

SUPREME COURT OF FLORIDA

Florida Power Corp. v. City of Tallahassee

18 So. 2d 671 (Fla. 1944) · Decided June 27, 1944

SUMMARY

The Florida Supreme Court considered whether a hurricane-induced interruption of electric service excused Florida Power Corporation from contractual outage penalties owed to the City of Tallahassee. The court held that the hurricane constituted an act of God and legally justified the 10.2-hour interruption under the contract. The court also upheld the striking of immaterial answer allegations and reversed the final decree for further proceedings consistent with its opinion.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                      |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Florida                                                                                                                                                                                                                                                                                             |
| WRITING FOR THE COURT | Chapman; Buford, C.J.; Brown; Thomas                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | Florida                                                                                                                                                                                                                                                                                                              |
| DECIDED               | June 27, 1944                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Florida Power Corporation appealed a final declaratory decree entered on bill and answer by the Circuit Court of Leon County, which held that the power company remained liable for a contractual outage penalty following a hurricane. The City cross-assigned error concerning the striking of part of its answer. |
| STANDARD OF REVIEW    | The court reviewed the contract-construction and declaratory-decree issues on the record presented by the bill and answer. On a final hearing on bill and answer, responsive allegations in the answer are accepted as true, while affirmative avoidance must be proven.                                             |
| PRECEDENTIAL VALUE    | Published Florida Supreme Court opinion; precedential.                                                                                                                                                                                                                                                               |
| PARTIES               | Florida Power Corporation v. City of Tallahassee                                                                                                                                                                                                                                                                     |

TOPICS

- contract interpretation
- conditions precedent
- municipal law
- declaratory judgment
- civil procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the hurricane constituted an act of God or a cause beyond the power company's control that excused its failure to deliver electric energy under Article 12 of the contract.
2. Whether the contract's outage-penalty provisions could be read consistently with its act-of-God and force-majeure provisions.
3. Whether the Circuit Court properly struck paragraph 5 of the City's answer as irrelevant and immaterial.
4. What issues and evidentiary consequences follow when a declaratory action is submitted for final hearing on bill and answer.

## HOLDINGS

1. The hurricane that disrupted the power company's facilities and prevented delivery for 10.2 hours was an act of God and legally justified the company's non-delivery under the contract.
2. The provisions of Article 12 must be construed as a whole and reconciled where possible so that the act-of-God exception and the outage provisions operate consistently; the contract did not impose the outage penalty for the hurricane-related interruption at issue.
3. The lower court did not err in striking paragraph 5 of the City's answer because allegations concerning the stability of collections, budgeting, and related matters were not responsive, material, or relevant to the contractual outage issue presented by the complaint.
4. When a case is submitted for final hearing on bill and answer after the time for taking testimony has expired, responsive allegations in the answer are taken as true; affirmative allegations by way of avoidance must be proven, and the pleadings define and limit the issues.

## KEY QUOTATIONS

*"We therefore conclude that the hurricane visiting the City of Tallahassee and vicinity on October 7, 1941, for a period of several hours which disorganized and affected the equipment and facilities of the power company and thereby prevented a delivery to the City of electric energy for 10.2 hours, in light of the cited authorities, was an Act of God and a legal justification for the non delivery for the period of the energy as provided for by the terms of the contract."* (646)

*"The final decree appealed from is reversed, with directions for further proceedings in the lower court, not inconsistent with the views herein expressed."* (648)

## FACTUAL BACKGROUND

The parties entered a twenty-year contract under which Florida Power Corporation agreed to provide Tallahassee with continuous and uninterrupted electric service, subject to specified exceptions and outage penalties. A hurricane struck Tallahassee on October 7, 1941, damaging and disorganizing the power company's equipment and causing a 10.2-hour interruption. The City deducted approximately \$2,659.83 under the contract's outage formula, and the power company sought a declaration that the deduction was unauthorized.

## PROCEDURAL HISTORY

The power company filed a bill in chancery seeking a declaration of the parties' rights under an electric-energy contract after the City deducted \$2,659.83 in outage damages from amounts owed. The chancellor ruled that the power company was not excused from liability even though the outage resulted from an act of God or a cause beyond its control. The Supreme Court of Florida reversed and directed further proceedings consistent with its opinion, while affirming the order striking the challenged portion of the City's answer.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Further proceedings in the lower court not inconsistent with the Supreme Court's opinion.

## CASES CITED

- Sheldon v. Powell, 99 Fla. 782, 128 So. 258
- Woodman v. Jones, 101 Fla. 177, 133 So. 620
- Southern Food Stores, Inc. v. Palm Groceries, Inc., 134 Fla. 838, 184 So. 502
- Griley v. Rackley, 135 Fla. 829, 185 So. 734
- Mayfair Operating Corp. v. Bessemer Properties, Inc., 150 Fla. 132, 7 So. 2d 342
- Lippman v. Shapiro, 151 Fla. 327, 9 So. 2d 636
- Orlando Orange Grove Co. v. Hales, 119 Fla. 159, 161 So. 284
- Bennett v. Williams, 149 Fla. 4, 5 So. 2d 51
- Knabb v. Reconstruction Finance Co., 144 Fla. 110, 197 So. 707
- Hull v. Burr, 58 Fla. 432, 50 So. 754
- Holmes v. Kilgore, 89 Fla. 194, 103 So. 825
- Ross v. Savage, 66 Fla. 106, 63 So. 148
- Durham Tropical Land Corp. v. Sun Garden Sales Co., 106 Fla. 429, 138 So. 21, 143 So. 758
- Moon v. Wilson, 100 Fla. 791, 130 So. 25
- Arundel Corp. v. Griffin, 89 Fla. 128, 103 So. 422
- Stoltenberg v. Hughes
- Davis v. Wilson, 139 Fla. 698, 190 So. 716
- Whitaker v. Eddy, 109 Fla. 535, 147 So. 868
- Watson v. Blair, 73 Fla. 255, 74 So. 317