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FINANCE - TEXAS

Preston Hollow Capital, L.L.C. v. Cottonwood Development Corporation

United States Court of Appeals, Fifth Circuit - January 14, 2022 - F.4th - 2022 WL 131110

Lender, which made loan to city in connection with development project, brought § 1983 action against city, alleging city violated Takings Clause when it failed to return loaned funds.

The United States District Court adopted magistrate's report and recommendation and dismissed action. Lender appealed.

The Court of Appeals held that:

- Lender's pre-existing title to its own money did not allow lender to bring takings claim, as opposed to breach of contract claim, against city, and
- Neither city's statements asserting belief that loan agreement was void or voidable nor its adoption of resolution stating that transaction with lender was "legally defective" were sovereign acts, and therefore such acts could not support takings claim.

Lender's pre-existing title to its own money did not allow lender to bring takings claim, as opposed to breach of contract claim, against city based on city's failure to return funds lent to city by lender pursuant to parties' loan agreement; lender exchanged its pre-existing title for various rights laid out in loan agreement, such as a promissory note, and thus rights at issue in takings action were not independent of parties' contract.

Neither municipal borrower's statements asserting belief that loan agreement was void or voidable nor its adoption of resolution stating that transaction with lender was "legally defective" were sovereign acts, and therefore such acts could not support takings claim by lender after borrower failed to return loaned funds; borrower did not act pursuant to statute, ordinance, or regulation.

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