

# **Bond Case Briefs**

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## **LAND USE - NEW YORK**

### **Marinaccio v. Town of Clarence**

**Court of Appeals of New York - March 21, 2013 - N.E.2d - 2013 N.Y. Slip Op. 01868**

*In case of intentional flooding, court finds considerable injury and undeniably intentional tortious acts but holds that evidence is insufficient for an award of punitive damages.*

Property owner brought action against town and subdivision developer asserting causes of action for trespass and private nuisance and seeking damages for flooding on his property allegedly caused by intentional flow of water onto his property.

The question in this case was whether the evidence was sufficient to find defendant liable for punitive damages. The court found that, although the injury was considerable and the tortious acts undeniably intentional, the evidence was insufficient for an award of punitive damages.

Because the standard for imposing punitive damages is a strict one and punitive damages will be awarded only in exceptional cases, the conduct justifying such an award must manifest spite or malice, or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that the conduct may be called wilful or wanton.

In this case, developer of subdivision did not willfully and wantonly cause danger to health, safety, and welfare of public through diversion of storm water to mitigation pond. Although developer failed to ensure that town followed through with plan to obtain an easement from property owner to allow water to flow onto his property, developer complied with all federal, state, and local planning and development laws and regulations, and worked closely with Army Corps, town engineer, and town planner to secure all required permits and approvals, and hired wetlands expert, engineering expert, and soil expert to assist in those regards.