
IMMUNITY - NEW YORK

Trimble v. City of Albany

Supreme Court, Appellate Division, Third Department, New York - November 23, 2016 - N.Y.S.3d - 144 A.D.3d 1484 - 2016 WL 6883669 - 2016 N.Y. Slip Op. 07912

Property owners whose home was destroyed, when fire re-ignited from undiscovered embers located in vicinity of window well after municipal fire department employee represented that it had been fully extinguished, brought negligence action against municipality.

The Supreme Court, Albany County, granted defendants' motion for summary judgment, and property owners appealed.

The Supreme Court, Appellate Division, held that:

- Property owners sufficiently raised genuine issue of material fact, of kind sufficient to preclude entry of summary judgment for municipality in negligence action, as to whether lead investigator's representations were sufficient to give rise to special relationship between municipality and property owners, and
- Municipal firefighters' alleged failure to remove stack of firewood and the remains of lawn furniture from area of window well in violation of department protocol, following their containment and purported extinguishment of fire when it first broke out at property owners' home, did not involve the exercise of reasoned judgment.

Property owners whose home was destroyed, when fire that was represented to be fully extinguished by municipal fire department's lead investigator re-ignited from embers that remained undiscovered near window well, sufficiently raised genuine issue of material fact, of kind sufficient to preclude entry of summary judgment for municipality in negligence action, as to whether lead investigator's representations were sufficient to give rise to special relationship between municipality and property owners to protect property owners from dangers posed by risk that fire might re-ignite, on which property owners relied to their detriment in leaving home unattended for the night and foregoing other available avenues of protection.

Municipal firefighters' alleged failure to remove stack of firewood and the remains of lawn furniture from area of window well in violation of department protocol, following their containment and purported extinguishment of fire when it first broke out at property owners' home, did not involve the exercise of reasoned judgment of kind typically producing different acceptable results, as required for municipality, if such a violation of department protocol were established, to successfully assert governmental immunity defense to liability for firefighters' negligence in representing that fire had been fully extinguished and in allowing fire to re-ignite and destroy home from smoldering embers located underneath this stack of firewood.

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