

Bond Case Briefs

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EMINENT DOMAIN - SOUTH CAROLINA

Marlowe v. South Carolina Department of Transportation

Court of Appeals of South Carolina - September 27, 2023 - S.E.2d - 2023 WL 6280433

Landowners brought action against the Department of Transportation (DOT), alleging inverse condemnation, conversion, due process, and negligence for flood damage to their property purportedly caused by DOT's construction project for a new culvert and elevated highway following a cataclysmic flood and hurricane.

The Circuit Court granted DOT's motion for summary judgment. Landowners appealed.

The Court of Appeals held that:

- DOT was not liable for any damages to landowners' property which occurred during or before its construction process;
- Adoption and execution of construction project was a quasi-judicial function subject to governmental immunity;
- Triable issue of fact existed as to whether DOT's conduct amounted to an affirmative, positive, aggressive act; and
- Provision of Stormwater Act did not provide for unchecked immunity to governmental entities once a permit had been obtained.

Department of Transportation (DOT) had no notice of alleged defects or condition of existing culvert for highway near landowners' property, and thus was not liable for any damages which occurred during or before its construction process under provision of Tort Claims Act (TCA) providing that governmental entities were not liable for design of highways and other public ways, in landowners' action against DOT for flood damage to their property purportedly caused by DOT's construction project for a new culvert and elevated highway following a cataclysmic flood and hurricane; before construction began, DOT's hydraulic design study found no functional deficiencies with existing culvert, and once construction began, project was under design and not subject to maintenance.

Department of Transportation's (DOT) adoption and execution of construction project for a new culvert and elevated highway near landowners' property was quasi-judicial function subject to governmental immunity under Tort Claims Act (TCA), in landowners' action against DOT for flood damage to their property purportedly caused by DOT's construction project for a new culvert and elevated highway following a cataclysmic flood and hurricane; though process of altering highway elevation near a property increased risk of flooding to the surrounding areas, DOT had plans to install new culvert during construction process, however, new culvert was not installed until after the two major weather events occurred.

Genuine issue of material fact existed as to whether Department of Transportation's (DOT) conduct in its construction project for a new culvert and elevated highway near landowners' property amounted to an affirmative, positive, aggressive act, precluding summary judgment in landowners' action against DOT for flood damage to their property purportedly caused by DOT's construction project for a new culvert and elevated highway following a cataclysmic flood and hurricane.

Landowners were not required to demonstrate that affirmative, positive, aggressive act on part of the Department of Transportation (DOT) occurred because its installation of culverts and construction to public roadways were legitimate government actions, as would support a claim for regulatory inverse condemnation, in landowners' action against the DOT for inverse condemnation for flood damage to their property purportedly caused by DOT's construction project for a new culvert and elevated highway following a cataclysmic flood and hurricane; landowners were seeking recovery for flooding damage under a theory of physical inverse condemnation.

Provision of Stormwater Act providing that no action or failure to act under the Act could be construed to impose any liability on the State, department, districts, local governments, or other agencies, officers, or employees for recovery of damages caused by such action or failure to act was not a catch-all provision that provided unchecked immunity to governmental entities once a permit had been obtained, in landowners' action against Department of Transportation (DOT) for flood damage to their property purportedly caused by DOT's construction project for a new culvert and elevated highway following a cataclysmic flood and hurricane; provision neither imposed nor relieved liability for actions or failures to act.