

Bond Case Briefs

Municipal Finance Law Since 1971

ANTI-SLAPP - MASSACHUSETTS

Bristol Asphalt, Co., Inc. v. Rochester Bituminous Products, Inc.

Supreme Judicial Court of Massachusetts, Plymouth - February 29, 2024 - N.E.3d - 2024 WL 849711

Asphalt companies brought action against competitors, alleging competitors' underlying judicial and regulatory challenges to town's approval of asphalt companies' proposed asphalt plant constituted unfair or deceptive acts or practices in the conduct of trade or commerce, conspiracy in restraint of trade or commerce, and abuse of process.

Competitors filed special motion to dismiss under anti-SLAPP (strategic litigation against public participation) statute or, alternatively, motion to dismiss for failure to state a claim. The Superior Court Department denied special motion to dismiss, finding that competitors' petitioning activities were a sham, but granted motion to dismiss claim for abuse of process. Competitors filed interlocutory appeal. The Appeals Court affirmed. Competitors' application for further appellate review was allowed.

The Supreme Judicial Court held that:

- At first stage of resolving anti-SLAPP motion, movant must show the challenged claim lacks substantial basis in conduct other than or in addition to movant's petitioning activity, abrogating *Blanchard v. Steward Carney Hospital, Inc.*, 75 N.E.3d 21, *Blanchard v. Steward Carney Hospital, Inc.*, 130 N.E.3d 1242, and *Reichenbach v. Haydock*, 90 N.E.3d 791;
- Appellate review of both stages of anti-SLAPP inquiry is de novo, abrogating *Baker v. Parsons*, 434 Mass. 543, 750 N.E.2d 953, and *McLarnon v. Jokisch*, 431 Mass. 343, 727 N.E.2d 813;
- Companies' claims were based solely on competitors' petitioning activity;
- Competitors' underlying argument that asphalt plan was not use permitted as of right in town's industrial district lacked reasonable factual support or arguable legal basis;
- Competitors' underlying arguments regarding noise and traffic problems lacked reasonable factual support or arguable legal basis;
- Competitors' underlying challenges to extension of order of conditions lacked reasonable factual support or arguable legal basis; and
- Competitors' fail-safe petitions for review under Massachusetts Environmental Protection Act (MEPA) did not constitute legitimate petitioning activity.