

Bond Case Briefs

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EMINENT DOMAIN - GEORGIA

Wise Business Forms Inc. v. Forsyth County

Court of Appeals of Georgia - March 15, 2022 - S.E.2d - 2022 WL 780001

Property owner brought action against county and Georgia Department of Transportation (GDOT) alleging per se taking and inverse condemnation in that road expansion increased surface and stormwater runoff flowing under its property, which created sinkhole in its parking lot.

The Superior Court dismissed complaint, and owner appealed.

The Court of Appeals held that:

- Owner was not required to file expert affidavit with its complaint;
- Statute of limitation began to run against owner's permanent nuisance claim when road expansion project was completed; and
- Owner's inverse condemnation claim was based on permanent, rather than abatable, nuisance.

Property owner was not required to file expert affidavit with its complaint asserting inverse condemnation by nuisance claim against county and Georgia Department of Transportation (GDOT) premised on their failure to mitigate increased runoff following road expansion, which channeled stormwater through pipe running underneath its property, thereby causing sinkhole in its parking lot, where complaint did not assert any claims of negligence.

Statute of limitation began to run against property owner's permanent nuisance claim against county and Georgia Department of Transportation (GDOT) when road expansion project was complete, rather than when owner noticed sinkhole in its parking lot 20 years later; claim was premised on county's and GDOT's failure to mitigate increased runoff following road expansion, which channeled stormwater through pipe running underneath its property, thereby causing sinkhole, and alleged dramatic increase in stormwater runoff would have been immediately observable.

Property owner's inverse condemnation claim against county and Georgia Department of Transportation (GDOT), premised on their failure to mitigate increased runoff following road expansion, which channeled stormwater through pipe running underneath its property, thereby causing sinkhole in its parking lot, was based on permanent, rather than abatable, nuisance; expansion project included design and installation of stormwater drainage system and decision not to build detention facilities to address alleged increased runoff, which constituted enduring features of construction project.