

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3 August Term, 2014

4 (Argued: August 27, 2014 Decided: February 24, 2015)

5 Docket No. 13-4161-cv

6 - - - - -  
7 NATIONAL RAILROAD PASSENGER CORPORATION,

8 Plaintiff-Appellant,

9 v.

10 JOAN MCDONALD, COMMISSIONER, THE NEW YORK STATE DEPARTMENT OF  
11 TRANSPORTATION,

12  
13 Defendant-Appellee.

14 - - - - -  
15 Before: WINTER, RAGGI, and CARNEY, Circuit Judges.

16 Appeal from a judgment of the United States District Court  
17 for the Southern District of New York (Colleen McMahon, Judge),  
18 denying appellant's motion for summary judgment on the ground  
19 that New York's taking of appellant's land by eminent domain was  
20 barred by federal law and granting appellee's motion for summary  
21 judgment on grounds of Eleventh Amendment immunity and statute of  
22 limitations. We affirm on statute-of-limitations grounds.

23 KATHLEEN M. SULLIVAN (Christopher  
24 E. Kulawik, on the brief), Quinn  
25 Emanuel Urquhart & Sullivan, LLP,

1 New York, NY, for Plaintiff-  
2 Appellant.  
3

4 CECELIA C. CHANG, Special Counsel  
5 (Barbara D. Underwood, Solicitor  
6 General, Andrew W. Amend & Mark H.  
7 Shawhan, Assistant Solicitors  
8 General, of counsel), on the brief  
9 for Eric T. Schneiderman, Attorney  
10 General of the State of New York,  
11 for Defendant-Appellee.  
12

13 WINTER, Circuit Judge:  
14

15 The National Railroad Passenger Corporation ("Amtrak")  
16 appeals from Judge McMahon's grant of summary judgment dismissing  
17 its federal Supremacy Clause claims brought against Joan  
18 McDonald, Commissioner of the New York State Department of  
19 Transportation (the "Commissioner"). Amtrak's complaint claimed  
20 that, in light of federal statutes that organize and regulate  
21 Amtrak, the Supremacy Clause of the United States Constitution  
22 deprived the New York State Department of Transportation  
23 ("NYSDOT") of authority to condemn Amtrak's property by eminent  
24 domain. Because Amtrak brought its federal claims more than six  
25 years after its claims accrued, the action was time-barred. We  
26 therefore affirm.

27 BACKGROUND

28 The relevant facts are undisputed.

29 Amtrak is a private corporation created by the Rail  
30 Passenger Service Act of 1970, 49 U.S.C. § 24101 et seq., to  
31 operate intercity commuter rail service throughout the United

1 States. See 49 U.S.C. §§ 24101(a); 24301(a)(2). In furtherance  
2 of its objectives, Amtrak owns and uses real property, much of  
3 which was conveyed to it pursuant to the Regional Rail  
4 Reorganization Act of 1973. See 45 U.S.C. § 701 et seq.

5 The NYSDOT is currently engaged in a project called the  
6 Bronx River Greenway, involving joint federal and state efforts  
7 to convert a 23-mile-long stretch of land along both sides of the  
8 Bronx River into urban parkland. Part of the planned Greenway  
9 adjoins Amtrak's Northeast Corridor rail lines. In the course of  
10 carrying out the project, NYSDOT determined that it needed to  
11 build on several parcels of land owned by Amtrak. The  
12 Commissioner sought to acquire the land by eminent domain under  
13 the authority given her by the New York State Highway Law, N.Y.  
14 High. Law §§ 22, 30 (McKinney 2004), and the Eminent Domain  
15 Procedure Law ("EDPL"), N.Y. Em. Dom. Proc. Law § 101 et seq.  
16 (McKinney 2004).

