

Bond Case Briefs

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LIABILITY - NEW YORK

Ferreira v. Celco Partnership

Supreme Court, Appellate Division, Second Department, New York - November 20, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 07706

Owners of homes located near a commercial facility brought action against village and facility owner, seeking to recover damages for injuries allegedly sustained by exposure to noise, smoke, and odor emanating from the facility, and alleging that village was negligent in failing to enforce building codes.

The Supreme Court, Appellate Division, held that:

- Village did not have special relationship with owners giving rise to a duty to exercise care for their benefit;
- Village did not voluntarily assume a duty to protect owners; and
- Owners did not detrimentally rely on village's alleged promise to address the situation.

In the absence of some special relationship creating a duty to exercise care for the benefit of particular individuals, liability may not be imposed on a municipality for failure to enforce a statute or regulation.

A special relationship creating a duty on the part of a municipality to exercise care for the benefit of particular individuals can be formed in three ways: (1) when the municipality violates a statutory duty enacted for the benefit of a particular class of persons; (2) when the municipality voluntarily assumes a duty that generates justifiable reliance by the person who benefits from the duty; or (3) when the municipality assumes positive direction and control in the face of a known blatant and dangerous safety violation.