

# SUPREME COURT OF OHIO

## Huff v. FirstEnergy Corp.

130 Ohio St. 3d 196, 2011-Ohio-5083 (2011) · No. 2010-0857 · Decided October 5, 2011

### SUMMARY

The Supreme Court of Ohio held that an injured third party qualifies as an intended third-party beneficiary only when the contract indicates an intention to benefit that third party. The court concluded that a utility vegetation-management contract requiring the contractor to safeguard persons and property during its work did not create an ongoing duty to protect the general public from injury after the work was completed. The court reversed the appellate judgment and reinstated summary judgment for Ohio Edison and Asplundh.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                             |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Ohio                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Lanzinger, J.; O'Connor, C.J.; Lundberg Stratton, J.; Cupp, J.; McGee Brown, J.; Pfeifer, J.; O'Donnell, J.                                                                                                                                 |
| JURISDICTION          | Ohio                                                                                                                                                                                                                                        |
| DECIDED               | October 5, 2011                                                                                                                                                                                                                             |
| DOCKET                | 2010-0857                                                                                                                                                                                                                                   |
| DISPOSITION           | reversed                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Discretionary appeal from the Eleventh District Court of Appeals' reversal of summary judgment entered for Ohio Edison and Asplundh.                                                                                                        |
| STANDARD OF REVIEW    | Summary judgment is reviewed based on whether the record establishes no genuine issue of material fact and the moving parties are entitled to judgment as a matter of law; the opinion applied that standard without separately stating it. |
| PRECEDENTIAL VALUE    | Published Ohio Supreme Court opinion; precedential.                                                                                                                                                                                         |
| PARTIES               | Ohio Edison Company, Asplundh Tree Expert Company v. Lisa G. Huff, Reggie D. Huff, the Huff children                                                                                                                                        |

### TOPICS

third party beneficiary

contract interpretation

contracts

appellate procedure

personal injury

## PRACTICE AREAS

Contracts

Torts

Appellate Procedure

## QUESTIONS PRESENTED

1. Whether the Huffs were intended third-party beneficiaries of the written contract between Ohio Edison and Asplundh.
2. Whether the contract created a continuing duty to protect members of the public from injury after the contractor completed its work.

## HOLDINGS

1. For an injured third party to qualify as an intended third-party beneficiary under a written contract, the contract must indicate an intention to benefit that third party. The Ohio Edison-Asplundh contract did not indicate an intent to benefit the Huffs, so they had no enforceable contractual rights.
2. The provision requiring the contractor to safeguard all persons and property from injury established safety guidelines for work performed at the site; it did not require Ohio Edison or Asplundh to protect all persons from injury at all times after the work was completed.

## KEY QUOTATIONS

*“For an injured third party to qualify as an intended third-party beneficiary under a written contract, the contract must indicate an intention to benefit that third party.”* (130 Ohio St. 3d at 196)

*“It is clear that this portion of the agreement establishes safety guidelines designed to protect persons and property from injury while the contractor performs its work. This period is finite: until the work has been completed.”* (130 Ohio St. 3d at 200-201)

*“The Huffs thus fail to qualify as intended third-party beneficiaries, and the court of appeals improperly reversed the summary judgment granted to Ohio Edison and Asplundh.”* (130 Ohio St. 3d at 202)

## FACTUAL BACKGROUND

Lisa G. Huff was injured when a large limb from a sugar maple tree struck her while she was walking along Kings Grave Road during a thunderstorm. The tree was on privately owned property outside Ohio Edison's easement and did not threaten the utility's power lines. Ohio Edison had contracted with Asplundh to inspect and maintain vegetation affecting its lines, but Asplundh had last worked in the area approximately three years before the injury. The Huffs presented no evidence that either defendant had actual or constructive notice of decay in the tree.

## PROCEDURAL HISTORY

The Huffs sued Ohio Edison, Asplundh, FirstEnergy, and the property owners after Lisa Huff was injured by a falling tree limb. The trial court granted summary judgment to Ohio Edison and Asplundh, concluding that they owed no duty to the Huffs and that the Huffs were not intended third-party beneficiaries of the utility's contract with Asplundh. The Eleventh District reversed, finding a genuine issue of material fact concerning whether the

contract gave Huff enforceable third-party-beneficiary rights. The Supreme Court of Ohio accepted jurisdiction and reversed the court of appeals.

## DISPOSITION

reversed

## CASES CITED

- Hill v. Sonitrol of Southwestern Ohio, Inc., 36 Ohio St. 3d 36, 521 N.E.2d 780 (1988)
- Norfolk & W. Co. v. United States, 641 F.2d 1201 (6th Cir. 1980)
- Shifrin v. Forest City Enters., Inc., 64 Ohio St. 3d 635, 597 N.E.2d 499 (1992)
- Terry v. Hancock-Wood Electric Cooperative, Inc., 2009-Ohio-4925
- Anderson v. Olmsted Utility Equipment, Inc., 60 Ohio St. 3d 124, 573 N.E.2d 626 (1991)
- Subaru Distributors Corp. v. Subaru of America, Inc., 425 F.3d 119 (2d Cir. 2005)
- Public Service Co. of New Hampshire v. Hudson Light & Power Department, 938 F.2d 338 (1st Cir. 1991)
- Beverly v. Macy, 702 F.2d 931 (11th Cir. 1983)
- Hickman v. SAFECO Insurance Co. of America, 695 N.W.2d 365 (Minn. 2005)

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