

Common Enemy Rule/Water Law: Federal District Court Addresses Claim by Adjacent Landowner Against City Official



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The United States District Court for the Middle District of Pennsylvania (“Court”) addressed in a July 6 Memorandum issues arising out of stormwater moving from a property to an adjacent parcel at a lower elevation. See *Hartman v. Borough*, No. 1:21-CV-01735, 2022 WL 2513043 (M.D. Pa. July 6, 2022).

Questions addressed include application of the common enemy rule and whether the defendants were immune from suit under Pennsylvania law.

Hartman filed a complaint alleging a “riparian trespass” against several defendants. They included Gratz Borough and City Council member Angie Sitlinger. Hartman claimed that the Defendants improved their upstream properties as part of a water drainage project and as a result:

- dramatically reduced surface permeability
- increased surface run off volume and force.

Hartman alleged that Sitlinger used her influence as a member of the Council to cause the city to complete the water drainage project.

Hartman’s claim was determined by the Court to involve the common enemy rule. This rule provides that the owner of a higher land is not liable for damages caused by water that naturally flows down into the lower land. However, liability may be established if the upper landowner has manipulated the natural channel by artificial means or “unreasonably or unnecessarily increased the quantity or changed the quality of water discharged upon his neighbor.”

Gratz Borough was deemed immune from the lawsuit because of the Political Subdivision Tort Claim Act.

An additional question was whether Harman could establish a riparian trespass against a city official (Sitlinger) who does not own the higher land.

The doctrine of “common enemy” and its relation to a riparian trespass has traditionally involved disputes involving the landowners. In limited circumstances, the Pennsylvania courts have extended liability in common enemy cases to parties that do not own the land. An example is a developing company found liable for constructing a storm management system that caused a continuing trespass. Moreover, Pennsylvania courts have in certain instances found that a person who authorizes or directs another to trespass is liable as if he or she was the physical trespasser.

The Court concluded that a city official could be liable for a riparian trespass despite his or her absence of ownership. However, the plaintiff must prove that the city official's actions were not within the scope of employment. If not, they may not be protected by immunity.

Without enough information as to the question of immunity, the claim against the city official (Sitlinger) for riparian trespass survived a motion to dismiss.

A copy of the Memorandum can be found [here](#).