17 Before resorting to eminent domain, NYSDOT contacted Amtrak  
18 and attempted to negotiate the purchase of the land and easements  
19 it needed. As a result, beginning in 2001, NYSDOT and Amtrak  
20 communicated for several years about the Greenway project's need  
21 for the land in question. However, a stalemate resulted.  
22 Although Amtrak was willing to sell the land to New York, it  
23 demanded indemnification from all potential environmental cleanup  
24 liability and the right to pre-approve NYSDOT's entering and

1 working on the land. NYSDOT did not make the desired  
2 concessions.

3 In April 2005, NYSDOT began proceedings under the EDPL to  
4 condemn the properties. In accordance with EDPL §§ 202-203,  
5 NYSDOT published notices of a public hearing. It also notified  
6 Amtrak officials that the hearing would occur on May 19, 2005.  
7 On May 11, 2005, Roger Weld, a NYSDOT employee, called and  
8 emailed a regional Amtrak official, Earl Watson, and notified him  
9 of the hearing. Watson, in turn, forwarded the NYSDOT email to  
10 the Amtrak personnel with authority to act in eminent domain  
11 cases, namely the Project Director of Real Estate Development --  
12 Sheila Sopper -- and the legal department. However, NYSDOT's  
13 EDPL-mandated notice was sent to an erroneous address for Amtrak,  
14 not at the statutory address where Amtrak is to receive service  
15 of process. See 49 U.S.C. § 24301(b); N.Y. Em. Dom. Proc. Law §§  
16 202-03.

17 On May 19, 2005, NYSDOT held the public hearing as  
18 scheduled. No one from Amtrak attended, and Amtrak did not  
19 submit written comments. Subsequently, on August 17, 2005,  
20 NYSDOT published the determinations and findings necessary for  
21 condemnation of the land. See N.Y. Em. Dom. Proc. Law § 204.  
22 Amtrak could have challenged the condemnation under the EDPL's  
23 judicial review provision, see id. § 207, but did not. As it  
24 conceded at oral argument, it could also have brought the present

1 action. Instead, from 2005 through 2008, it continued to discuss  
2 the Greenway project with NYSDOT.

3 Meanwhile, in 2007 and 2008, NYSDOT sent Amtrak notice that  
4 it planned to condemn six parcels and made an offer of  
5 compensation. On February 19, 2008, the Commissioner filed  
6 notices of appropriation and maps with the county clerk. When  
7 those documents were filed, title to the land vested in New York  
8 state. Id. § 204; see id. § 402(A)(3). A year and a half later,  
9 on August 13, 2009, Sopper sent NYSDOT "agreement of sale"  
10 documents that proposed to sell the land and easements for the  
11 same price as the compensation proffered by NYSDOT but also  
12 provided for Amtrak's pre-approval of construction and for  
13 indemnification for environmental liability. On August 28, 2009,  
14 NYSDOT responded that it had already acquired title to the  
15 parcels by eminent domain. Nearly two and a half years later, on  
16 April 9, 2012, Amtrak brought the present action claiming that  
17 the takings were invalid under the Supremacy Clause as expressly  
18 or impliedly preempted by federal law. Joint App. at 8-22.<sup>1</sup>

19 The district court held that Amtrak's Supremacy Clause  
20 claims against the Commissioner were barred under the Eleventh  
21 Amendment. Nat'l R.R. Passenger Corp. v. McDonald, 978 F. Supp.  
22 2d 215, 245 (S.D.N.Y. 2013). Alternatively, it held them time-

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<sup>1</sup> Condemnation proceedings for one parcel are not yet completed, but the district court's dismissal on time-bar grounds applies to that parcel as well.

1 barred, because Amtrak brought suit over six years after it knew  
2 or should have known that it had a claim. Id. at 242 & n.1. We  
3 affirm on statute-of-limitations grounds.

