

# **Bond Case Briefs**

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## **GOVERNMENTAL IMMUNITY - NEW YORK**

### **Middleton v. Town of Salina**

**Supreme Court, Appellate Division, Fourth Department, New York - July 5, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 05119**

In an action against a municipality, it is the fundamental obligation of a plaintiff pursuing a negligence cause of action to prove that the putative defendant owed a duty of care. Under the public duty rule, although a municipality owes a general duty to the public at large to perform certain governmental functions, this does not create a duty of care running to a specific individual sufficient to support a negligence claim, unless the facts demonstrate that a special duty was created.

In order for plaintiffs to establish that defendant owed a special duty to them, they were required to establish that defendant voluntarily assumed a duty that generated justifiable reliance by the person who benefitted from the duty. That burden has four elements: (1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipality's agents that inaction could lead to harm; (3) some form of direct contact between the municipality's agents and the injured party; and (4) that party's justifiable reliance on the municipality's affirmative undertaking.

Here, defendant met its initial burden on the motion by submitting evidence establishing that plaintiffs' alleged reliance upon representations allegedly made by defendant's agents was not justifiable.

However, even assuming, arguendo, that plaintiffs raised a triable issue of fact whether defendant owed a special duty to them, the court concluded that the governmental function immunity defense applied. Defendant established that it was engaged in a governmental function when it engaged in the allegedly negligent conduct, i.e., failing to install a check valve or similar anti-backflow device on plaintiffs' sewer line to prevent sewage from flowing backwards out of the sewer line and into plaintiffs' house.