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United States v. A.J.S., Inc., No. CIV.A.00-0263-C, 2000 U.S. Dist. LEXIS 17388 (E.D. La. Nov. 29, 2000)

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was “not determinative” of whether or not the section pertained to venue.

The court noted the CWA’s legislative history was unclear and not unequivocal as to whether section 509(b)(1) pertained to jurisdiction or venue. However, Industry petitioners did not raise this argument. The court concluded that even if they had, it would not have found such an argument persuasive.

The court held section 509(b)(1) determines venue, not jurisdiction. Because venue objections could be waived and Industry petitioners conceded proper venue was no longer an issue, the court denied Industry petitioners’ motion to dismiss.

Sarah E. McCutcheon

Slinger Drainage, Inc. v. EPA, 237 F.3d 681 (D.C. Cir. 2001) (holding the provision of the Clean Water Act that establishes the computation of time for filing a notice of appeal determines whether the notice is timely and not the federal rules of procedure).

Slinger Drainage (“Slinger”) installed drainage tiles over a fifty-acre area that resulted in the discharge of pollutants into a wetland. The Environmental Protection Agency (“EPA”) subsequently filed an administrative complaint against Slinger alleging a violation of section 301(a) of the Clean Water Act (“CWA”) for failure to obtain a permit before discharging pollutant into a wetland. The Administrative Law Judge found Slinger liable and imposed a civil penalty of \$90,000. The Appeals Board upheld the fine, and Slinger brought this action to the United States Court of Appeals for the District of Columbia.

The court ruled it had no jurisdiction to hear the case on its merits because Slinger failed to timely file the notice of appeal. Under the CWA, Slinger had thirty days to file its notice of appeal beginning on the date the Appeals Board issued its order. Slinger filed its notice a day late under the CWA provision. Slinger argued the Federal Rules of Appellate Procedure Rule 26(a) (“Rule 26(a)”) governed how courts should compute the thirty-day period, and not the CWA. Under Rule 26(a), the day the court issued its order is not calculated in the time period, and Slinger’s appeal would have been filed on time.

The court held Rule 26(a) did not apply when Congress has specified a particular method of counting in the statute itself and there is no indication of a contrary congressional intention. The court dismissed Slinger’s appeal because the CWA clearly established the computation of time.

Spencer L. Sears

United States v. A.J.S., Inc., No. CIV.A.00-0263-C, 2000 U.S. Dist. LEXIS 17388 (E.D. La. Nov. 29, 2000) (denying summary judgment motion concerning a mortgage foreclosure due to the existence of

demonstrated disputed issues of material fact regarding the impact of fresh water release onto the mortgaged property, thereby leading to a defense of equitable estoppel).

A.J.S., Inc. ("A.J.S.") defaulted on its United States Government ("Government") mortgage payments. The Government claimed no factual dispute regarding A.J.S.'s obligation to pay and filed a summary judgment motion, thus allowing the Government to foreclose on the mortgage. In response, A.J.S. argued that because its inability to pay resulted directly from Government misrepresentation within the loan agreement's Environmental Impact Statement ("EIS"), this fact estopped the Government from mortgage foreclosure.

The EIS stated the release of fresh water from the Caernarvon Fresh Water Diversion Project ("the Project") would neither adversely affect nor impact the mortgaged property. A.J.S. relied on the Government representations and took the proceeds from the loan to develop an oyster habitat, plant oyster seedlings, and construct a reef on the Project leases. However, the fresh water flow was greater than the EIS anticipated and the value of the oyster leases plunged. Accordingly, A.J.S. proffered the affidavits of two witnesses as corroboration of its defense. Furthermore, plans to depose the witnesses were in place at the time the Government filed the summary judgment motion.

The court found A.J.S. demonstrated disputed issues of material fact concerning its defense of equitable estoppel. Therefore, the court held the Government's attempt to dispose of the case prior to the depositions was premature and denied the summary judgment motion.

Kimberley E. Montanaro

L.B. Corp. v. Schweitzer-Mauduit Int'l, Inc., 121 F. Supp. 2d 147 (D. Mass. 2000) (holding, unless the parties were in commercial transaction, Massachusetts General Law chapter 93A was inapplicable to claims arising from: (1) subsurface pumping of a well that caused damage to the adjacent property's building; and (2) unfair or deceptive business practices).

L.B. Corp. ("L.B.") brought a diversity action seeking compensatory damages in the amount of \$400,000 from Schweitzer-Mauduit Corp. ("Schweitzer") and Kimberly-Clark Corp. ("Kimberly"). In 1984, Kimberly sold the Valley Industrial Park, a fifteen-acre parcel, to L.B. Kimberly's subsidiary, Schweitzer, owned the Valley Mill Landfill adjacent to the Valley Industrial Park. L.B. claimed improper pumping of a Kimberly well ("Well No. 5") in 1993 caused its buildings to subside twelve inches and resulted in repeated costly repairs between 1995 and 1998. In 1997, the Massachusetts Department of Environmental Protection informed L.B. that volatile