

Bond Case Briefs

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Day's Auto Body, Inc. v. Town of Medway

Supreme Judicial Court of Maine - August 2, 2016 - A.3d - 2016 WL 4088076 - 2016 ME 121

Auto body business brought negligence action against town and contractor that assisted town fire department in responding to fire at business location.

The Superior Court granted summary judgment in favor of defendants, and business appealed.

The Supreme Judicial Court held that:

- Town's actions in responding to fire did not fall within the Tort Claims Act's immunity exception for negligent acts or omissions in its ownership, maintenance, or use of vehicles, machinery, and equipment;
- Contractor was a government employee for purposes of the Tort Claims Act;
- Contractor was absolutely immune from personal civil liability for any intentional act or omission within the course and scope of its employment; and
- Tort Claims Act provision that governed the defense and indemnification of government employees by their employers in certain suits arising out of the use of motor vehicles did not apply to hold contractor liable for damages to business to the extent of any private liability insurance contractor held.

Town's actions in responding to fire did not fall within the Tort Claims Act's immunity exception for negligent acts or omissions in its ownership, maintenance, or use of vehicles, machinery, and equipment, regardless of the fact that vehicles or equipment were involved in the conduct that allegedly caused harm, because the gravamen of business's claim was that the town made imprudent tactical decisions in the course of fighting fire at business location.

Contractor that assisted town fire department in responding to fire at business location was a government employee for purposes of the Tort Claims Act. On the day of the fire, town's fire department summoned one of contractor's employees to assist at fire scene with an excavator, employee acted only at the direction of the town, no contract existed for performance of the work performed at a fixed price, and the type of work, fire suppression, was the regular business of the town.

Contractor, that under the Tort Claims Act, was an employee of town when, at the direction of town, it responded to a business fire and used its excavator in an attempt to minimize fire damage, was absolutely immune from personal civil liability for any intentional act or omission within the course and scope of its employment. Contractor's actions were intentional, they were within the scope of its employment, and there was no allegation that they were taken in bad faith.

Tort Claims Act provision that governed the defense and indemnification of government employees by their employers in certain suits arising out of the use of motor vehicles did not apply to hold contractor that assisted town in responding to business fire liable for damages to business to the extent of any private liability insurance contractor held, when contractor, as a government

employee, was otherwise immune from suit pursuant to the Act.