

Bond Case Briefs

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Acosta v. City of Mabton

Court of Appeals of Washington, Division 3 - January 18, 2018 - P.3d - 2018 WL 456968

Homeowners who had several inches of raw sewage back up into their basement after city sewer line became clogged brought negligence action against city.

The Superior Court summarily dismissed homeowners' claims, and they appealed.

The Court of Appeals held that:

- Trial court did not abuse its discretion by denying city's motion to strike industrial hygienist's report, attached as an exhibit to homeowners' summary judgment declaration;
- Homeowners sufficiently rebutted city's theory that a foreign object such as a partially inflated ball caused the blockage by impeaching city's witnesses, creating a genuine issue of material fact that precluded summary judgment; and
- A genuine issue of material fact as to whether city breached its duty to maintain its sewer lines, and whether such a breach was the cause in fact of property damages sustained by homeowners, precluded summary judgment.

Trial court did not abuse its discretion by denying city's motion to strike industrial hygienist's report, attached as an exhibit to homeowners' summary judgment declaration in negligence action against city in which homeowners sought damages for the extensive property damage caused by sewer backup after city sewer line became clogged; the report was unquestionably the report of the industrial hygienist who faulted the city for failing to adequately clean its sewer system, it was submitted to the city during discovery, and the city questioned the industrial hygienist extensively about it during her sworn deposition.

Homeowners, who suffered extensive property damage when sewage from clogged city sewer line backed up into their basement, sufficiently rebutted city's theory that a foreign object such as a partially inflated ball caused the blockage by impeaching city's witnesses, creating a genuine issue of material fact that precluded summary judgment on their negligence claim against city; city could produce no credible explanation of how a partially inflated 8 ½ inch ball could get into a 10 inch sewer line, city's initial response to homeowner's complaint did not describe the blockage as being caused by a ball, and during a city council meeting, the mayor discussed a history of blockages near plaintiffs' home as being due to sewer lines being blocked by solidified grease.

A municipality's duty to keep its sewers in repair is not performed by waiting to be notified by citizens that they are out of repair, and repairing them only when the attention of the officials is called to the damage they have occasioned by having become dilapidated or obstructed.

Where the obstruction or dilapidation of a city sewer line is an ordinary result of the use of the sewer, which ought to be anticipated and could be guarded against by occasional examination and cleansing, the omission to make such examinations and to keep the sewers clear is a neglect of duty which renders the city liable.

A genuine issue of material fact as to whether city breached its duty to maintain its sewer lines, and whether such a breach was the cause in fact of property damages sustained by homeowners who had several inches of raw sewage back up into their basement, precluded summary judgment on their negligence claim against city; city knew that grease accumulated in sewer lines, yet for more than a year, city's procedures did not involve clearing grease from the area of the blockage.