

SUPREME COURT OF CONNECTICUT

Celentano v. Rocque, 282 Conn. 645

923 A.2d 709 (2007) · No. 17703 · Decided June 12, 2007

SUMMARY

The Supreme Court of Connecticut affirmed the dismissal of an administrative appeal challenging an order requiring the plaintiffs to remedy deficiencies in an unsafe dam and detention basin. The court held that the Commissioner of Environmental Protection acted within his statutory authority under General Statutes § 22a-402 and that an easement or maintenance efforts by other parties did not relieve the plaintiffs of potential responsibility. The court also addressed, and rejected, the challenge to applying the responsible corporate officer doctrine to impose personal liability on Celentano.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Borden, J.; Norcott, J.; Katz, J.; Palmer, J.; Zarella, J.
JURISDICTION	Connecticut
DECIDED	June 12, 2007
DOCKET	17703
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Superior Court's dismissal of an administrative appeal challenging the Connecticut Commissioner of Environmental Protection's order requiring remediation of an unsafe dam and detention basin.
STANDARD OF REVIEW	Administrative factual findings are reviewed under the deferential UAPA standard and may not be retried or reweighed. The court determines whether the agency acted unreasonably, arbitrarily, illegally, or in abuse of its discretion, while statutory-interpretation questions are reviewed plenary. Traditional deference to an agency's statutory interpretation is unwarranted when the issue presents a pure question of law and the agency's interpretation has not received prior judicial or time-tested administrative scrutiny.
PRECEDENTIAL VALUE	Published Connecticut Supreme Court opinion; precedential.
PARTIES	Vincent D. Celentano, Cel-Mor Investments, Inc., Vincent D. Celentano doing business as Cel-Mor Investments, Inc. v. Arthur J.

TOPICS

judicial review of agency action administrative law statutory interpretation environmental law
municipal law

PRACTICE AREAS

administrative law environmental law statutory interpretation municipal law corporate law

QUESTIONS PRESENTED

1. Whether the commissioner acted within his statutory authority under General Statutes § 22a-402 when he issued the 2002 order without evidence that the dam had already breached or exceeded its capacity.
2. Whether the plaintiffs avoided responsibility for the dam under § 22a-402 because an easement allowed Ridge Development and the borough to maintain the dam and because those entities performed some maintenance.
3. Whether the responsible corporate officer doctrine could apply under § 22a-402 and whether the facts supported holding Celentano personally responsible for repairing the unsafe dam.

HOLDINGS

1. The commissioner acted within his jurisdiction and statutory authority under General Statutes § 22a-402 because he had inspected the dam, determined that it was unsafe, and reasonably concluded that its failure could cause loss of life or property damage. Section 22a-402 does not require proof that the dam had already breached or that its capacity had previously been exceeded.
2. The plaintiffs remained subject to § 22a-402 because an easement granting maintenance rights to Ridge Development and the borough did not establish that full control had been transferred to and accepted by those entities. Even if the easement had been accepted, it could subject those entities to liability without relieving the plaintiffs of their own statutory responsibility.
3. The responsible corporate officer doctrine may be applied under General Statutes § 22a-402 to hold a corporate officer personally responsible for remediation of an unsafe dam. The doctrine applies because § 22a-402 is a strict-liability public-welfare statute that broadly reaches any individual or legal entity owning or controlling a dangerous dam. Celentano satisfied the three-part test because he occupied a position of responsibility, his conduct and omissions were connected to Cel-Mor's ownership and failure to remedy the unsafe dam, and those actions or omissions resulted in the violation.

KEY QUOTATIONS

“The commissioner's failure to comply adequately with these inspection requirements, however, would not deprive him of the jurisdiction to remedy an unsafe condition of which he had become aware.” (282 Conn. at 717)

“Section 22a-402 is a strict liability public welfare statute sharing all three of the specified common elements.” (282 Conn. at 723)

“In other words, the “conduct” underlying a violation of § 22a-402 is the ownership or control of an unsafe dam.” (282 Conn. at 725)

FACTUAL BACKGROUND

The plaintiffs were associated with a residential subdivision and owned or controlled a dam and detention basin in Naugatuck. The dam had a history of inadequate capacity, deficient drainage, seepage, unevenness, and poor soil compaction, and the commissioner classified it as a significant-hazard dam whose failure could cause loss of life or substantial property damage. Despite prior orders and a stipulated judgment requiring repairs, the deficiencies remained. The commissioner issued a 2002 order requiring engineering studies, an emergency operations plan, and a remediation plan, and directed the order both to Cel-Mor as owner and to Vincent Celentano individually under the responsible corporate officer doctrine.

