

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - UTAH**

### **Utah Associated Municipal Power Systems v. 3 Dimensional Contractors Inc.**

**Court of Appeals of Utah - March 21, 2024 - P.3d - 2024 WL 1202505 - 2024 UT App 35**

Interlocal electric energy services agency, a political subdivision of the state formed under Utah Interlocal Cooperation Act (UICA), sued subdivision developer for nuisance and trespass and sought declaratory and injunctive relief, alleging that developer's placement of house on subdivision lot interfered with agency's utility easement.

Developer counterclaimed for declaratory and injunctive relief, seeking removal of agency's support pole and relocation of guy wires that were near house. The Fifth District Court granted summary judgment to agency on its claim for easement interference, awarding declaratory and injunctive relief. The District Court then entered summary judgment in favor of agency on developer's counterclaims and entered final judgment, finding that the agency's trespass and nuisance claims were moot due to agency's election of remedies, and ordering developer to remove any portions of the house encroaching on the easement. The District Court also denied developer's request for attorney fees, pertaining to agency's trespass and nuisance claims, under bad-faith statute. Developer appealed.

The Court of Appeals held that:

- Developer was not required to provide notice of counterclaims to agency under Utah Governmental Immunity Act (UGIA);
- Agency was subject to easement realignment statute, which gave servient estate owners the right to realign municipal easements;
- Realignment statute included right to relocate existing utility infrastructure in the process of realigning boundaries of easement;
- Doctrine of unclean hands did not prevent developer from asserting its rights under easement realignment statute;
- Developer bore burden of proof on realignment claim;
- Expert reports of developer's engineer and surveyor complied with disclosure rule; and
- Developer was not entitled, under bad-faith attorney fees statute, to attorney fees pertaining to agency's trespass claim.