



HIGH COURT OF AUSTRALIA

Public Information Officer

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BANKSTOWN CITY COUNCIL v ALAMDO HOLDINGS PTY LIMITED

The Council was not liable for stormwater damage to two industrial buildings owned by Alamo, the High Court of Australia held today.

Alamo bought its site at Chester Hill in Sydney in 1988. The land is at a low point of the local catchment area and managing director Anthony Maurici was aware of an incident of short-lived flooding of both buildings not long before he bought the site. In 1998 and 2000, parts of the land, including one building on the first occasion, were briefly flooded. A stormwater channel, connected the Council's drainage system, runs alongside the land. Water ran into the channel from a "gross pollutant trap" or barrage where two 2.4-metre stormwater pipes met near the property's boundary.

Alamo brought a nuisance action in the New South Wales Supreme Court. Justice Ian Gzell held that the frequency with which the land was likely to be inundated had significantly increased from once every five to 10 years in 1960 to more than once every two years by 1998. This affected plans for the site and was an unreasonable interference with the use and enjoyment of the land. Justice Gzell granted an injunction restraining the Council from causing or permitting stormwater from inundating the land and ordered the Council to carry out abatement works which the Council estimated would cost \$1.5 million. A valuer called by the Council estimated the value of the site had diminished by more than \$1.4 million, while Alamo claimed the figure was higher and that the risk of flooding had cut rental values for both buildings. Justice Gzell did not award damages.

The Court of Appeal dismissed both an appeal by the Council and a cross-appeal by Alamo, but it suspended the injunction pending the outcome of the High Court appeal by the Council. The Council based the appeal on its contention that section 733 of the NSW *Local Government Act* provided an exemption from liability for decisions about land liable to flooding.

The High Court unanimously allowed the appeal. It held that a body such as the Council is not, without negligence on its part, liable for a nuisance attributable to the exercise of, or failure to exercise, its statutory powers. The Court rejected Alamo's contentions that section 733 did not extend to protecting the Council from exposure to injunctive relief and that the Council had not acted in good faith so could not rely upon section 733. The Court held that section 733 applied in this case.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*