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**EMINENT DOMAIN - MICHIGAN**

## Mount Clemens Recreational Bowl, Inc. v. Director of Department of Health and Human Services

**Court of Appeals of Michigan - November 17, 2022 - N.W.2d - 2022 WL 17070755**

Owners of restaurants, bars and banquet halls brought purported class action against the Governor, Director of Health and Human Services, and Chairperson of the Liquor Control Commission, seeking just compensation for their alleged regulatory taking by promulgating executive orders and regulations in response to the COVID-19 pandemic.

The Court of Claims denied owners' motion to transfer venue and granted defendants' motion for summary disposition. Owners appealed.

The Court of Appeals held that:

- Owners could not pursue their action in a circuit court by a jury under Court of Claims Act;
- Owners failed to state a claim for regulatory taking under Penn Central; and
- Governor did not engage in ultra vires conduct, as required for owners' claims to avoid governmental immunity.

Action brought by owners of restaurants, bars, and banquet halls against the Governor, Director of Health and Human Services, and Chairperson of the Liquor Control Commission, seeking just compensation for an alleged regulatory taking through executive orders promulgated during the COVID-19 pandemic, was against the State, and thus, owners had no right to jury under Court of Claims Act, where owners sued the Governor, Director, and Chairperson in their official capacities.

In their action seeking just compensation for an alleged regulatory taking through executive orders promulgated during the COVID-19 pandemic, owners of restaurants, bars and banquet halls could not pursue their action against the State by a jury in the circuit court under the Court of Claims Act; owners' complaint made clear that they were seeking money damages under state constitution, and their claims were not brought under Uniform Condemnation Procedures Act (UCPA), as would allow them to demand a jury trial, because they did not allege that the State acquired their property.

Owners of restaurants, bars and banquet halls failed to state a claim that governor's executive orders that closed and imposed restrictions on their businesses during the COVID-19 pandemic constituted a regulatory taking under Penn Central, as required for owners to be entitled to just compensation under state constitution; even though owners alleged that regulations and executive orders at-issue were not actually warranted, they emphatically argued government's purpose in making restrictive regulations was not pertinent to a regulatory-takings analysis under Penn Central, stating that whether orders were "arbitrary, invalid exercises of police power" was ultimately irrelevant to regulatory taking analysis, and they did not argue that the executive orders at-issuer were imprudent.

Governor did not engage in ultra vires conduct by promulgating executive orders that closed and imposed restrictions on owners' restaurants, bars and banquet halls during the COVID-19 pandemic,

as required for owners' tort claims for interference with business and contractual relationships to avoid governmental immunity; Governor was clearly acting, at the very least, under implied authority under the Emergency Powers of the Governor Act of 1945, even if the Supreme Court had ruled against that authority.

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