

Bond Case Briefs

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Showers Appraisals, LLC v. Musson Bros.

Supreme Court of Wisconsin - July 18, 2013 - N.W.2d - 2013 WI 79

Owner of store that was flooded brought action against independent contractor who had been retained by State to replace storm sewer in front of owner's building. The Circuit Court entered summary judgment in favor of contractor upon finding that he had been acting as an agent of the State and was thus entitled to government immunity.

The Supreme Court of Wisconsin held that:

- Government contractor seeking immunity must show both that it was agent and that injurious conduct was caused by implementation of decision for which immunity was available for government;
- Contractor failed to demonstrate that it was an agent entitled to governmental contractor immunity; and
- Contractor did not have governmental immunity for performance of its construction duties

Analyzing whether the conduct of a government contractor was undertaken as a statutory agent within the scope of governmental immunity statute solely by reference to three-part test, which is used to determine whether the relationship between contractor and the governmental entity was such that the contractor should be immune from liability for design defects, may lead a court to err. Rather, an equally dispositive question is whether the relevant decision of the governmental entity that the contractor implements is, itself, entitled to immunity because it was made through the exercise of a legislative, quasi-legislative, judicial or quasi-judicial function of the governmental entity.