

**ELEVE ROMESBURG, Administratrix of the ESTATE OF SPURGEON M. ROMESBURG, Plaintiff vs. PENNSYLVANIA ELECTRIC COMPANY, GENERAL PUBLIC UTILITIES CORPORATION, PENNSYLVANIA TURNPIKE COMMISSION, HARNISCHFEGER CORPORATION, PPM CRANES, INC./P & H, INC., PPM CRANES, INC., P & H INC., STEPHENSON EQUIPMENT, INC., UNITED TECTONIC INDUSTRIES, INC., and TIU, INC., Defendants, Franklin County branch , Civil Action - Law No. A.D 1994 - 58**

**Romesburg v. Pennsylvania Electric Co. et al.**

*Summary Judgment- Sovereign Immunity- Real Estate Exception*

1. The Pennsylvania Turnpike Commission is not entitled to summary judgment if electrical lines overhanging a construction site are a "dangerous condition of Commonwealth agency real estate" within the meaning of the Sovereign Immunity statute, codified at 42 Pa. C.S. §8522(b)(4).
2. Electrical lines are not a substance placed on the land by third parties, being instead fixtures, such that they are a condition of real estate.
3. The electrical lines may in fact have caused the injury because their presence and condition could have been a substantial factor in the death of Mr Romesburg.
4. The dangerousness of the condition is a jury question.

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**OPINION AND ORDER**

**WALKER, P.J., April 11, 1996**

**Motion for Summary Judgment**

**Discussion**

The issue before this court on defendant Pennsylvania Turnpike Commission's motion for summary judgment is whether to apply the real estate exception to the Sovereign Immunity statute, 42 Pa.C.S.A. § 8522(b)(4). This section states:

Acts which may impose liability. -- The following acts by a Commonwealth party may result in the imposition of liability on the Commonwealth and the defense of sovereign immunity shall not be raised to claims for damages caused by: . . . A dangerous condition of Commonwealth agency real estate and sidewalks, including Commonwealth-owned real property, leaseholds in the possession of a Commonwealth agency to private persons, and highways under the jurisdiction of a Commonwealth agency . . .

This section raises three interrelated questions, whether there was a "condition of Commonwealth agency real estate," whether the condition caused harm to the plaintiff, and finally whether that condition was dangerous. This last question is reserved for the finder of fact, *Bendas v. Twip. of White Deer*, 531 Pa. 180, 184, 611 A.2d 1184, 1186-7 (1992). Before this court, the Turnpike argues that the overhead power lines were neither a condition of Commonwealth real estate within the meaning of Pennsylvania case law, nor were they a legal cause of Mr. Romesburg's death. This court finds against the Turnpike on both these issues, and therefore must deny the motion for summary judgment.

The standard for summary judgment under Pa.R.C.P. 1035 states that the court shall grant the motion if the evidence of record, viewed in the light most favorable to the non-moving party, discloses no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Mason & Dixon Lines, Inc. v. Mognet*, 166 Pa. Commw. 1, 645 A.2d 1370 (1994).

There is no dispute that the electric lines were on Turnpike right-of-way, that the Turnpike was aware of them,<sup>1</sup> and that the Turnpike, through its employees, were aware that cranes were going to be present, and that the Turnpike knew one crane was in operation close to the power lines. Turnpike brief at 3. The Turnpike, however, argues that the power lines, owned by Penn Electric, are not a condition of Turnpike property.

Under the Pennsylvania Supreme Court case of *Snyder v. Harmon*, 522 Pa 424, 562 A.2d 307 (1989), no agency of the Commonwealth is liable for conditions on the land of others, even to the extent of warning persons on Commonwealth land. In *Snyder*, several persons were seriously injured, and two killed, when they fell eighty feet to the bottom of a strip mine adjacent to a PennDOT road, after pulling off onto the shoulder, and ascending a berm on PennDOT's right-of-way.

The Pennsylvania Supreme Court, after reviewing the state of the law, held that sovereign immunity is waived where it is alleged that the artificial condition or defect of the land itself causes an injury to occur, and that the Commonwealth owes a duty to those using its real estate to make safe the property for activities for which the land is regularly used, intended to be used, or reasonably foreseen to be used. *Snyder* at 434-435, 562 A.2d at 312. In *Snyder*, the Supreme Court found the condition was not on Commonwealth real estate, and therefore no duty applied. *Id.*

In discussing the applicable law in *Snyder*, our Supreme court observed that the history of sovereign and governmental immunity in Pennsylvania law dictated that the exceptions to such immunity must be strictly construed. *Snyder* at 433, 562 A.2d at 311. The court also explicitly stated that previous distinctions between governmental immunity (applying to political subdivisions of the commonwealth, and codified at 42 Pa.C.S. § 8542) and sovereign immunity (which is enjoyed by the Commonwealth itself were inapplicable, and the real estate exceptions for both types of immunity should be interpreted similarly. *Id.* at 435, n. 7, 562 A.2d at 312.

