

## LEGAL AND REGULATORY NOTES

### *The Doctrine of Municipal Sovereign Immunity*

In October 2008, doctors Eitan and Vered Sobel bought a residential property in Rutland City with the intention of tearing down the house and developing a medical practice building on the lot. Thereafter they contacted the Rutland City Tax Assessor by telephone and followed up with a series of emails, asking for property tax estimates for various buildings they proposed to construct. Based on representations made by the doctors, the Assessor provided some rough estimates of the appraised value of the proposed buildings and the doctors' potential property tax liability.

The doctors went ahead with construction. The final cost of construction was approximately \$700,000. After the building was completed, the Assessor inspected and assessed the plaintiffs' property at \$649,100. In June 2010, the Assessor received an email from the doctors stating that they were "surprised to receive your [e]tter of appraisal valuing the building as \$649,100" because it was "2¼ times more than [the] original estimate."

The Assessor treated this email as a grievance and declined to adjust his appraisal. The doctors appealed the Assessor's denial to the City Board of Civil Authority (BCA), citing their communications with the Assessor as the basis of their disputed valuation. The BCA upheld the \$649,100 assessment. On appeal to the Director of Property Valuation and Review, the State Appraiser decided the value of the building was \$516,700.

The doctors then brought suit against the City, alleging negligent misrepresentation and equitable estoppel by the Assessor. The doctors complained that they relied to their detriment on the Assessor's email estimate, which was a major factor in their decision on the type and size of the building constructed on the lot. The superior court granted summary judgment for

the City, holding that the City was protected against suit by municipal immunity because the Assessor's estimates arose from the City's governmental function of assessment and collection of taxes. The court further held that the doctors could not meet the elements of equitable estoppel.

On appeal to the Vermont Supreme Court, the superior court's decision was affirmed, with the Supreme Court holding that the Assessor's tax estimates were protected by municipal sovereign immunity. Municipal immunity protects municipalities from tort liability where a municipality exercises powers and functions specifically authorized by the legislature, as well as those functions that may be fairly and necessarily implied or that are incident or subordinate to the express powers. The estimates given by the Assessor were governmental functions reasonably related to his duties and the City's taxing authority. Even if the Assessor wasn't under a legal duty to provide estimates to the doctors, it did not reduce it to an unprotected, proprietary activity.

Estoppel is an equitable remedy intended to prevent harm to a party from when it had relied on another's representation to its detriment. Under their estoppel claim, the doctors were required to establish four elements: (1) the party to be estopped must know the facts; (2) the party being estopped must intend that its conduct be acted upon; (3) the party asserting estoppel must be ignorant of the true facts; and (4) the party asserting the estoppel must rely on the conduct of the party to be estopped to its detriment. The Supreme Court found that the doctors did not show that the Assessor intended his estimates to be relied upon or that their reliance on the estimates was reasonable.

The Assessor's response to the doctors' initial inquiry explicitly disclaimed the accuracy and

finality of his estimates, emphasizing that they were made “without having detailed plans,” and that the estimates were “vague” and “could change.” Since all of the Assessor’s subsequent estimates were given in this context, and since no evidence supported the notion that the Assessor intended for the doctors to rely on the hypothetical valuations, then in the face of the Assessor’s disclaimer the defendants could not prove that their claimed reliance on the Assessor’s estimates was reasonable. *Sobel v. City of Rutland*, 2012 VT 84.

The *Sobel* decision is a very favorable one for local government, upholding the doctrine of municipal sovereign immunity and recognizing that municipalities should not be liable when local officials step outside the strict definitions of their legal duties to assist citizens. Often local officials provide assistance and advice to residents – because the assistance sought is reasonably related to the official’s area of responsibility and helping out is the right thing to do. If municipalities were only afforded protection under the sovereign immunity doctrine when officials are acting within the strict letter of their duties, then concern for legal liability would undoubtedly deter some measure of the helpfulness and responsiveness that citizens rightfully expect local government to provide.

Nevertheless, local officials should heed some of the important details in this case. The Rutland City Assessor was very careful to communicate that the assessment estimates he provided to the doctors were just estimates and could change, depending on a variety of circumstances. This effort largely saved the day for the City, as it prevented the doctors from establishing that they had relied on the Assessor’s projected assessment figures to their financial detriment.

Disclaimers and warnings are so ubiquitous that sometimes it seems we don’t even notice them anymore. But disclaimers, both formal and informal, can play an important role in mitigating some of the risk arising from offering a helping hand. Simple qualifying statements such as, “this is only a rough estimate,” “we can’t be certain of the outcome,” and “I am glad to help if I can, but you really ought to speak with your own real estate appraiser (or attorney,

engineer, etc.)” can walk the line between providing assistance and avoiding liability if things do not turn out as anticipated. The *Sobel* decision is archived at <http://info.libraries.vermont.gov/supct/current/op2011-436.html>.

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