

Bond Case Briefs

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Birge v. Town of Linden

Court of Appeals of Indiana July 25, 2016 - N.E.3d - 2016 WL 3976353

Property owners brought action against town after modifications to a farm drainage system caused flooding on their property, asserting claims for nuisance, civil conspiracy, and inverse condemnation.

The Circuit Court granted town's motion to dismiss, and property owners appealed.

The Court of Appeals held that:

- Town failed to demonstrate that it was entitled to discretionary function immunity under the Tort Claims Act, and
- Property owners' allegations were sufficient to state a claim for civil conspiracy.

Town failed to demonstrate in motion to dismiss property owners' claims for nuisance and inverse condemnation that it was entitled to discretionary function immunity under the Tort Claims Act. Accepting as true the allegations in property owners' complaint as to whether town's actions constituted a nuisance, the question of immunity required additional factual development with regard to whether or not town consciously weighed competing interests in reaching its decision to modify farm drainage system, and the immunity provisions of the Act did not apply to claims for inverse condemnation.

Property owners' allegations that town conspired with drainage board to improperly utilize existing right-of-way and construct new components for municipal storm drainage system, which caused water to accumulate on property owners' farmland was sufficient to state a claim for civil conspiracy, even if property owners did not allege town acted unlawfully or to accomplish an unlawful purpose. The allegation of civil conspiracy was just another way of asserting a concerted action in the commission of a tort causing damages to the property owners.