



TEXAS MUNICIPAL LAW BULLETIN™

A News Bulletin Published by the Bojorquez Law Firm, PC ★ May 2017

Buying a House That's Been Declared a Nuisance

When someone buys a property where the house or another structure on it has already been declared a nuisance by city ordinance, can the new owner challenge the nuisance order? A recent case says no. The new owner also may not sue the city for a takings, which is the unconstitutional “taking” of private property by the government. *City of Beaumont et al v. Ermis*, No. 09-15-00451-CV (Tex. App.—Beaumont Mar. 30, 2017).

Local Government Code Chapter 214 gives a city authority to order the demolition of a building that is, among other things, dilapidated and unsafe. Additionally, Chapter 214 allows an owner thirty days to file suit in court to appeal a city's demolition order.

In October 2007, Beaumont City Council passed an order declaring a specific structure a public nuisance because the structure violated the building ordinances. This nuisance finding was not appealed. Almost six months after the structure was declared a nuisance, the owners sold the property to Ms. Ermis. Ermis filed suit against the City, challenging the validity of the nuisance determination and arguing that destroying her property was a constitutional taking.

After reviewing the record, the court noted that, as Ermis was not the owner of record at the time the property was declared dangerous and ordered destroyed, and as she did not acquire any potential claims regarding the validity of the nuisance determination from the previous owners, therefore, she had no right to challenge the nuisance determination. “Under Texas law, [t]he right to sue is a personal right that belongs to the person who owns the property at the time of the injury.” Additionally, the Court dismissed Ermis's takings claim by noting that the property was the subject of a final finding that it was a nuisance.

In *Dallas v Stewart*, the Texas Supreme Court held that an owner's takings claim could not be dismissed simply because the structure had been found a nuisance. When an owner brings a takings claim, the nuisance determination must be reviewed *de novo*—the court either has to agree that the structure is a nuisance or the owner's takings claim can proceed. This sparked a lot of concern by cities, who feared they could follow all the statutory procedures and still be subject to a takings suit if a judge disagreed with their evaluation of the structure.

This fear was calmed when the Court later stated that a party asserting a taking must first exhaust its administrative remedies and implied that appealing a nuisance finding within the 30-day deadline was a jurisdictional prerequisite for filing a takings suit. This Beaumont case confirms that failure to appeal a Chapter 214 nuisance determination within 30 days will result in a final finding that the property is a nuisance. Because abating a nuisance is not considered a taking, this final finding can be used to dispose of a takings claim.

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