

# **Bond Case Briefs**

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## **EMINENT DOMAIN - ILLINOIS**

### **Tzakis v. Maine Township**

**Supreme Court of Illinois - November 19, 2020 - N.E.3d - 2020 IL 125017 - 2020 WL 6788163**

Landowners whose property flooded brought action against township, city, and water-reclamation district for negligence, negligent nuisance, negligent trespass, statutory duty to maintain property, duty to remedy dangerous plan, and taking of real and personal property.

The Circuit Court granted township's, city's, and district's motions to dismiss based on the public duty rule, and reinstated the dismissal after reconsideration based on the Supreme Court's subsequent abolition of the public duty rule. Landowners appealed. The Appellate Court affirmed in part and reversed in part. Township, city, and district's petition for leave to appeal was allowed.

The Supreme Court held that:

- The Supreme Court case that abolished the public duty rule did not apply retroactively;
- The public duty rule barred landowners' negligence-based and duty-based claims; and
- Landowners failed to allege that water flowing onto their property was the intended or foreseeable result, as required for takings claims.

Supreme Court case that abolished common-law public duty rule, *Coleman v. East Joliet Fire Protection District*, 46 N.E.3d 741, did not apply retroactively, and thus public duty rule applied to landowners' complaint against local public entities regarding property flooding; case established new principle of law by overturning decades of existing precedent, judgment would have been final and appealable well prior to Supreme Court's case if public entities had obtained dismissal when they first raised issue, and public entities relied upon public duty rule throughout 11-year course of litigation that related to actions going back 60 years, during which time public duty rule existed.

Public duty rule, despite being abolished prospectively, applied to bar landowners' negligence-based and duty-based claims against township, city, and water-reclamation district arising out of flooding allegedly caused by municipal stormwater system; to the extent that landowners alleged that township, city, and district failed to provide adequate public services in design, maintenance, improvement, or operation of the stormwater system, that duty ran to public at large and not to individual members of public such as landowners.

Landowners failed to allege that water flowing onto their property causing flood damage was the intended or foreseeable result of authorized government actions by township, city, or water-reclamation district, as required for a viable takings claim; landowners merely alleged that township, city, and district had caused properties to become partially or totally uninhabitable by their actions or inactions.