

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8139

FORREST E. SMOCK, ET AL.,

Plaintiffs-Appellants,
Cross-Appellees,

versus

THE CITY OF AUSTIN, ET AL.,

Defendants-Appellees,
Cross-Appellants.

Appeal from the United States District Court for the
Western District of Texas
(A-90-CV-357)

(January 6, 1995)

Before KING, JOLLY, and STEWART, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:*

This appeal concerns the district court's disposition of (1) the state law nuisance claim, (2) the takings claim based on state and federal constitutional provisions, and (3) the § 1983 claim, which encompassed a reiteration of the takings and nuisance claims, plus a claim of negligent misrepresentation and other "arbitrary

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

actions" that allegedly injured the plaintiffs. After repeated study of the record and the arguments of the parties, we are convinced that under the particular facts and the procedural posture of this case, the district court had jurisdiction and that in reaching its judgment, it committed no reversible error. For the following reasons, we therefore affirm.

First, the district court clearly had jurisdiction to enter the judgment because the amended complaint alleged various federal civil rights claims, in addition to the federal takings claim.

Second, although we agree that the federal takings claim was not ripe for adjudication, see Samaad v. City of Dallas, 940 F.2d 925, 933-34 (5th Cir. 1991), there was no impediment to the federal court's trying the inverse condemnation claim based on state law. The state inverse condemnation claim was properly before the court because it was supplemental to the federal civil rights claims asserted by the plaintiffs, which provided an adequate basis for exercising jurisdiction.

Third, although the record is not transparently clear on the point, we are convinced, following careful study of the record, that the state inverse condemnation claim was submitted to the jury along with the federal takings claim.

Fourth, keeping in mind that we are obliged to view the evidence in a light most favorable to upholding the jury's verdict, we find that a plausible view of the record and the verdict indicates that the jury returned a monetary award on the basis of

the state inverse condemnation claim. In addition, again reading the evidence (with respect to damages) in a light most favorable to upholding the jury verdict, we find it amply supports the jury award.

Fifth, the district court properly dismissed the state law nuisance claim and the § 1983 claim because they are barred by the statute of limitations.

Because we have upheld the verdict and because no party has challenged the adequacy of the compensation awarded by the trial court, the federal takings claim is rendered moot.

Therefore, the judgment of the district court is, in all particulars,

A F F I R M E D.