#### 4 DISCUSSION

5 We review de novo whether the Commissioner was entitled to  
6 summary judgment. See, e.g., Terry v. Ashcroft, 336 F.3d 128,  
7 137 (2d Cir. 2003). Summary judgment is appropriate only where  
8 there are no issues of material fact and the movant is entitled  
9 to judgment as a matter of law. Id. We may affirm on any ground  
10 with support in the record. McElwee v. County of Orange, 700  
11 F.3d 635, 640 (2d Cir. 2012).

12 As noted, the district court proffered alternative  
13 rationales for dismissing Amtrak's claims: sovereign immunity  
14 under the Eleventh Amendment and the time-bar of the relevant  
15 statute of limitations. Nat'l R.R. Passenger Corp., 978 F. Supp.  
16 at 235, 242 & n.1.

17 The Eleventh Amendment bars suits against a state in federal  
18 court unless that state has consented to the litigation. See  
19 Papasan v. Allain, 478 U.S. 265, 276-77 (1986); Pennhurst State  
20 Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). An exception  
21 exists for suits against state officers alleging a violation of  
22 federal law and seeking injunctive relief that is prospective in  
23 nature. See Edelman v. Jordan, 415 U.S. 651, 675-77 (1974);  
24 accord Va. Office for Protection & Advocacy v. Stewart, 131 S.

1 Ct. 1632, 1639 (2011). If appellee is entitled to Eleventh  
2 Amendment immunity, we would lack jurisdiction. See McGinty v.  
3 New York, 251 F.3d 84, 100 (2d Cir. 2001); see also Woods v.  
4 Rondout Valley Central Sch. Dist. Bd. of Educ., 466 F.3d 232, 238  
5 (2d Cir. 2006). Ordinarily, therefore, we would reach this issue  
6 first.

7 However, Eleventh Amendment immunity "is a privilege which  
8 may be waived." Gunter v. Atl. Coast Line R.R. Co., 200 U.S.  
9 273, 284 (1906); see Gardner v. New Jersey, 329 U.S. 565, 574  
10 (1947); Clark v. Barnard, 108 U.S. 436, 447 (1883). Also, we  
11 have discretion to dispose of a case on a non-merits issue before  
12 considering a jurisdictional question.

13 Because one of the parcels is not subject to sovereign  
14 immunity, see Note 1, supra, the statute of limitations issue has  
15 to be resolved. The district court held that Amtrak's Supremacy  
16 Clause preemption claim as to the seventh parcel, see note 1,  
17 supra, was time-barred under New York's six-year catch-all  
18 limitations period, N.Y. C.P.L.R. § 213(1) (McKinney 2004), and,  
19 by footnote, that its claims as to the six parcels already  
20 condemned were accordingly barred for the same reason. Nat'l  
21 R.R. Passenger Corp., 978 F. Supp. 2d at 242 & n.1.

22 At oral argument, recognizing that the limitations issue  
23 was dispositive as to all the parcels, the state urged us to  
24 exercise our discretion to reach the statute-of-limitations issue

1 without deciding whether the suit is barred by sovereign  
2 immunity. See Tr. of Oral Arg. at 21:2-7. In view of our  
3 disposition of the limitations issue, we may treat the state's  
4 suggestion as a waiver of the immunity issue for purposes of this  
5 appeal.

6 The parties disagree as to the relevant statute of  
7 limitations. The Commissioner urges upon us the 30-day appeal  
8 period under EDPL § 207 or, alternatively, the three-year period  
9 applicable to Bivens actions. Kronisch v. United States, 150  
10 F.3d 112, 123 (2d Cir. 1998). Amtrak argues for a six-year  
11 period based on Niagara Mohawk Power Corp. v. FERC, 162 F. Supp.  
12 2d 107, 137-38 (N.D.N.Y. 2001), aff'd, 306 F.3d 1264 (2d Cir.  
13 2002). We need not resolve this dispute because Amtrak had  
14 notice of its claims well before April 9, 2006, the date six  
15 years before it filed the present action on April 9, 2012. The  
16 action is, therefore, barred even if the six-year limitations  
17 period applies.

