

Bond Case Briefs

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Maytown Sand and Gravel, LLC v. Thurston County

Supreme Court of Washington - August 9, 2018 - P.3d - 2018 WL 3765517

Gravel company and port brought action against county for tortious interference, negligent misrepresentation, and a violation of substantive due process, based on county's handling of company's special use permit to mine gravel.

After county's motions for summary judgment were denied and after a jury trial, the Superior Court entered judgment in favor of gravel company and port. County appealed and gravel company and port cross-appealed. The Court of Appeals affirmed and remanded for a trial on attorney fees. County's petition for review was granted.

The Supreme Court of Washington held that:

- County's allegedly tortious actions were not "land use decisions" subject to administrative exhaustion requirement;
- Gravel company had constitutionally protected property right to mine;
- County's actions shocked the conscience, as required to support § 1983 due process action;
- As a matter of first impression, gravel company and port were not entitled to prelitigation attorney fees as damages;
- Attorney fees are not recoverable as damages under the tort of wrongful use of civil proceedings, abrogating *Davis v. Cox*, 183 Wash.2d 269, 351 P.3d 862;
- Bad faith exception to the American rule does not apply to prelitigation attorney fees; and
- Reverse-Erie doctrine does not bar application of state appellate rule to § 1983 and § 1988 requests for appellate attorney fees.