

Bond Case Briefs

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STANDING - OHIO

Wooster v. Enviro-Tank Clean, Inc.

Court of Appeals of Ohio, Ninth District, Wayne County - May 18, 2015 - Slip Copy - 2015 - Ohio- 1876

City brought action against industrial waste treatment facility for public nuisance and injunctive relief, alleging that odors from facility's operation endangered the health, safety, or welfare of the public or caused unreasonable injury or damage to property. The Court of Common Pleas entered summary judgment in favor of facility. City appealed.

The Court of Appeals held that:

- Complaint did not put facility on notice that city sought relief based upon damage to city-owned property, and thus trial court did not err in declining to consider allegations of such damage in deciding facility's summary judgment motion, and
- Trial court erred in dismissing city's complaint due to lack of allegations concerning damage to city-owned property.

City's complaint for public nuisance and injunctive relief against industrial waste treatment facility did not put facility on notice that city sought relief based upon damage to city-owned property, even though allegations in complaint mentioned "damage to property," and thus trial court did not err in declining to consider allegations of such damage in deciding facility's summary judgment motion. Complaint stated that facility's actions caused harm to city's citizens and injury and discomfort to those living in proximity to facility, and no allegations mentioned damages to city-owned property or city workers.

Trial court erred in dismissing city's complaint for public nuisance and injunctive relief against industrial waste treatment facility due to lack of allegations concerning damage to city-owned property, even though court correctly cited law concerning common law standing. Facility acknowledged that statute permitted a city law director to bring an action in the name of the state to abate nuisance but court did not address issue, and court did not consider individual counts of complaint to determine whether it was possible that city might have standing on some counts even if it lacked standing on others.