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Brunero v. City of New York Dept. of Parks and Recreation

Supreme Court, Appellate Division, First Department, New York - October 30, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 07444

The City of New York and the Central Park Conservancy entered into the 2006 Central Park Agreement, a contract between the City and the Conservancy, a nonprofit organization, in which they acknowledged that they had formed an effective “public/private partnership.” Under the Agreement, the Conservancy is required to provide specified maintenance services in Central Park to the “reasonable satisfaction” of the City, and the City is broadly required to indemnify the Conservancy from liability.

In a negligence action against the City, plaintiff moved for leave to amend the complaint to add the Conservancy as a defendant, arguing that it was united in interest with the City. Since the statute of limitations had run as to the Conservancy, plaintiff argued that the relation back doctrine applied.

The Appeals Court held that:

- The City was vicariously liable for the Conservancy’s negligence in the course of providing maintenance in Central Park by virtue of the contractual indemnification provision, and the parties were thus united in interest.
- Since the City has a nondelegable duty to maintain Central Park, it was vicariously liable for negligence committed by the contractor in the course of fulfilling that duty.
- However, the City was correct that its interests were not united with those of the Conservancy with respect to the proposed gross negligence claim, and leave to assert that claim against the Conservancy was therefore denied.