

Bond Case Briefs

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UTILITIES - WYOMING

The Tavern, LLC v. Town of Alpine

Supreme Court of Wyoming - May 16, 2017 - P.3d - 2017 WL 2124030 - 2017 WY 56

Campground owners brought action against town, seeking declaratory and injunctive relief arising out of town's financing and construction of new sewer system. Owners also brought action against engineering firm retained by town, after firm reported campground to state Department of Environmental Quality, alleging abuse of process, civil extortion, and civil conspiracy against firm and town.

The District Court consolidated the cases, dismissed owners' claims against town for failure to state a claim, and granted summary judgment to engineering firm on owners' claims against it. Owners appealed.

The Supreme Court of Wyoming held that:

- Owners sufficiently alleged facts establishing that controversy with town was justiciable, as required for declaratory judgment claim;
- Owners established standing on claim against town under Uniform Declaratory Judgment Act;
- Owners stated claim for injunctive relief against town; and
- Engineering firm did not commit tort of abuse of process.

Campground owners sufficiently alleged that they had a tangible interest that had been harmed, as required to establish that controversy with town arising out of town's construction and financing of new sewer system was justiciable, within the meaning of the Uniform Declaratory Judgments Act. Owners alleged that they had private septic system, so if town enforced ordinances requiring connection to town's system, it would make owners' business economically non-viable and would irreparably diminish value of owners' real estate, and town also allegedly required owners to decommission their septic system, which owners estimated would cost over \$100,000.

Campground owners sufficiently alleged that a judicial decision in their favor would effectively remedy harm they were suffering, as required to establish that controversy with town arising out of town's construction and financing of new sewer system was justiciable, within the meaning of the Uniform Declaratory Judgments Act. Owners' requested declaration that town's loans from state for new sewage treatment facility were unconstitutional, necessarily implicating town's ordinances and exactions, which owners asserted would have rendered their business economically non-viable.

Campground owners sufficiently alleged that they faced a perceptible, rather than speculative, harm, as required to establish standing under Uniform Declaratory Judgment Act to bring declaratory judgment action against town, arising out of town's construction and financing of new sewer system. Owners alleged that they would be required to decommission their existing, functional septic system, allegedly an expensive task, while also connecting to new sewer facility and paying related connection fees and utility costs.

Campground owners sufficiently alleged that, in constructing and financing new sewer system, town

exceeded its constitutional and statutory authority, as required to state a claim for injunctive relief. While town was entitled under statute to charge rates for sewer system services, which could have been used to pay cost of operating and maintaining system as well as paying principal and interest on bonds issued to pay for system, town instead borrowed money to pay for system rather than issuing bonds, so owners asserted that revenues received through sewer system fees and rates could not be applied to alleged illegal loans.

Campground owners sufficiently alleged that they would be irreparably harmed by town's financing and construction of new sewer system, as required to state a claim for injunctive relief against town. Owners alleged that their business and property values would be harmed if town enforced enactments requiring owners to connect campground to new sewer system, even though owners maintained private septic system, and requiring owners to pay for sewer service and to repay loans town received for construction.

Engineering firm retained by town to design town's new sewer system did not commit tort of abuse of process by sending letter to state Department of Environmental Quality, asserting that campground's septic system violated agency's rules. Letter sent by engineer was outside any legal proceeding or process, instead reporting a claimed violation to agency that had authority to investigate complaint, and if appropriate, could have taken administrative action.