

Claims Against Town over Enforcement of Local Ordinances and Environmental Laws Dismissed

Notable PDP Victories

Gregory Smith v. Town of North Andover, Essex Superior Court, C.A. No. 2016-00407-A (October 25, 2016)

The Essex Superior Court recently granted a Motion to Dismiss in favor of the Town of North Andover and three current/former town officials. The case stemmed from a 1997 lawsuit between the plaintiffs and the Sutton Pond Condominium Trust (Sutton Pond) involving a sewer pumping station located on Sutton Pond property. The plaintiffs were seeking to enforce:

- a prior settlement agreement and arbitration award against Sutton Pond;
- a declaratory judgment to enforce local ordinances and environmental laws against the Town;
- a Chapter 93A claim against Sutton Pond;
- a civil conspiracy claim against Sutton Pond and the Town; and
- a claim of fraud and deceit against Sutton Pond and individual town defendants.

All claims against the Town and its officials were dismissed, as well as three claims against Sutton Pond.

Representing the Town, PDP attorney Adam Simms, argued that the plaintiffs did not have standing to compel the Town to enforce local bylaws or state law. Additionally Simms argued under the Massachusetts Tort Claims Act (“MTCA”), G.L. c. 258, that the Town was immune from any claim based on an act or failure to act to prevent or diminish the harmful consequences of a condition that was not originally caused by the municipality. G.L. c. 258, §10(j). The Court agreed.

On the claims of alleged conspiracy between the Town and Sutton Pond, and fraud and deceit claims against individual Town defendants, the Court again found that the plaintiffs failed to state a claim upon which relief may be granted and dismissed all claims. The Court agreed with Simms’ argument that the plaintiffs’ claims did not meet the “particularity” requirements of Mass. R. Civ. P. 9(b), and presented no or insufficient facts to support their claims of fraud and deceit.