

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOHN DERAFFELE,	:	NO. 13 – 01,732
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
CITY OF WILLIAMSPORT,	:	
Defendant	:	Preliminary Objections

OPINION AND ORDER

Before the court are Preliminary Objections filed by Defendant on December 10, 2013. Argument was scheduled for January 15, 2013, and Counsel for Defendant appeared but Plaintiff was unable to appear due to illness. The argument was not held, and has not been rescheduled as it was indicated that the court could decide the objections based on the filings and briefs.

In his Amended Complaint, Plaintiff alleges that the basement of his property was flooded on July 28, 2012, when a flash flood overwhelmed the storm water drainage system which served his neighborhood. Plaintiff seeks damages for personal property, loss of rental income and loss of value of his home. In the instant preliminary objections, the City contends it is immune from suit under the Political Subdivision Tort Claims Act. 42 Pa.C.S. Section 8541. Plaintiff argues in response that the real property exception and the streets exception provide for liability.

The Tort Claims Act provides for exceptions to immunity for, *inter alia*, negligence in the care, custody or control of real property and for a dangerous condition of streets, as follows:

§ 8542. Exceptions to governmental immunity.

(a) Liability imposed. --A local agency shall be liable for damages on account of an injury to a person or property within the limits set forth in this subchapter if both of the following conditions are satisfied and the injury occurs as a result of one of the acts set forth in subsection (b):

(b) Acts which may impose liability. --The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:

(3) Real property. --The care, custody or control of real property in the possession of the local agency, except that the local agency shall not be liable for damages on account of any injury sustained by a person intentionally trespassing on real property in the possession of the local agency. As used in this paragraph, "real property" shall not include:

(i) trees, traffic signs, lights and other traffic controls, street lights and street lighting systems;

(ii) facilities of steam, sewer, water, gas and electric systems owned by the local agency and located within rights-of-way;

(iii) streets; or

(iv) sidewalks.

...

(6) Streets.

(i) A dangerous condition of streets owned by the local agency, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of

the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

42 Pa.C.S. Section 8542. Contrary to Plaintiff's assertion, however, neither one of these exceptions applies to the situation at hand.

The real property exception does not apply, by its very terms, as it specifically excludes facilities of steam, sewer, water, gas and electric systems owned by the local agency.¹ The streets exception does not apply as Plaintiff has not alleged a dangerous condition of the City's street, but only the "inadequacy of their drainage systems".

While it may appear that the utility service facilities exception might apply, since such speaks to "a dangerous condition of the facilities of steam, sewer, water, gas or electric systems owned by the local agency and located within rights- of-way", 42 Pa.C.S. Section 8542(5), the appellate courts of this Commonwealth have held that while liability may be imposed for a drainage system which was negligently constructed or maintained, a municipal entity cannot be held liable for an *inadequate* system. See Woodbine Auto, Inc. v. SEPTA, 8 F.Supp.2d 475 (E.D. Pa. 1998), citing City of Washington v. Johns, 474 A.2d 1199 (Pa. Commw. 1984), and Yulis v. Borough of Ebensburg, 128 A.2d 118 (Pa. Super. 1956). This conclusion flows from the principle that a municipality is not liable for damages resulting from a lawful exercise of its *discretionary power to plan* and construct sewers and other improvements. See Fair v. Philadelphia, 88 Pa. 309, 311 (1879), wherein the Court stated:

The time and manner of draining the streets of the city require the exercise of judgment, deliberation and discretion of the municipal

¹ A storm water management system has been held to be the equivalent of a "sewer" for purposes of the Tort Claims Act. See, e.g., Staffaroni v. City of Scranton, 620 A.2d 676 (Pa. Commw. 1993).

authorities. The duty is therefore one of a judicial character. It involves a consideration of the financial condition of the city, and of the time and plan of construction. It must, therefore, be left to the municipal authorities to determine the extent and capacity of the sewerage to be constructed, and not to the verdict of a jury to decide at the suit of an owner of property aggrieved. So long as it is the mere omission, as here, of the authorities, to provide adequate means to carry off the water which storms, and the natural formation of the ground, throw on a lot, the owner thereof cannot sustain an action against the municipality.

Here, Plaintiff clearly seeks to impose liability for an inadequate system. For example, in Paragraph 10 he contends the City had prior knowledge “that the old antiquated drainage systems could not handle the extraordinary amount of water that occurred on this day”, and in Paragraph 13A, that “the existing drains are undersized and antiquated and in need of replacement.” The case thus falls within the rule that liability may not be imposed and the City’s objections must be sustained.

ORDER

AND NOW, this 23rd day of January 2014, for the foregoing reasons, the preliminary objections filed by the City are hereby SUSTAINED and Plaintiff’s Amended Complaint is hereby DISMISSED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: John Deraffele, 305 North Avenue, New Rochelle, NY 10801
Patrick Boland, III, Esq., P.O. Box 3118, Scranton, PA 18505
Gary Weber, Esq.
Hon. Dudley Anderson