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**IMMUNITY - PENNSYLVANIA**

## Godfrey v. Upland Borough

**United States District Court, E.D. Pennsylvania - March 30, 2017 - F.Supp.3d - 2017 WL 1196635**

Homeowners brought action against county's water control authority, borough, borough employees and officials, and engineering firm, alleging storm and sewage-water systems were surreptitiously installed on their property and destroyed its value, and asserting claims for First Amendment retaliation, fraud, malicious prosecution, due process violations, and Clean Water Act (CWA) violations.

After defendants' motions to dismiss were granted in part and denied in part borough and its individual officers and employees moved to dismiss and for a more definite statement, and firm also filed motion to dismiss. Homeowners moved to amend their complaint.

The District Court held that:

- A more definite statement was not warranted with respect to homeowners' fraud, malicious prosecution, and First Amendment retaliation claims against borough and its employees and officials;
- Homeowners stated fraud claim against borough;
- Homeowners pleaded with sufficient particularity their fraud claim against plumber who worked for borough;
- Homeowner stated malicious prosecution claim against borough and its employees and officials;
- Homeowners' amended complaint asserting fraud claims against individual employees of county's water control authority related back to their original, timely complaint against the authority, for statute of limitations purposes;
- Pennsylvania Tort Claims Act did not provide individual employees of county's water control authority with immunity from their alleged fraudulent conduct;
- *Younger* abstention was not warranted as to homeowners' due process claim against county water authority; but
- CWA's diligent prosecution bar precluded homeowners' citizen suit against county's water control authority.

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