

Bond Case Briefs

Municipal Finance Law Since 1971

NEGLIGENCE - NEW YORK

Mahar v. McDonald

Supreme Court, Appellate Division, Second Department, New York - January 22, 2025 - N.Y.S.3d - 2025 WL 264148 - 2025 N.Y. Slip Op. 00315

Victim brought negligence action against city, city police department, and police officer who was handler of the police dog that allegedly bit victim for personal injuries suffered from the bite.

The Supreme Court, Orange County, denied defendants' motion for summary judgment.

The Supreme Court, Appellate Division, held that defendants did not owe victim a special duty, thus precluding their liability for negligence.

When a negligence cause of action is asserted against a municipality, and the municipality was exercising a governmental function, the municipality may not be held liable unless it owed a special duty to the injured party; such a special duty can arise where the municipality took positive control of a known and dangerous safety condition.

City, city police department, and police officer who was handler of the police dog that allegedly bit victim did not owe victim a special duty, thus precluding their liability for negligence to victim from the dog bite; officer did not take control of a known and dangerous condition that gave rise to victim's injuries, as, at the time of the bite, officer was an attendee at a training program conducted by a state agency at a state facility, he merely participated in the training exercise, and he took direction from the canine instructor.