

Bond Case Briefs

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City of Rapid City v. Big Sky, LLC

Supreme Court of South Dakota - June 13, 2018 - N.W.2d - 2018 WL 2976314 - 2018 S.D. 45

City brought action against subdivision developers, which were a limited liability company (LLC) and its owner, seeking damages for prospective cost of repairing roads in subdivision and also alleging public nuisance.

The Circuit Court granted owner's motion for judgment as a matter of law and entered judgment on jury's general verdict for LLC. City appealed.

The Supreme Court of South Dakota held that:

- The Court's prior decision as to effect of expiration of bonds given in lieu of completing public improvements was not the law of the case as to developers' liability;
- Owner was not personally liable for any damages;
- Evidence supported developers' requested instruction on estoppel; and
- City could not use a public nuisance cause of action to recover the anticipated cost of abatement.

Supreme Court's prior decision holding that expiration of bonds given in lieu of completing public improvements in subdivision development did not release developers from obligation of making those improvements was not the law of the case as to developers' liability to city for road repairs, where developers' defenses, including the period of limitation, waiver, and estoppel, were not in issue in the prior decision.

Owner of subdivision development company that was a limited liability company (LLC) was not personally liable to city for damages for prospective costs of repairing roads in development, where developer was a valid LLC, developer was sole owner of the subdivision plats with deficiencies, and owner did not act in such a way that he should have been stripped of protections of an LLC.

Evidence supported subdivision developers' requested instruction on estoppel in city's action seeking to recover prospective cost of repairing roads in subdivision; evidence showed that developers began paving streets and installing curbs after city's inspector concluded that related phases had passed compaction testing, inspector testified that his primary responsibility was to be construction observer, that he visited the job site daily, spoke with foreman, inspected work, and filled out a daily construction diary, inspector's daily notes indicated that three of phases passed compaction testing, city's construction close-out checklist indicated that the fourth phase passed compaction testing, and inspector testified that compaction test failures would have been readily apparent to everyone.

City could not use a public nuisance cause of action to recover, from subdivision developers, damages in the form of the anticipated cost of abatement of allegedly unsafe roads in subdivision; nuisance statute did not allow city to recover the cost of abatement prior to undertaking such abatement.

