

Bond Case Briefs

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INVERSE CONDEMNATION - OREGON

Dunn v. City of Milwaukie

Supreme Court of Oregon, En Banc - May 8, 2014 - P.3d - 2014 WL 1873691

Homeowner brought action against city for inverse condemnation, seeking compensation for damage to her home caused by sewage that backed up through bathroom fixtures due to city's use of highly pressurized water to clean adjacent sewer lines. Following jury trial, *the* Circuit Court entered judgment in favor of homeowner. City appealed. The Court of Appeals affirmed. City petitioned for review, and review was granted.

The Supreme Court held that, as a matter of first impression, city did not have requisite intent to cause backup. Natural and ordinary consequences test, permitting inference of requisite intent to take in inverse condemnation claim when consequences of governmental action are necessary, inevitable, or substantially certain to result, examines whether government intentionally undertook to act in a manner that necessarily caused injurious invasion of plaintiff's property. In order for factfinder to infer requisite intent to take in inverse condemnation claim under natural and ordinary consequences test, plaintiff need not prove that governmental actor subjectively intended consequential invasion of property interests or undertook action knowing, even if not desiring, that consequences would follow.

In order for factfinder to infer requisite intent to take in inverse condemnation claim under natural and ordinary consequences test, plaintiff must show that government intentionally undertook its actions and that inevitable result of those actions, in ordinary course of events, was invasion of plaintiff's property that is basis for plaintiff's inverse condemnation claim.

City did not have requisite intent to cause sewage backup in property owner's home under natural and ordinary consequences test when it intentionally used highly pressurized water to clean sewer lines near owner's home, as required for city's actions to constitute a taking in owner's inverse condemnation claim, absent evidence that sewage backup was necessary, certain, predictable, or inevitable result of city's intentional manner of cleaning adjacent sewer. City regularly cleaned sewers using highly pressurized water, and backups of sewage into adjacent houses due to city's cleaning of sewers was rare.