

**Case Name:** Island Park LLC v CSX Transportation, et al.  
**Date Decided:** October 16th, 2008  
**Originally Filed in:** New York (Federal)  
**Decided by:** U.S. Court of Appeals, Second Circuit (Federal)  
**Court:** United States Court of Appeals, Second Circuit  
**Judge:** Judge Wesley  
**Citation:** 559 F.3d 96

**Background:**

Property owner brought action to enjoin railroad from enforcing or executing state agency order to close private rail crossing. The United States District Court for the Northern District of New York entered summary judgment in owner's favor and railroad and state appealed. Plaintiff, Island Park LLC (Island Park) owns and operates a 400 acre nursery outside Albany, New York. Railroad tracks owned by Defendant CSX Transportation (CSX) intersect Island Park's property. The tracks are part of the "Hudson Line" a heavily traveled, primarily passenger-based railroad line running between Albany and New York. In February 2005, the NYSDOT commenced an administrative proceeding to determine whether the crossing should be altered or closed and discontinued. The Administrative Law Judge recommended the crossing be closed due to safety reasons. Island Park commenced this action in federal district court seeking a permanent injunction enjoining the CSX from enforcing or executing NYSDOT's order to close the crossing. Island Park contended the closure was pre-empted by the Interstate Commerce Commission Termination Act (ICCTA) the State Defendants deprived Island Park of its property without due process, the State Defendants' actions constituted a taking without just compensation and that CSX was obligated to keep the crossing open pursuant to a 1989 State Court judgment. The lower court permanently enjoined the State Defendants from employing NY Railroad Law Â§97(3) to order the closure of the crossing and CSX from undertaking any actions to barricade the crossing pursuant to the order issued by the State Defendants. CSX and the State Defendants appealed the decision.

**Issue:**

Did the District Court err in permanently enjoining the State Defendants from using NY Railroad Law Â§97 and CSX from undertaking any actions to barricade the crossing?

**Overall Issues Discussed or Touched Upon in this Case:**

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**Held:**

Pre-emption may be express or implied. Express preemption arises when a federal statute expressly directs that state law to be ousted or in absence of an express directive from Congress, pre-emption may be inferred if the scope of the statute indicates that Congress

intended federal law to occupy the legislative field or if there is actual conflict between state and federal. The ICCTA "preempts all 'state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation". The Lower Court premised its pre-emption conclusion by determining "rail crossing" falls within the ICCTA's definition of "transportation" by rail carriers. This Court however, found that rail "transportation" does not encompass the closure of the private rail crossing. Furthermore, this Court could not conclude all state action related to a railroad crossing is pre-empted. The NYSDOT's order closing the rail, according to this Court, does not relate to the movement of passengers or property by rail. Also, this Court found that ICCTA's pre-emption language does not categorically sweep up all state regulation that touches upon railroads-interference with rail transportation must always be demonstrated. Accordingly this Court found that the ICCTA did not pre-empt the NYSDOT's decision to close Island Park's crossing. Second, Island Park argued that they have been deprived of just compensation and that the order effectuates a "taking" of its property. A takings claim is not ripe if "a remedy potentially is available under the state constitution's provision". Prior to a federal takings claim assertion, compensation must first be sought from the state if it has a "reasonable, certain, and adequate provision for obtaining compensation". the New York Constitution states private property shall not be taken for public use without just compensation. Island Park failed to seek compensation from the State prior to commencing this action. Accordingly, Island Park's takings claim is unripe and therefore thrown out. This Court reversed and remanded to the district court ordering summary judgment in favor of defendants on the pre-emption claim and further proceedings on Island Park's takings claim.

**Comments:**

Under the ICCTA, something can be rail "transportation" if it burdens railroad operations. This Court found that the ICCTA did not pre-empt New York's closure of the private rail crossing. Furthermore, in a takings claim, the landowner/plaintiff must demonstrate they have exhausted all state remedies available to them prior to taking the action to federal court.

Steve Gordon