SUPREME COURT OF SOUTH CAROLINA

Gressette v. South Carolina Electric & Gas Co.

370 S.C. 377 (2006) · Decided October 2, 2006

SUMMARY

The South Carolina Supreme Court held that whether a utility easement holder may apportion part of an allowed use to third-party telecommunications companies cannot be resolved as a matter of law without construing the written easement instruments. The court distinguished cases addressing additional servitudes from the separate issue of apportionment and reversed dismissal of the landowners' complaint under Rule 12(b)(6).

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Moore; Justice Waller; Justice Burnett; Justice Pleicones; Acting Justice James W. Johnson, Jr.
JURISDICTION	South Carolina
DECIDED	October 2, 2006
DISPOSITION	reversed
PROCEDURAL POSTURE	Landowners brought a class action alleging trespass and unjust enrichment and seeking an injunction and declaratory judgment. The circuit court granted South Carolina Electric & Gas Co.'s motion to dismiss under Rule 12(b)(6), SCRCP.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court considers only the allegations in the complaint and presumes all well-pleaded facts to be true.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of South Carolina.
PARTIES	Landowners v. South Carolina Electric & Gas Co.

TOPICS

easements · real estate · motions to dismiss · civil procedure · injunctions

PRACTICE AREAS

real estate · civil procedure · easements · remedies

QUESTIONS PRESENTED

1. Whether the holder of a utility easement may apportion part of its own allowed use to third parties as a matter of law without reference to the written easement instruments.
2. Whether prior South Carolina cases concerning additional servitudes authorized dismissal despite alleged restrictive language in the written easements.

HOLDINGS

1. A utility easement holder may not establish its right to apportion part of an allowed easement use to third parties as a matter of law without construing the language of the easement instrument.
2. Dismissal was improper because the alleged restriction in the easement instruments created an issue requiring construction of the written easements, and the complaint's well-pleaded allegations had to be accepted as true.

KEY QUOTATIONS

> *"Rather the issue is whether SCE & G may apportion its allowed use to third parties. This is clearly an issue that cannot be resolved without construing the instruments granting the easements in question."* (382)

> *"While this language indicates assignability, the language limiting the use of the easement to communications necessary to SCE & G's business appears to restrict that assignability. This ambiguity requires construction of the written easements themselves."* (383)

FACTUAL BACKGROUND

Landowners granted South Carolina Electric & Gas Co. easements to construct, operate, and maintain electric transmission lines and related telegraph and telephone lines necessary or convenient to that use. South Carolina Electric & Gas later installed fiber optic communications lines on existing utility poles and conveyed excess fiber optic capacity to third-party telecommunications companies without notice or compensation to the landowners. The landowners did not challenge the utility's use of the fiber optic lines for its own internal communications but alleged that the easements did not authorize apportioning the easement use to third parties for general telecommunications purposes.

PROCEDURAL HISTORY

Landowners alleged that South Carolina Electric & Gas Co. improperly conveyed excess capacity on fiber optic cables installed within electric easements to third-party telecommunications companies. The trial court accepted as true the allegation that the easement language did not authorize third-party communications but held that prior South Carolina precedent made the conveyance authorized as a matter of law. The Supreme Court of South Carolina reversed the dismissal.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The dismissal of the landowners' complaint was reversed; the opinion does not state additional specific remand instructions.

CASES CITED

- Overcash v. South Carolina Elec. and Gas Co., 364 S.C. 569, 614 S.E.2d 619 (2005)
- Lay v. State Rural Electrification Auth., 182 S.C. 32, 188 S.E. 368 (1936)
- Leppard v. Central Carolina Tel. Co., 205 S.C. 1, 30 S.E.2d 755 (1944)
- Richland County v. Palmetto Cablevision, 261 S.C. 222, 199 S.E.2d 168 (1973)
- Jackson v. City of Auburn, 2006 WL 893617 (Ala. Civ. App. 2006)
- City of Orlando v. MSD-Mattie, L.L.C., 895 So. 2d 1127 (Fla. App. 2005)
- McDonald v. Mississippi Power Co., 732 So. 2d 893 (Miss. 1999)
- Lighthouse Tennis Club Village Horizontal Prop. Regime LXVI v. South Island Pub. Serv. Dist., 355 S.C. 529, 586 S.E.2d 146 (Ct. App. 2003)
- Patterson v. Duke Power Co., 256 S.C. 479, 183 S.E.2d 122 (1971)
- Sandy Island Corp. v. Ragsdale, 246 S.C. 414, 143 S.E.2d 803 (1965)
- Douglas v. Medical Investors, Inc., 256 S.C. 440, 182 S.E.2d 720 (1971)