

# **Bond Case Briefs**

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## **ANNEXATION - ILLINOIS**

### **Doyle v. Village of Tinley Park**

**Appellate Court of Illinois, First District, Second Division - September 28, 2018 - N.E.3d - 2018 IL App (1st) 170357 - 2018 WL 4698897**

Homeowners brought negligence suit against developer of their subdivision and village, alleging that developer failed to install a properly working storm drain system, in breach of annexation agreement entered into by developer and village, and that the damage was exacerbated by village's delay in addressing the drainage problem.

The Circuit Court dismissed claims against developer and granted summary judgment to village, and homeowners appealed.

The Appellate Court held that:

- Homeowners lacked standing to bring action against subdivision developer for breach of annexation agreement;
- Homeowners were not third-party intended beneficiaries of annexation agreement; and
- Village was entitled to discretionary tort immunity with respect to homeowners' negligence suit.

Homeowners, as the purchasers of individual lot within subdivision, lacked standing, as successor owners of property, to bring action against subdivision developer for breach of annexation agreement entered into by developer and village, pertaining to storm drainage system; annexation agreement defined the "subject property" as 828-acre parcel of land contiguous with village, i.e., the entire subdivision, and if drafters of agreement had intended to confer successor status upon each and every purchaser of lot within the subdivision, agreement would have said successor owners of record of the subject property or any portion thereof, and annexation statute referred to successor owners of record of land which was the subject of agreement and made no reference to those who had purchased only small portion of that land.

Even if homeowners, as the purchasers of individual lot within subdivision, could be considered successor owners of the property, they would succeed to subdivision developer's interest in the annexation agreement between developer and village, not to the village's, and as such, homeowners could not sue developer, in whose shoes they would be standing, for breach of annexation agreement, pertaining to storm drainage system.

Homeowners, who purchased individual lot within subdivision, were not third-party intended beneficiaries of annexation agreement entered into by subdivision developer and village, and thus, homeowners lacked standing, as third-party beneficiaries, to enforce annexation agreement pertaining to storm drainage system; individual homeowners were not successor owners of record of the subject property within meaning of annexation agreement, and thus, there was no expressed intent to benefit such individual homeowners, and although parties were aware that the storm drainage system would benefit homeowners, this was insufficient to afford individual homeowners intended third-party beneficiary status.

Village employed discretion at every step of the repair process for sinkhole, from the first work crew that visited homeowners' house and had to decide what to do about sinkhole, to the village manager who decided to approve street pipe repair, and thus, village was entitled to discretionary tort immunity with respect to homeowners' negligence suit; fixing pipe was not merely execution of a set task, but, rather, required exercise of personal deliberation and judgment by village officials, village officials were engaged in ongoing policy determinations regarding allocation of village funds and resources, and deciding how best to spend limited resources was a policy determination.