

Bond Case Briefs

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Smokebrush Foundation v. City of Colorado Springs

Supreme Court of Colorado - February 5, 2018 - P.3d - 2018 WL 700096 - 2018 CO 10

Landowner brought action against city for negligence, nuisance, and other tort claims relating to contamination by asbestos and coal tar from an adjacent property owned by the city on which city had dismantled a gas department building and on which a coal gasification plant and a natural gas plant used to operate.

The District Court denied city's motion to dismiss for lack of subject matter jurisdiction. City appealed. The Court of Appeals reversed and remanded with instructions. Landowner petitioned for certiorari.

The Supreme Court of Colorado held that:

- City did not waive its sovereign immunity under the Colorado Governmental Immunity Act (CGIA) as to landowner's injuries that purportedly resulted from airborne asbestos contaminants during demolition of the gas department building, but
- As a matter of apparent first impression, coal gasification plant that used to sit on the city-owned property was a "public gas facility" within the meaning of the CGIA.

City did not waive its sovereign immunity under the Colorado Governmental Immunity Act (CGIA) for injuries to owner of land adjacent to city-owned land that purportedly resulted from airborne asbestos contaminants during building demolition activities on the city-owned land; in the context of CGIA's provision waiving sovereign immunity for injuries resulting from a dangerous condition of any public building, CGIA defined a "dangerous condition" as one that was proximately caused by the negligent act or omission of the public entity in constructing or maintaining a facility, and demolishing a building in its entirety was the opposite of "constructing" it.

Coal gasification plant that used to sit on city-owned land was a "public gas facility" within the meaning of the Colorado Governmental Immunity Act (CGIA), and thus the city waived its sovereign immunity as to adjacent landowner's negligence, nuisance, and other tort claims against city for injuries related to purported contamination of adjacent landowner's property by subsurface migration of coal tar pollutants created by historical coal gasification operations on the city-owned land, despite argument that the injury-causing conduct must have occurred before the CGIA's effective date; the migration of the contaminants at issue was ongoing and continued after the CGIA's enactment.