

Bond Case Briefs

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Page v. Portsmouth Redevelopment and Housing Authority

Supreme Court of Virginia - July 3, 2024 - S.E.2d - 2024 WL 3281159

Building owner brought negligence action against adjacent building owner, which was city redevelopment and housing authority, alleging owner's building was damaged when adjacent owner demolished its building after city declared it to be unlawful nuisance.

The Portsmouth Circuit Court granted adjacent owner's plea in bar raising defense of tort immunity, and denied owner's motion to reconsider. Owner appealed. The Court of Appeals affirmed. Owner appealed.

The Supreme Court held that:

- Owner did not violate approbate-reprobate doctrine by asserting on appeal that adjacent owner was not entitled to tort immunity, and
- Housing authority's demolition was proprietary function to which tort immunity did not apply.

City redevelopment and housing authority's demolition of its building after city declared it to be unlawful nuisance was ministerial legal duty to perform a "proprietary function," not exercise of governmental discretion, and thus, housing authority was not entitled to immunity from adjacent building owner's negligence claim alleging its building was damaged during demolition; housing authority bought property that was unsafe for human occupancy, did nothing during ensuing five years to make it safe, allowed public to use building, and demolished building only after receiving notice from city that, if disobeyed, would have exposed housing authority to criminal prosecution and civil penalties, such that housing authority acted no differently than any other private landowner.

Building owner did not violate approbate-reprobate doctrine by asserting on appeal that adjacent building owner, which was city redevelopment and housing authority, was not entitled to immunity from owner's negligence claim alleging owner's building was damaged when adjacent owner demolished its building after city declared it to be unlawful nuisance; statement by owner's counsel before trial court that adjacent owner was acting in its proprietary role on behalf of city did not amount to concession that adjacent owner was acting on behalf of city, as statement included important qualifier of in "proprietary role," and counsel's next statement again asserted that adjacent owner was performing "a proprietary function."