

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Holt v. West Virginia-American Water Co., 233 W. Va. 688

760 S.E.2d 895 (2014) · Decided June 11, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed dismissal of Roger F. Holt’s West Virginia Consumer Credit and Protection Act claims against West Virginia-American Water Company. The court held that the claims arose from transactions under a public utility tariff and were therefore excluded from the Act by West Virginia Code § 46A-1-105(a)(3).

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Chief Justice Davis; Justice Workman; Justice Ketchum; Justice Loughry
JURISDICTION	West Virginia
DECIDED	June 11, 2014
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order granting the defendant public utility's West Virginia Rule of Civil Procedure 12(b)(6) motion to dismiss claims under the West Virginia Consumer Credit and Protection Act.
STANDARD OF REVIEW	De novo plenary review of a circuit court's dismissal of a complaint under Rule 12(b)(6).
PRECEDENTIAL VALUE	published
PARTIES	Roger F. Holt v. West Virginia-American Water Company

TOPICS

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QUESTIONS PRESENTED

1. Whether West Virginia Code section 46A-1-105(a)(3) is ambiguous regarding the exclusion of transactions under public utility tariffs from the WVCCPA.
2. Whether Holt's claims concerning West Virginia-American Water Company's leak-adjustment, billing, late-penalty, and service-termination practices arose from transactions under a public utility tariff and were therefore excluded from the WVCCPA.
3. Whether the circuit court properly dismissed the complaint under Rule 12(b)(6).

HOLDINGS

1. Section 46A-1-105(a)(3) is unambiguous and excludes more than challenges to publicly approved rates and charges; the phrase 'transactions under public utility or common carrier tariffs' encompasses the rules, regulations, and practices governing rate- and charge-based utility services.
2. Holt's WVCCPA claims all arose from transactions described in West Virginia-American Water Company's public utility tariff and were therefore excluded from the WVCCPA by section 46A-1-105(a)(3).
3. The circuit court properly dismissed Holt's complaint under Rule 12(b)(6), and the dismissal order was affirmed.

KEY QUOTATIONS

“The term “public utility tariffs” is universally understood to mean more than just PSC-approved rates and charges. It also governs the rules, regulations, and practices relating to rate- and charge-based services between a utility and its consumers.” (692)

“We conclude that Mr. Holt’s claims all arise from transactions described in the Tariff. Accordingly, W. Va. Code § 46A-1-105(a)(3) applies to exclude Mr. Holt’s WVCCPA claims.” (693)

FACTUAL BACKGROUND

Holt received an unusually large residential water bill after leaks developed in his water line and meter box. West Virginia-American Water Company repaired the meter box, continued billing disputed leak-related charges, imposed late penalties, and temporarily terminated service. The Public Service Commission later ordered additional leak adjustments and correction of inappropriate late penalties but declined to award Holt damages for replacing his water line. Holt subsequently sued under the WVCCPA, alleging unfair or deceptive practices related to the utility's leak, billing, penalty, and termination policies.

PROCEDURAL HISTORY

Holt challenged West Virginia-American Water Company's billing and leak-adjustment practices before the Public Service Commission. The Commission ordered additional account adjustments but concluded that it lacked jurisdiction to award the damages Holt sought. Holt then filed a WVCCPA action in the Circuit Court of Kanawha County. The circuit court dismissed the complaint under Rule 12(b)(6), ruling that the claims arose from transactions excluded from the WVCCPA by West Virginia Code section 46A-1-105(a)(3). The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc., 194 W. Va. 770, 461 S.E.2d 516 (1995)
- Hill v. Stowers, 224 W. Va. 51, 680 S.E.2d 66 (2009)
- State v. Epperly, 135 W. Va. 877, 65 S.E.2d 488 (1951)
- State v. Jarvis, 199 W. Va. 635, 487 S.E.2d 293 (1997)
- Mace v. Mylan Pharm., Inc., 227 W. Va. 666, 714 S.E.2d 223 (2011)
- Crockett v. Andrews, 153 W. Va. 714, 172 S.E.2d 384 (1970)
- Hereford v. Meek, 132 W. Va. 373, 52 S.E.2d 740 (1949)
- In re Waikoloa Sanitary Sewer Co., Inc., 109 Hawai'i 263, 125 P.3d 484 (2005)
- Adams v. N. Ill. Gas Co., 211 Ill. 2d 32, 809 N.E.2d 1248 (2004)
- Danisco Ingredients USA, Inc. v. Kansas City Power & Light Co., 267 Kan. 760, 986 P.2d 377 (1999)
- In re Complaint of Reynoldsburg, 134 Ohio St. 3d 29, 979 N.E.2d 1229 (2012)

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