

Appeals Court Confirms Plaintiffs' Claims Governed by Massachusetts Tort Claims Act – Town Is Immune

Venkataraman v. Graniteville Woods, LLC, 91 Mass. App. Ct. 1131 (2017)

In a case defended by Attorney John J. Davis of Pierce Davis & Perritano LLP, the Massachusetts Appeals Court recently affirmed a judgment of dismissal entered by the Middlesex Superior Court in favor of the Town of Westford, the Westford Building Commissioner and the former Westford Conservation/Resource Planner.

The case arose out of the plaintiffs' purchase of a condominium unit in a residential development known as Graniteville Woods. In their pleadings, plaintiffs claimed their unit failed to meet certain minimum requirements of the Massachusetts State Building Code, failed to comply with the Comprehensive Permit issued by the Zoning Board of Appeals, and violated various deed, contract and statutory conditions and restrictions.

Not satisfied with suing only the developer, the plaintiffs brought suit against the Town and its officials claiming they "allowed" the developer to construct and sell them a flawed condominium. Seeking to avoid the various immunity protections available to municipal defendants under the Massachusetts Tort Claims Act, the plaintiffs labeled their claims as ones for fraud, unjust enrichment, corruption, embezzlement, violation of fundamental human rights and perjury. But the Superior Court saw through plaintiffs' artful pleading.

In allowing the Westford defendants' Motion to Dismiss, Judge Robert Tochka reasoned that, in general terms, the plaintiffs accused Town officials of negligently failing to take action to correct certain violations and/or to prevent various harms. Thus, "at base," Judge Tochka ruled that the plaintiffs' claims were governed by the Massachusetts Tort Claims Act (the MTCA). In accordance with the MTCA, the individual defendants were immune under M.G.L. c. 258, § 2, and the Town was immune under M.G.L. c. 258, §§ 10(b), 10(e), 10(f) and 10(j). At their request, Judge Tochka also entered a separate and final judgment in favor of the Westford defendants. The plaintiffs appealed.

The Appeals Court affirmed. Disregarding the labels attached to plaintiffs' pleadings, the Appeals Court agreed that the theories advanced by the plaintiffs were governed by the exclusive remedy provisions of the MTCA. As a result, the Town officials were personally immune for any wrongful acts or omissions committed within the scope of their employment. To the extent the Town itself was faulted for issuing certificates of occupancy, for not issuing notices of violation of the State Building Code, and for failing to revoke the Comprehensive Permit, it was immune under Sections 10(b) and 10(e). To the extent its employees allegedly failed to inspect, or negligently inspected, the development condominiums, it was immune under Section 10(f). And, finally, to the extent it failed to prevent or diminish any harm to plaintiffs' property as a result of the developer's actions, the Town enjoyed immunity under Section 10(j).

This decision affirms once again that Massachusetts courts will continue to reject the strategy of artful pleading and, instead, determine the rights of parties based on the "gist" or true essence of the claims. Form will not be allowed to prevail over substance.