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Adams Sanitation Co. v. Department of Env'tl. Protection, 715 A.2d 390 (Pa. 1998)

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intentional infliction of emotional distress. Additionally, the court of appeals held that the trial court erred in its interpretation of the 1927 plat and found in favor of the appellants as to the meaning of the language in the plat.

The Ohio Supreme Court held that the wording in the 1927 plat was clear and unambiguous in stating that all residents of the Long Beach subdivision had use of the lagoon, which included the residents of Blocks A, B, and C. The court noted that where terms in an existing contract are clear and unambiguous, the court could not in effect create a new contract by finding an intent not expressed in the clear language employed by the parties. Applying this principle, the court concluded that if the drafters intended to delineate an entirely new subdivision, they would have done so by eliminating any reference to it as being a part of the general subdivision. Furthermore, the court concluded that the language in the plat clearly established Block B as part of the general subdivision. The court rejected the appellants' argument that there was any language to indicate an intent to remove Block B from the general subdivision, which would give exclusive use of the lagoon to residents of Block B. Therefore, the use of the private lane and the lagoon were not exclusive to the residents of Block B. The Supreme Court of Ohio reversed the court of appeal's decision and reinstated the trial court's judgment.

Lori Asher

PENNSYLVANIA

Adams Sanitation Co. v. Department of Env'tl. Protection, 715 A.2d 390 (Pa. 1998) (holding that the Department of Environmental Protection is permitted to order an owner or occupier of land to remedy a contaminated condition, regardless of fault or knowledge).

Adams Sanitation Company ("ACS") entered into a lease with Netta S. Deatrck to operate a sanitary landfill on a 108 acre parcel and, in 1979, obtained a permit from the Pennsylvania Department of Environmental Protection ("DEP") allowing it to dispose of solid waste on the site. In October of 1983, Keystone Sanitation Company ("Keystone") acquired ASC's assets, name, tradename, lease rights, and obligations to Deatrck. In November, 1983, Keystone assigned its rights and obligations under this lease to its new, wholly owned subsidiary, known as Adams Sanitation Company, Inc. ("Subsidiary"). At that time, ASC had filled seventy-eight acres of the 108 acre parcel of land. The Subsidiary applied and received a permit from DEP allowing it to fill the remaining thirty acres. DEP notified the Subsidiary that it was responsible for the water supply contamination on a residential tract of land adjacent to the seventy-eight acre site

previously filled by ASC.

DEP directed the Subsidiary to provide a replacement water supply to the residence according to Section 1104(a) of the Municipal Waste Planning, Recycling and Waste Reduction Act, 53 P.S. § 4000.1104(a) and to develop and implement a program to abate groundwater contamination emanating from the landfill pursuant to Sections 104 and 602 of the Solid Waste Management Act, Sections 5, 316 and 610 of the Clean Streams Law, and Section 1917-A of the Administrative Code.

Subsidiary appealed to the Environmental Hearing Board ("EHB"). EHB granted partial summary judgment in favor of DEP. Subsidiary was directed to restore and replace the water supply, and comply with DEP's order to submit and implement a groundwater abatement program. Subsidiary then appealed to the commonwealth court, which affirmed EHB's judgment.

The issue was whether a party who leases a parcel of land for the operation of a business could be required to abate groundwater contamination pursuant to Section 316 of the Clean Streams Law where the record failed to demonstrate that the party either caused or knew of the contamination. The court held that Section 316 of the Clean Streams Law allows the DEP to order either the owner or the occupier of land to correct the condition caused by pollution, regardless of that party's fault in causing the contamination. The clear and plain language of Section 316 does not require the DEP to prove that an owner or occupier of land either knew or should have known of the existence of the pollution before requiring that party to correct the condition caused by the contamination.

The court found this construction of Section 316 in accord with the General Assembly's stated objective in Section 4 of the Clean Streams Law—that clean, unpolluted streams are absolutely essential to attract business, to attract tourists, for recreational purposes, and "to prevent further pollution of the waters of the Commonwealth . . . [and] . . . to reclaim and restore to a clean, unpolluted condition every stream in Pennsylvania"

The court rejected Subsidiary's argument that a party is only liable for the water pollution it either caused or knew to exist before leasing or operating on the property. Rather, it found that this interpretation would undermine the DEP's efforts to achieve the legislature's mandate set forth under 35 P.S. § 691.4 because it would require the DEP to conduct an extensive investigation into the cause of the pollution, before ordering remediation of the polluted site. This extensive investigation would delay the clean up of the water and cause the polluted condition to increase while the DEP searched for the party that caused the pollution.

The court further found a tenant has a proprietary interest in the land at common law. Here, Subsidiary occupied and had a proprietary interest in the contaminated site. Therefore, the court permitted the DEP to order Subsidiary under Section 316 to correct the condition

without having to prove that Subsidiary caused or knew of the pollution.

The court also rejected Subsidiary's argument that this was an abuse of the state's police powers. The court held Subsidiary failed to explain or demonstrate that the DEP's directive would have a severe economic impact on its business, or that the directive was a physical intrusion by the government.

Melody Divine

WASHINGTON

Ravenscroft v. Washington Water Power Co., 969 P.2d 75 (Wash. 1998) (holding that submerged tree stumps which caused plaintiff's injuries while boating were "artificial" within the meaning of the applicable statute as a matter of law, but whether stumps represented a "latent" condition was a question for the trier of fact).

To increase the production of electricity from Long Lake Dam, the Washington Water Power Company ("WWP") raised the level of water in Long Lake Reservoir over a period of years. Raising the water level submerged the bases of trees around the perimeter of the lake. WWP removed the trees but left their stumps, which, when WWP holds the reservoir at maximum level, lie below the surface of the water. While boating on Long Lake Reservoir, the plaintiff was injured when his motor hit one of the submerged tree stumps. The stump flipped the motor into the boat, striking the plaintiff in the head and shoulders.

The Washington Supreme Court's analysis turned upon the Washington recreational use statute, RCW 4.24.200-.210. Washington's Revised Code 4.24.210 exempts landowners from liability for injuries sustained by the public while recreating on the landowner's property except where the injury stems from a "known dangerous artificial latent condition for which warning signs have not been conspicuously posted."

The purpose of the statute is to encourage landowners to hold their property open to the public for recreational purposes without the fear of liability. A landowner's potential for liability is narrow—it applies only to specific, limited conditions over which the landowner presumably has more control.

The issues in this case pertaining to the first defendant, WWP, were whether the stumps created an "artificial" and "latent" condition as a matter of law, thereby supporting summary judgment in favor of the plaintiff. The court held that the condition was artificial due to the "man-made change in the natural condition of the water channel . . ." The court reasoned WWP created the injury-causing condition by cutting dead trees down, leaving their stumps near the middle of the