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Melchert v. Pro Electric Contractors

Supreme Court of Wisconsin - April 7, 2017 - N.W.2d - 2017 WL 1311838 - 2017 WI 30

Property owners and tenants brought negligence action against subcontractor for Department of Transportation project after it severed sewer lateral during excavation, causing flooding damage to property.

The Circuit Court granted summary judgment for subcontractor. Property owners and tenants appealed. The Court of Appeals affirmed. Property owners and tenants filed petition for review, which was granted.

The Supreme Court of Wisconsin held that:

- Subcontractor was entitled to immunity for severing sewer lateral;
- Subcontractor was not entitled to immunity for allegedly negligently backfilling excavation without inspecting sewer lateral for damage; but
- Subcontractor complied with its statutory duties under excavation notice provision of statute governing damage to transmission facilities.

Subcontractor was entitled to governmental immunity from liability for severing sewer lateral during excavation for Department of Transportation project, causing flooding damage to property, in negligence action by property owners and tenants. Specifications in Department's project plan for subcontractor's augering were reasonably precise, as plan directed exact location for augering using measured coordinates, specified dimensions for augering, and specified method of excavation, subcontractor complied with those specifications exactly, and Department adopted specifications for augering in exercise of its legislative or quasi-legislative functions, as project was government by its project plan, which was prepared at its direction and approved by it prior to start of project.

Subcontractor for Department of Transportation project was not entitled to governmental immunity for allegedly negligently backfilling its excavation without inspecting sewer lateral for damage and allowing repairs to be made in negligence action brought by property owners and tenants after subcontractor severed sewer lateral, causing flooding damage to property. Department's work proposal assigned responsibility to subcontractor to coordinate its excavation activities with call to utilities that had facilities in area and to use caution to ensure integrity of underground facilities, as required by statute, but project plan did not provide reasonably precise specifications for how to fulfill those responsibilities and, thus, subcontractor was not acting as Department's agent in that regard.

Subcontractor for Department of Transportation project, which severed sewer lateral during excavation, causing flooding damage to property, complied with its statutory duties under excavation notice provision of statute governing damage to transmission facilities prior to beginning excavation. Subcontractor contacted excavation hotline at least three days before beginning excavation, nothing indicated presence of any markings indicating that sewer lateral was in way of excavation, sewer lateral was not transmission facility exposed during excavation and, thus,

subcontractor did not have statutory duty to inspect it for damage and refrain from backfilling until repairs could be made, and subcontractor was not statutorily required to inspect its excavation.