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UTAH

Pigs Gun Club, Inc. v. Sanpete County, 42 P.3d 379 (Utah 2002)

(reversing summary judgment because a question of material fact remained regarding whether defendant's actions in the management of flood waters could be characterized so as to qualify for immunity under the Utah Governmental Immunity Act).

Pigs Gun Club, Inc. ("PGC") brought suit against Sanpete County ("County") for their alleged negligence and strict liability in maintaining an elevated road resulting in flood damage to PGC's real property, as well as an inverse condemnation action. The Sanpete County District Court found (1) there were no undisputed facts; (2) the County's decisions constituted the "management of flood water," which were "discretionary functions"; and (3) that the flooding was the result of a "latent defect" in the lane. As such, the court granted the County's motion for summary judgment on the negligence claim under the Utah Governmental Immunities Act ("Act"). In addition, the trial court dismissed PGC's claims for strict liability and inverse condemnation as barred by the Act, and dismissed several named plaintiffs for failure to file notice of claim. PGC appealed and the Supreme Court of Utah reversed the summary judgment motion and remanded to the trial court to determine whether the County's actions in managing flood waters could be characterized as qualifying for immunity under the Act.

PGC owned property adjacent to the Sevier River in Sanpete County, Utah. Fayette River Lane crossed the river between PGC's property and Yuba Reservoir, into which the river flows. Prior to a flood, which washed out the lane in 1983, floodwaters washed over the lane when the capacity of an underlying culvert was exceeded, sparing PGC's lands from damaging floods. The County repaired the lane after the 1983 flood, which increased the height of the lane and the underlying earthen structure and prevented overflow, and allegedly resulted in flood damage to PGC's lands. Following a second flood in 1995, PGC requested that the County breach the lane in order to prevent continued flooding and to allow the current floodwaters to recede into the reservoir. Although the county refused to breach the lane, the floodwater itself caused a breach, and the water receded. The county rebuilt the lane, allegedly causing further flood damage to PGC's lands. Subsequently, PGC filed suit alleging that the County was negligent and subject to strict liability for its maintenance of the lane and that the resulting flood constituted a taking of PGC's land without just compensation.

Upon review of the summary judgment motion, the supreme court found that the Act required a three-part test to determine whether immunity has been waived for a particular action. The court must

determine (1) whether the activity is a government function for which the legislature has granted blanket immunity; (2) whether another section of the Act waived the blanket immunity; and (3) whether the Act contains an exception to the waiver resulting in retention of immunity. Further, the court determined that the test must be applied to the three separate activities of the defendant, the rebuilding of a higher lane prior to 1995, the refusal to breach the lane upon flooding in 1995, and the subsequent reconstruction of the lane. The court found that while all three activities satisfied the first two prongs of the test, satisfaction of the final prong turned on whether the County's actions could be categorized as the management of floodwater, a discretionary function, or a latent defect.

At the trial court, PGC presented deposition testimony from several county officials who opposed the motion for summary judgment. While the trial court did not find the official's testimony compelling, upon review the supreme court determined that the testimony was sufficient to raise a dispute over whether the purpose of the county's activities was for flood control. The court further found that the trial court failed to address defendant's second ground for retaining immunity, the exercise of a discretionary function. Finally, the court found that under Utah law, the existence of a latent defect is a question for the fact finder to answer. Consequently, in determining that questions of material fact remained, the court reversed the trial court's granting of summary judgment and remanded for further consideration. Additionally, the court found that the language of the Act did not prohibit claims for strict liability, and reversed the dismissal.

Inverse condemnation requires that a plaintiff's property interest be taken or damaged for a public use. The court, in reversing the summary judgment motion, determined that a factual dispute existed as to whether the damage was the result of a public use, as required by Utah precedent, and remanded for reconsideration. As to the dismissal of several named plaintiffs, the court affirmed the lower decision, stating that timely notification under the Act requires the name of each plaintiff to appear on the notice, not merely constructive notice of a general claim.

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