18 Amtrak argues that various deficiencies in the NYSDOT's  
19 giving of notice of the eminent domain proceedings prevented the  
20 limitations period from beginning to run. For example, NYSDOT  
21 failed to give Amtrak formal notice strictly according to the  
22 procedures of the EDPL and did not serve Amtrak at the address  
23 referenced in 49 U.S.C. § 24301(b). But full compliance with  
24 formal notice requirements is not necessarily the trigger

1 beginning the relevant limitations period. See, e.g., Veltri v.  
2 Bldg. Serv. 32B-J Pension Fund, 393 F.3d 318, 326 (2d Cir. 2004)  
3 (declining to establish “mechanical rule that failure to notify a  
4 claimant of her right to bring an action in court automatically  
5 tolls the statute of limitations”). Rather, Amtrak’s claims  
6 accrued -- and the limitations clock started running -- when  
7 Amtrak had reason to know of its injury.

8 “Under federal law, a cause of action generally accrues  
9 ‘when the plaintiff knows or has reason to know of the injury  
10 that is the basis of the action.’” M.D. v. Southington Bd. of  
11 Educ., 334 F.3d 217, 221 (2d Cir. 2003) (quoting Leon v. Murphy,  
12 988 F.2d 303, 309 (2d Cir. 1993)). We do not pause to determine  
13 the precise date on which NYSDOT knew, or had reason to know,  
14 because both possible dates are well beyond six years from the  
15 date this action was brought. In 2005, when Weld sent the email  
16 informing Amtrak that NYSDOT would hold a May 2005 public hearing  
17 on the subject of condemning Amtrak’s land, Amtrak arguably had  
18 reason to know of the alleged Supremacy Clause violation that is  
19 the basis of its present claim. Eminent domain proceedings cloud  
20 title, and Amtrak concedes that it suffered not merely potential,  
21 but actual injury once its property became the subject of EDPL  
22 proceedings. At the very latest, Amtrak had notice of this harm  
23 in August 2005, when NYSDOT announced its findings. See Didden  
24 v. Village of Port Chester, 173 F. App’x 931, 933 (2d Cir. 2006)

1 (summary order). Accordingly, Amtrak had actual notice more than  
2 six years before it filed its lawsuit.

3 Amtrak argues that it suffered two separate injuries: the  
4 first when it learned that NYSDOT planned to take its land, and  
5 the second in 2008, when the Commissioner actually executed the  
6 takings. However, the completion of the takings was merely the  
7 final act of the intrusion on Amtrak's alleged Supremacy Clause  
8 rights that accrued in 2005 at the outset of the condemnation  
9 proceedings. See City of Plattsburgh v. Weed, 945 N.Y.S. 2d 812,  
10 813 (App. Div. 3d Dep't 2012) (exercise of eminent domain is a  
11 single "two-step process under the EDPL"). It would make no  
12 sense to begin a limitations period -- or restart it -- when  
13 title to the real estate actually vests in the state, an act that  
14 occurs only after notice to interested parties and the requisite  
15 findings have been made. Indeed, Amtrak's proposed rule would  
16 leave the validity of a condemnation of its property in doubt for  
17 some six years after title has passed. Common sense, not to  
18 mention the record of Amtrak's failure to take any of the obvious  
19 protective measures, directs otherwise.<sup>2</sup> The limitations period,  
20 therefore, did not reset when NYSDOT took formal title in 2008.

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<sup>2</sup> In that regard, Amtrak advances a post hoc argument to explain and avoid the consequences of its lassitude in the face of events that unambiguously portended condemnation. At oral argument, we were asked not to "impose a practical nightmare on Amtrak by inviting states to come in and do piecemeal takings . . . because it will be too much of a burden for Amtrak to come into court every time someone wants to take [its] property." See Tr. of Oral Arg. at 18. We know of no record evidence of such a "nightmare" or its purported consequences, and, even if we did, a legislative, rather than judicial remedy, would seem appropriate.

