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JURISDICTION - MISSISSIPPI

Promenade D'Iberville, LLC v. Jacksonville Electric Authority

Supreme Court of Mississippi - June 12, 2025 - So.3d - 2025 WL 1659903

Developer of retail shopping center in Mississippi brought action against Florida municipal utility, alleging that use of defective soil stabilizer product using material from utility's power plant in construction of shopping center caused extensive property damage.

The Circuit Court adopted special master's recommendation and denied utility's motion to dismiss for lack of subject matter jurisdiction based on sovereign immunity, denied utility's motion for summary judgment, and denied both parties' motions for partial summary judgment.

Following the United States Supreme Court's decision in *Franchise Tax Board of California v. Hyatt (Hyatt II)*,578 U.S. 171, 136 S. Ct. 1277, 194 L.Ed. 2d 431, the Circuit Court granted utility's motion to reconsider, granted utility's motion for partial summary judgment, and denied developer's motion to amend the complaint.

After initially granting developer's motion for interlocutory appeal, the Mississippi Supreme Court subsequently dismissed and remanded for consideration based on the United States Supreme Court's decision in *Franchise Tax Board of California v. Hyatt*. On remand, the Circuit Court, Schmidt, J., granted utility's motion to dismiss for lack of subject matter jurisdiction based on sovereign immunity. Developer appealed.

The Supreme Court held that:

- Florida municipal utility did not enjoy interstate sovereign immunity from developer's action in Mississippi, and
- Allowing developer to proceed with its product liability claims against Florida municipal utility in a Mississippi court would not be either arbitrarily or fundamentally unfair to utility and would not be hostile to the Full Faith and Credit Clause or to Florida law.

Florida municipal utility did not enjoy interstate sovereign immunity from developer's action in Mississippi, alleging utility supplied a defective product which caused property damage to retail shopping center; utility was not an arm of the State of Florida for purposes of the Eleventh Amendment, but rather an electric utility operated by city and was an instrumentality of that municipality, and enjoyed only a limited waiver of statutory immunity under Florida law.

Allowing developer of shopping center to proceed with its product liability claims against Florida municipal utility in a Mississippi court would not be either arbitrarily or fundamentally unfair to utility and would not be hostile to the Full Faith and Credit Clause or to Florida law; utility was an instrumentality of a city and not entitled to sovereign immunity, there were genuine issues of material fact as to whether utility's product was designed in a defective manner which rendered it unreasonably dangerous such that it was the proximate cause of developer's damages, there was evidence that utility knowingly shipped its product to Mississippi, and developer asserted claims and sought damages in Mississippi similar to those that would be allowed against a public utility in

Florida.

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