<sup>1</sup> The Turnpike had in fact owned the lines themselves in the past, as evidence by an agreement for the sale of them to defendant Penn Electric, attached as Exhibit C to the Turnpike's Amended Answer and New Matter.

Therefore the court finds the Pennsylvania courts, most recent interpretations of the real estate exception to governmental immunity very important for analyzing the current case's facts. The most important of these recent interpretations is *Finn v. City of Philadelphia*, \_\_\_ Pa. \_\_\_, 664 A.2d 1342 (1995). *Finn* concerned a fall on city-owned sidewalk caused by an accumulation of grease. There was no question that the city was aware of the grease, located at the rear of the Philadelphia Juvenile Courthouse, because the city had allowed vehicles to park on the sidewalk, which was the source of the grease, and because city employees attempted to cover part of the grease stains with a rug.

The Supreme Court reviewed the history of the exception, and the underlying immunity before holding that the city was not liable, as a matter of law, because the condition of the grease was not a condition arising from the realty itself. *Finn* at \_\_\_, 664 A.2d at 1346. The Supreme Court said that a defect in the sidewalk itself was necessary, being either an improperly designed sidewalk, an improperly constructed one, or a badly maintained, deteriorating, crumbling sidewalk. Because the dangerous condition was on, and not of, the sidewalk, the condition was insufficient to create liability in the city. *Id.*

*Finn* extended an already long line of cases which held that the acts of third parties, *Ziccardi v. School Dist. of Philadelphia*, 91 Pa. Commw. 595, 498 A.2d 452 (1985) (criminal assault), the failure to supervise, *Mascaro v. Youth Study Center*, 514 Pa. 351, 523 A.2d 1118 (1987) (escape of violent youthful offender), and objects and substances upon sidewalks, *Ambacher v. Penrose*, 92 Pa. Commw. 401, 499 A.2d 716 (1985) (a wire fence falling on the sidewalk), and *DeLuca v. School Dist. of Philadelphia*, \_\_\_ Pa. Commw. \_\_\_, 654 a.2d 29 (1994) (milk from trash bag leaked onto sidewalk) do not constitute conditions of real estate.

On the other hand, the Pennsylvania Supreme Court has held that the failure to erect traffic control devices at dangerous intersections does create a dangerous condition of highways, giving rise to liability under the real estate exception. *Crowell v. City of Philadelphia*, 531 Pa. 400, 613 a.2d 1178 (1992).

Plaintiff's vehicle was struck at a known dangerous intersection by a drunk driver, but the fact finder made no finding that the intoxication was related to the accident. Another case where the real estate itself was found to be defective was *Norwin School Dist. v. Cortazzo*, where the plaintiff successfully argued that a children's merry-go-round was dangerously defective. 155 Pa. Commw. 432, 625 a.2d 183 (1993).

Applying the lessons of these cases to the facts at hand, the court finds that the electrical lines are not substances placed by third parties on Commonwealth property. In fact, given the nature of electrical transmission lines, the lines are undoubtedly a fixture of the real estate. Therefore, they are a condition of the real estate within the meaning of 42 Pa.C.S. §8522 (b) (4).

The last issue then before the court is the matter of causation. The Turnpike argues that at most the electrical lines facilitated the injury, which was actually caused by others' negligence, and therefore the plaintiff impermissibly alleged that the Turnpike is vicariously responsible for Mr. Romesburg's death. This is not so, as illustrated by the *Crowell* case, *supra*. In that case, the legally intoxicated driver followed a misplaced directional sign, which pointed to the left, when in actuality the road went to the right, so that the driver crossed over a center strip of concrete, and drove head on into the Crowells' car. The Supreme Court, noting that the jury found that the actions of the city in misplacing the sign were a substantial factor in bringing about the harm, found that the city was a joint tortfeasor with the drunk driver. *Crowell* at 413, 613 A.2d at 1184-5. As the contribution for each party's negligence was apportioned, the Supreme Court reinstated the jury verdict, and overturned the trial court's granting of judgment n.o.v.

Similarly, in this case the Turnpike is alleged to have failed to arrange for appropriate safeguards for the electrical lines in the area of the construction. The Turnpike was present by employees on the site. They had an opportunity to observe the crane, working close to the electrical lines. The lines themselves had belonged in the past to the Turnpike itself, and the Turnpike had sold only the lines and not a right of way, granting the electric company only a permission to come on the right of way to

perform repairs. Finally, the electric company had contacted the Turnpike's office of utility coordination, expressing willingness to cooperate in any way with this rebuilding project. These facts as pleaded and alleged establish a direct, not a vicarious liability.

Therefore this court finds that the electrical lines were a condition of Commonwealth real estate, and further, that the Turnpike had a duty to Mr. Romesburg to take positive steps to make the condition safe for the foreseeable use of a crane on a bridge rebuilding project, which steps it is alleged the Turnpike failed to take, and it is alleged that failure resulted in Mr. Romesburg's death. The court leaves the dangerousness of the condition to the jury.

#### ORDER OF COURT

April 11, 1996, the motion for summary judgment filed on behalf of defendant, Pennsylvania Turnpike Commission, is denied.