

# **Bond Case Briefs**

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## **EMINENT DOMAIN - RHODE ISLAND**

### **Johnston Equities Associates, LP v. Town of Johnston**

**Supreme Court of Rhode Island - July 1, 2022 - A.3d - 2022 WL 2378319**

Owner of federally subsidized affordable-housing apartment complex brought continuing trespass action against town, town finance director, and town director of public works, alleging that they allowed sewage from town's sewer pipelines to be discharged into apartment complex's private sewer line.

The Superior Court entered judgment on jury verdict for complex owner but reduced \$1.2 million award to \$100,000 based on statutory cap on damages. Complex owner appealed, and town cross-appealed.

The Supreme Court held that:

- Complex's general contractor, who was a partner in complex's owner, did not have apparent authority to enter into agreement with town to transfer ownership of private sewer line to town;
- Evidence was insufficient to show that town's use of apartment complex's private sewer line was open and notorious, and thus town did not have a prescriptive easement;
- Town's continuing trespass was a "proprietary function" to which the statutory cap on tort damages did not apply;  
Public duty doctrine did not apply;
- Complex owner could recover prejudgment interest beginning from date on which it submitted presentment letter to the town council seeking damages;
- Evidence was sufficient to support finding of causation; and
- Bills, invoices, and general ledgers were supported by testimony of parties who performed the work that was the subject of those documents, and thus were admissible.

Town's continuing trespass through connection of town sewer line to apartment complex's private sewer line was not part of the design and construction of the system, and thus was not a "governmental function" but instead was a "proprietary function" to which the statutory cap on tort damages did not apply; town was unaware of the connection until shortly before the trespass action was filed, plans and maps did not show any plan for the town to tie into the private line, and claim was that town, by allowing its sewage to flow into the private line, wrongfully operated the town's sewage system.