

Bond Case Briefs

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Foley Investments, L.P. v. Alisal Water Corporation

Court of Appeal, Fourth District, Division 1, California - November 16, 2021 - Cal.Rptr.3d - 2021 WL 5833275

Apartment complex owner brought action against water company, asserting inverse condemnation and tort claims of nuisance, trespass, and negligence after water main running through complex repeatedly ruptured.

Following bifurcation, the Superior Court determined that water main was not a public use and that water company had fire protection immunity from tort claims. Apartment complex owner appealed.

The Court of Appeal held that:

- Water main served a private use such that eminent domain principles did not apply, and
- As a matter of first impression, fire protection was a substantial or significant factor in water company constructing and maintaining water main such that it had fire protection immunity.

Water main running through apartment complex served a private use, and thus inverse condemnation principles did not apply in apartment complex owner's action against water company following pipe ruptures, where water company installed main pursuant to a contract with a private developer, water company constructed and maintained the main directly on the apartment property specifically to meet the flow requirements of the fire hydrants which benefited only the property, and water main did not provide service to the public at large and gate valve at the end of the main, which had not been opened in 32 years, functioned as a cap.

Fire protection was a substantial or significant factor in water company constructing and maintaining water main on apartment complex property, and thus fire protection immunity barred apartment complex owner's nuisance, trespass, and negligence claims against water company after water main ruptured multiple times; while water main provided domestic water to the apartment complex, it also supplied water to fire hydrants on the apartment property, and but for the apartment property's specific fire protection needs, including two fire hydrants, the main would not exist, as water company would have delivered water to the property's boundary, from which point the developer of the complex would have been responsible for installing and maintaining onsite infrastructure.