

SUPREME COURT OF DELAWARE

Nelson v. Russo

844 A.2d 301 (Del. 2004) · Decided March 11, 2004

SUMMARY

The Delaware Supreme Court held that the Superior Court lacked subject matter jurisdiction over a condominium dispute seeking removal of an addition allegedly encroaching on common-area airspace. The court determined that ejectment could not provide possession of airspace and that the requested removal constituted equitable relief available only through a mandatory injunction in the Court of Chancery. The judgment was reversed and the matter remanded.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Berger, Justice; Berger; Holland; Jacobs; Steele; Veasey
JURISDICTION	Delaware
DECIDED	March 11, 2004
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Russo filed an action in ejectment in the Superior Court seeking removal of Nelson's condominium addition from allegedly encroached common-element airspace, or alternatively damages. The Superior Court denied Nelson's motion to dismiss for lack of subject matter jurisdiction and granted summary judgment to Russo. Nelson appealed.
STANDARD OF REVIEW	The Supreme Court reviewed the Superior Court's subject matter jurisdiction de novo.
PRECEDENTIAL VALUE	Published Delaware Supreme Court opinion; precedential
PARTIES	Joseph W. Nelson v. Michelle A. Rogers Russo

TOPICS

- subject matter jurisdiction
- ejectment
- injunctions
- real estate
- appellate procedure

PRACTICE AREAS

- civil procedure
- real estate
- remedies
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Superior Court had subject matter jurisdiction over an action styled as ejectment when the plaintiff sought removal of a structure allegedly encroaching on condominium common-element airspace.
2. Whether ejectment may be used to obtain possession of incorporeal airspace and whether the requested removal of the structure constituted equitable relief available only through a mandatory injunction.

HOLDINGS

1. Ejectment is unavailable to recover possession of airspace because airspace is an incorporeal hereditament on which entry cannot be made and of which the sheriff cannot deliver possession.
2. The Superior Court lacked subject matter jurisdiction because the complaint sought equitable relief in the form of a mandatory injunction requiring removal of part of a building.

KEY QUOTATIONS

“In deciding whether the Superior Court has subject matter jurisdiction, however, we must look beyond the language in the complaint to determine the true nature of Russo’s claim and the desired relief.” (303)

“Thus, Russo is attempting to use the action of ejectment to obtain something that ejectment cannot provide — possession of airspace.” (303)

“In sum, we conclude that the Superior Court lacks subject matter jurisdiction to decide this complaint.” (304)

FACTUAL BACKGROUND

The parties owned neighboring units in a Delaware condominium complex whose backyards were designated common areas but had been treated by the owners as exclusive fenced areas. Nelson enclosed a first-floor porch and upper deck and added a new porch and deck in the backyard. Russo alleged that the addition encroached on common-element airspace and sought its removal, alternatively seeking damages for the resulting loss in value to her unit.

PROCEDURAL HISTORY

The Superior Court treated the action as an ejectment claim within its jurisdiction, denied the jurisdictional motion to dismiss, and granted Russo summary judgment. The Supreme Court of Delaware reversed, concluding that the claim sought possession of airspace and equitable mandatory-injunction relief beyond the Superior Court's subject matter jurisdiction, and remanded for further action.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further action in accordance with the decision; jurisdiction was not retained.

CASES CITED

- Diebold Computer Leasing, Inc. v. Commercial Credit Corp., 267 A.2d 586, 588 (Del. 1970)
- Suplee v. Eckert, 120 A.2d 718, 719-20 (Del. Ch. 1956)
- Burris v. Cross, 583 A.2d 1364 (1990)

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