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R&R Assocs. v. City of Providence Water Supply Bd., 765 A.2d 432 (R.I. 2001)

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“Act-of-God” to produce damages. The court determined that, although the hurricane was an Act-of-God, PG Energy’s negligence was a substantial factor causing the resulting damage.

Finally, the court considered PG Energy’s argument that the trial court abused its discretion in accepting the Shamnoskis’ testimony regarding the value of the lost property that resulted in an inappropriate damages calculation, especially with respect to delay damages. The court recognized the Shamnoskis’ damages occurred fifteen years before the date of the appeal and the record did indicate many periods of inactivity. The court declined to decide whether the trial court’s calculation of delay damages was appropriate, but remanded the case with directions that the trial court provide the superior court with an explanation of its method for calculating the damages awarded.

Megan Becher-Harris

RHODE ISLAND

R&R Assocs. v. City of Providence Water Supply Bd., 765 A.2d 432 (R.I. 2001) (holding the City of Providence (“City”) neither effected a *de facto* condemnation of mill owners water rights, nor breached the contract between the mill owners and the City regarding condemnation compensation when the City supplied water to communities not mentioned in the statute establishing the Scituate Reservoir).

In 1915, the Rhode Island General Assembly enacted a statute (“Act”) enabling the City of Providence Water Supply Board (“City”) to condemn lands and water in and around the north branch of the Pawtuxet River to establish the Scituate Reservoir (“Reservoir”). The Act specified the City and other named municipalities could receive water from the Reservoir. Over the years, the General Assembly amended the Act many times to allow additional communities to receive water from the Reservoir.

In 1922, the City contracted with mills that abutted the north branch of the Pawtuxet River downstream from the Reservoir, to compensate them for the taking their riparian rights through the Act. The contract specified that under section 6 of the Act, the City could not impair the mills’ residual water rights, and that all rights enjoyed by the mills under the Act would remain in force.

The superior court certified R&R Associates, L&L Associates, and Robert LaFerriere (collectively, “R&R”) to represent a class that constituted the successors in interest to the mills. In 1996, R&R filed suit arguing that by allowing additional communities to use the Reservoir over the years, the City had breached the contract and taken their residual water and property rights without just compensation. R&R argued the language in both the Act and the contract gave them

water rights in addition to the original water rights the City had condemned and compensated them for in 1922. Thus, R&R argued they were entitled to compensation for the taking of these additional water rights.

The trial court found the City's sale of water to additional communities did not affect an uncompensated taking or breach of the contract. First, the court found the language of the Act did not create additional water rights in the mills. Rather, the Act specifically gave the City an "open-ended right" to supply water to communities not mentioned in the Act and required only that the City maintain minimum water levels for the downstream mills. Second, the court examined the condemnation documents and the contract, which together demonstrated the City took all the water rights along the Pawtuxet River leaving R&R the enjoyment of a minimum-flow of water. The court found the City had not breached the contract because R&R did not allege the City had failed to comply with the minimum-flow requirements.

On appeal to the Rhode Island Supreme Court, R&R argued the trial court misinterpreted the Act and the contract. R&R argued that the contract provisions, which required the City to discharge water into the north branch and maintain minimum quantities of water in the north branch for the mills, created residual water rights in the mills. Thus, R&R argued a *de facto* condemnation of their water rights occurred each time the City sold water to communities not listed in the Act, because the City was required to discharge any unused water into the north branch for R&R's use. In addition, R&R argued the City breached the contract by selling water to communities not named in the Act.

The City argued the condemnation documents and contract's "Statement of Taking" indicated the City took all water rights associated with the north branch of the Pawtuxet River, subject only to the minimum-flow requirements. The City argued the contract neither created new water rights nor altered R&R's existing water rights. Thus, the City argued that because R&R had no proprietary rights to the water, the City did not effect a *de facto* condemnation when it sold water to additional communities. The City also argued the use of the words "hereafter supplied" and "elsewhere" in the Act allowed the City to sell water to communities not listed in the Act. Finally, the City cross-appealed challenging the decision of the trial court to exclude certain extrinsic evidence to show the parties' intent concerning the condemnation process and the contract.

The Rhode Island Supreme Court examined the relevant sections of the Act and the contract and determined the trial court had correctly determined the meaning of the contested sections. Thus, the court held the Act and the contract created no additional water rights in R&R and required only that the City maintain the specified minimum-flow on the Pawtuxet River for the mill owners. In addition, the court agreed the Act's language allowed the City to supply water to communities not named in the Act. Thus, because R&R was entitled

only to the benefit of the minimum-flow and did not retain any proprietary rights in the water, the City did not violate the Act or the contract when it supplied water to communities not named in the documents.

Thus, the court denied R&R's appeal and affirmed the trial court. Therefore, the court did not rule on the City's cross-appeal.

Julie E. Hultgren

TENNESSEE

The Pointe, L.L.C. v. Lake Mgmt. Ass'n, No. W2000-00211-COA-R3-CV, 2000 Tenn. App. LEXIS 771 (Tenn. Ct. App. Nov. 6, 2000)
(finding a lake owner's conveyance of property with appurtenances and adjacent to a lake included the right to use the water).

Lakewood Development Corp. ("LDC") owned both man-made Garner Lake ("Lake") and its adjacent land. The purpose of the Lake's creation was to develop the surrounding land into lakeside homes. LDC conveyed the land underneath the lake to Lake Management Ass'n ("LMA"). Likewise, LDC conveyed the adjacent land to two individuals, who later formed The Pointe, L.L.C. ("The Pointe"), in order to develop the property. The Pointe's deed included "all the appurtenances and hereditaments thereunto."

LMA sought to impose restrictions and fees on adjacent landowners. In response, The Pointe filed a declarative action to determine whether it could access and use the Lake without paying fees to LMA. LMA responded with a motion for summary judgment. The trial court granted LMA's summary judgment motion. The Pointe appealed.

To determine the propriety of summary judgment, the Court of Appeals of Tennessee first determined whether the deed's language entitled The Pointe to unrestricted use and enjoyment of the Lake. The court found The Pointe's three theories for its legal right to unrestricted use—appurtenances, riparian rights, and implied easements—were related. The three theories described methods through which a property owner may use something to enhance the enjoyment of the property. The court determined The Pointe acquired the right to use freely the Lake as an appurtenance to the riparian property it owned. Further, the right was in the form of an implied easement.

The court determined the appurtenance within the deed included the right to use the Lake. The court recognized that an appurtenance in a deed is meant to enhance the property. The riparian land's inherent value arose from its proximity and accessibility to the water. Furthermore, when a grantor conveys property adjacent to water, a court presumes the right to use and enjoy water accompanies the