PROCEDURAL HISTORY

The commissioner issued a 2002 order under General Statutes § 22a-402 requiring the plaintiffs to investigate, plan for, and remedy deficiencies in a dam and detention basin. After an administrative hearing, the commissioner issued a final decision. The plaintiffs exhausted their administrative remedies and appealed to the Superior Court under the Uniform Administrative Procedure Act. The Superior Court dismissed the appeal, and the Supreme Court of Connecticut affirmed.

DISPOSITION

affirmed

CASES CITED

- New Haven v. Freedom of Information Commission, 205 Conn. 767, 773-74, 535 A.2d 1297 (1988)
- Griffin Hospital v. Commission on Hospitals & Health Care, 200 Conn. 489, 496, 512 A.2d 199 (1986), appeal dismissed, 479 U.S. 1023 (1986)
- State Board of Labor Relations v. Freedom of Information Commission, 244 Conn. 487, 493-94, 709 A.2d 1129 (1998)
- Cadlerock Properties Joint Venture, L.P. v. Commissioner of Environmental Protection, 253 Conn. 661, 668-69, 757 A.2d 1 (2000), cert. denied, 531 U.S. 1148 (2001)
- MacDermid, Inc. v. Department of Environmental Protection, 257 Conn. 128, 137, 154, 778 A.2d 7 (2001)
- Cos Cob Volunteer Fire Co. No. 1, Inc. v. Freedom of Information Commission, 212 Conn. 100, 106, 561 A.2d 429 (1989)
- Pasquariello v. Stop & Shop Cos., 281 Conn. 656, 663, 916 A.2d 803 (2007)
- Fullerton v. Administrator, Unemployment Compensation Act, 280 Conn. 745, 755, 911 A.2d 736 (2006)
- AvalonBay Communities, Inc. v. Inland Wetlands Commission, 266 Conn. 150, 158-59, 832 A.2d 1 (2003)
- State v. Patterson, 276 Conn. 452, 479 n.19, 886 A.2d 777 (2005)

- Juchniewicz v. Bridgeport Hospital, 281 Conn. 29, 35, 914 A.2d 511 (2007)
- John A. Errichetti Associates v. Boutin, 183 Conn. 481, 484-85, 439 A.2d 416 (1981)
- Shelton v. Commissioner, Department of Environmental Protection, 193 Conn. 506, 517, 479 A.2d 208 (1984)
- Drabik v. East Lyme, 234 Conn. 390, 401, 662 A.2d 118 (1995)
- Il Giardino, LLC v. Belle Haven Land Co., 254 Conn. 502, 528, 757 A.2d 1103 (2000)
- Russak v. Scruggs, 241 Va. 135, 138, 400 S.E.2d 529 (1991)
- Meder v. Milford, 190 Conn. 72, 74, 458 A.2d 1158 (1983)
- BEC Corp. v. Department of Environmental Protection, 256 Conn. 602, 617-19, 775 A.2d 928 (2001)
- Matter of Dougherty, 482 N.W.2d 485, 489-91 (Minn. App. 1992)
- Ventres v. Goodspeed Airport, LLC, 275 Conn. 105, 144-45, 881 A.2d 937 (2005), cert. denied, 126 S. Ct. 1913 (2006)
- Commissioner, Indiana Department of Environmental Management v. RLG, Inc., 755 N.E.2d 556, 561 (Ind. 2001)
- United States v. Bestfoods, 524 U.S. 51, 63 (1998)
- United States v. Park, 421 U.S. 658, 670-73 (1975)
- Morissette v. United States, 342 U.S. 246, 256, 259-60 (1952)
- United States v. Dotterweich, 320 U.S. 277, 280, 284-85 (1943)
- United States v. Hodges X-Ray, Inc., 759 F.2d 557, 560-61 (6th Cir. 1985)
- Clark-Franklin-Kingston Press, Inc. v. Romano, 12 Conn. App. 121, 127-28, 529 A.2d 240 (1987), cert. denied, 205 Conn. 803, 531 A.2d 935 (1987)
- Dept. of Ecology v. Lundgren, 94 Wash. App. 236, 246, 971 P.2d 948 (1999)
- State v. Rollfink, 162 Wis. 2d 121, 140, 475 N.W.2d 575 (1991)