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# Sovereign immunity and negligent inspectors

*By Adam B. Whiteman*

**A client who was the victim of defective construction** in regards to a home addition recently asked me to sue a village because the village inspector approved the defective work. The real problem was that a lot of unnecessary work could have been avoided had the inspector done his job. Instead, after the work was complete, a new inspector came in and recanted the previous inspector, declaring the work defective and not up to code.

On researching the issue, I came across a case that made headlines a number of years ago. The situation involved a porch which collapsed in Chicago in 2003, killing 13 people. The case caption is *Ware v. City of Chicago*, 873 N.E.2d 944 (1st Dist. 2007).

In *Ware*, the plaintiffs collective alleged that the City failed to:

> a. inspect the porch adequately, for Building Code violations, for deviations from ordinary and customary construction practices;
>
> b. train inspectors to identify Building Code violations or deviations from ordinary and customary construction practices;
>
> c. supervise inspectors to ensure identification of Building Code violations or deviation from ordinary and customary construction practices;
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> d. employ qualified inspectors;
>
> e. discover that the porch had been built without a permit;
>
> f. ensure that Building Code standards were followed;
>
> g. provide sufficient time for an effective inspection; and
>
> h. end personal relationships with building owners that permitted custom and practice of passing noncompliant buildings as compliant.» (*Ware*, 873 N.E.2d 946).

In response, the City filed a motion to dismiss arguing in part, that it was immune from liability pursuant to the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/1-101 et seq. (West 2002)).

The court agreed and determined that "the City was immunized from liability against plaintiffs' allegations that it failed to properly inspect the porch in question and failed to report that the porch construction violated several building codes. Relying on the clear language of the immunities at issue, we conclude that their application bars plaintiffs' negligence claims against the City." (*Ware*, 873 N.E.2d at 952).

The court specifically cited section 2-105 of the Tort Immunity Act:

> A local public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its own, to determine whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

745 ILCS 10/2-105 (West 2002).

The court also cited section 2-207 of the Tort Immunity Act which provides:

> A public employee is not liable for an injury caused by his failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than that of the local public entity employing him, for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

745 ILCS 10/2-207 (West 2002).

In addition, the court cited sections 2-103 and 2-205 of the Tort Immunity Act which state that local public entities and public employees are "not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law." 745 ILCS 10/2-103 (West 2002); see 745 ILCS 10/2-205 (West 2002).

The plaintiffs attempted to argue that section 2-202 of the Tort Immunity Act provided an exception. This provision states as follows:

> A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct.

(745 ILCS 10/2-202 (West 2002)).

Because this particular exception was not contained within the actual immunity provisions cited above, the court determined that the immunity remained absolute, despite willful and wanton conduct. This is quite surprising in light of the exceptionally broad language contained in section 2-202 which asserts that it applies to the "enforcement of *any* law…" Just to make sure its bases were covered, the court went on to argue that plaintiff was unable to satisfy the requisite elements of a claim for willful and wanton conduct because the plaintiff's were not under the "direct and immediate" control of the City or inspectors when the porch collapsed.

The lesson here is that city/village inspectors are not there entirely for your protection. They are not insurers of workmanship or even code compliance. They are really there for the municipalities' purpose which is partially to establish some quality control over construction taking place within its jurisdiction, and partially to raise revenue for the municipality itself.

Thus, make sure you hire a licensed, experienced, and skilled contractor for your job, and demand insurance and bonds and warranties for construction quality and completion. Such demands will likely be the only coverage you are going to get.

As a final note, many municipalities also require a contractor to provide a bond as a prerequisite for a permit. These

bonds tend to be very small, such as $10,000, and the proceeds of same will usually be distributed among other homeowners who have also been the victims of the contractor's defective workmanship within the municipality. If the municipalities are actually seeking to protect its residents from defective workmanship, then perhaps the amount of these bonds should reflect the realities of modern construction costs.

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