Court, Limited v. City of Houston

United States Court of Appeals, Fifth Circuit - February 12, 2021 - F.3d - 2021 WL 523030

Operator of low-income housing complex brought action against city, challenging city's refusal to grant permits to operator to repair units damaged in hurricane, and alleging claims of regulatory taking, and violation of the due process, equal protection and contracts clauses of the United States constitution.

The United States District Court for the Southern District of Texas dismissed operator's suit for lack of subject matter jurisdiction, concluding it was not ripe because operator had not yet obtained a decision from city council, which was final arbiter of city permit requests. Operator appealed.

The Court of Appeals held that:

- Claims by operator were not ripe at the time they were dismissed by district court, but
- Given city's final decision after entry of district court judgment, operator's claims had become ripe, and thus vacatur of district court's judgment was warranted.

Claims by operator of low-income housing complex, including regulatory taking, due process, equal protection and contracts clause violations, arising out of city's refusal to grant permits for operator to conduct repairs at property based on hurricane damage, were not ripe when considered by the district court; city council had final say about operator's permit applications, and city council had not yet taken a final, definitive position on those applications at the time of hearing before district court that resulted in judgment dismissing claims without prejudice.

Claims by operator of low-income housing complex against city, including regulatory taking, and due process, equal protection and contracts clause violations, arising out of city's denial of permits to operator to repair hurricane damage at property, became ripe after district court entered judgment dismissing such claims against city, and thus vacatur of district court's judgment was warranted; while city council was final decisionmaker as to operator's permit applications, and had not yet made a final decision at the time operator's action was filed, city council made such a decision prior to consideration of operator's appeal from district court's judgment, and district court's ripeness concern was prudential, rather than jurisdictional.