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Claim resulting from city's construction of drainage infrastructure denied

FACTS:

Lawrence Fingerle's home is located in an Ann Arbor subdivision that has historically been prone to flooding. In the early 1990s, after hiring a private engineering firm that suggested construction of a relief storm sewer of a particular size, the city built drainage infrastructure to service the area, without any legal duty to do so. Even with the improvements, the area continued to flood. Nonetheless, the plaintiff claims that he was unaware of the risk of flooding and built a finished basement with a large egress window directly across from a private retention basin that overflowed in past rain events. In 2010, an intense rainstorm caused flooding and entered the plaintiff's home through the egress window. The plaintiff claimed that he would not have suffered damage had the city built the infrastructure of the size based on representations of the engineering firm contracted by the city.

Plaintiff sued the city under a statutory exception, i.e., the Sewage Act, to the governmental tort liability act (MCL 691.1407(1) et seq.). The Sewage Act makes governmental agencies liable for damage caused by certain sewer disposal system events.

QUESTION:

Has the plaintiff stated a claim that the city, based on its construction of drainage infrastructure, be held liable under the Sewage Act for damages caused by flooding of rainwater?

ANSWER ACCORDING TO THE TRIAL COURT:

The trial court denied the city's motion to dismiss the plaintiff's claim under the Sewage Act and held that plaintiff should be able to proceed to trial.

ANSWER ACCORDING TO THE MICHIGAN

COURT OF APPEALS: The city is not obliged under the Sewage Act to deal in any way with the consequences of rain that naturally flows from a higher to a lower elevation.

The Sewage Act provides limited and strictly circumscribed tort liability for sewage-related events, not contract-based liability for natural rainwater flooding. Since the causative event was rain and not sewage and because the plaintiff's claims sound in contract and not in tort, the plaintiff has no claim under the Sewage Act. In a concurring opinion, Judge O'Connell addressed the issues under the governmental tort liability act rather than the Sewage Act.

ANSWER ACCORDING TO THE DISSENTING OPINION OF THE COURT OF APPEALS:

Judge Beckering dissented, stating that plaintiff stated a claim based on a breach of duty by the city once it "voluntarily assumed a function that it was under no legal obligation to assume." Having done so, the dissent argues, the city had a duty to take steps to correct or remedy known defects in the system that it had constructed.

Fingerle v City of Ann Arbor, No. 310352 (Dec. 2, 2014).

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.

