

Bond Case Briefs

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STATUTE OF LIMITATIONS - PENNSYLVANIA

Township of Salem v. Miller Penn Development, LLC

Commonwealth Court of Pennsylvania - May 26, 2016 - A.3d - 2016 WL 3023809

Township brought action against subdivision developer to remedy defects in subdivision street.

The Court of Common Pleas entered judgment for township.

The Commonwealth Court held that:

- Under the doctrine of nullum tempus occurrit regi, statute of limitations did not bar township's action;
- Township lacked claim in equity for specific performance; and
- Evidence was sufficient to support award of damages only for paving roads.

Under the doctrine of nullum tempus occurrit regi, statute of limitations did not bar township's action against subdivision developer regarding defects in subdivision roads. Ensuring adequate construction of streets was purely public purpose within township's obligations to its citizens rather than a voluntary contractual undertaking, township had duty to require that developer complete street in accordance with subdivision and land development ordinance, and township had statutory right to recover cost of improvements from developer.

Township lacked any cause of action in equity action to compel specific performance to require subdivision developer to fix defects in subdivision streets or post a bond to cover that work. Neither county subdivision and land development ordinance nor statute authorized equitable action, and township's damages were capable of ascertainment and proof.

Evidence in township's action against subdivision developer regarding defective subdivision streets was sufficient to support award of damages only for repaving roads. While expert testified that there was no base installed and that entire road needed replacing, there was other evidence that a base was installed, that the primary defect was lack of compaction, and that township's engineers had proposed adding an extra asphalt wearing course layer as repair, and expert admitted that costs for paving unpaved cul-de-sac included utility relocation and excavation but that utilities had not been located and that he did not know what type of excavation would be involved.