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IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSOURI
BEFORE THE HONORABLE DENNIS A. ROLF

EVERGY MISSOURI WEST, INC.,)
)
Plaintiff,)
)
vs.) Case No. 23LF-CV00700
)
DONALD RASA, et al.,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS

September 19, 2023, at 1001 Main Street,
Lexington, Lafayette County, Missouri, before the
HONORABLE DENNIS A. ROLF, DIVISION 1 of the 15th
JUDICIAL CIRCUIT.

APPEARANCES:

Ms. Mandi Renee Hunter
1900 West 75th Street, Suite 120
Prairie Village, Kansas 66208
For: Plaintiff

Mr. Scott J. Sullivan
Mr. John Bryan Reddoch, II
1201 W. College, Suite 200
Liberty, Missouri 64068
For: Defendants

1 THE COURT: Everyg.

2 MR. SULLIVAN: Scott Sullivan and Mr.
3 Reddoch both here for Defendants, the Rasas, the
4 Butners, Dyer Farms and the Allegris.

5 THE COURT: Filed a request for
6 dismissal on behalf of US Bank. So based upon
7 that, any objection to US Bank being dismissed?

8 MS. HUNTER: No, Your Honor.

9 THE COURT: Okay. Motion to dismiss
10 filed, I'm going to take that up with the case.
11 We need to get the hearing going.

12 MR. SULLIVAN: We also have motion for
13 continuance, Judge. We believe that --

14 THE COURT: I thought we tried to find
15 this date in order to get this moving. Why are we
16 going to continue it?

17 MR. SULLIVAN: Seeking opportunity for
18 discovery, Judge, on numerous issues in the case.
19 They are all set forth in the motion. But we
20 believe we need to have an opportunity to send
21 Interrogatories, Request for Production of
22 Documents, and potentially take the deposition of
23 some of the Plaintiffs' witnesses, including the
24 person that signed the affidavit on the petition.
25 There are numerous factual issues that kind of

1 underlie this case, and we believe that time is
2 needed to take -- to get that discovery, get their
3 responses and be better prepared to respond in a
4 hearing, assuming they get by the motion to
5 dismiss.

6 THE COURT: What is really out there
7 that you need to discover?

8 MR. SULLIVAN: There is questions about
9 whether or not any legislative action was taken
10 that would support and underlie and really provide
11 the foundation for the Plaintiff's claim. We also
12 need to know if they have obtained any necessary
13 certificates, was there a public hearing, a lot of
14 facts of which we do not know at this point that
15 we are trying to determine. MODOT has also been
16 in a position to provide us information and we
17 need to discover more about the communications
18 between the Plaintiff and MODOT, and any positions
19 the Plaintiff has taken with MODOT. MODOT is not
20 interested in proceeding with anything in this
21 area at any foreseeable time, and we believe that
22 underlies the claim of necessity of the
23 Plaintiffs, and we need the opportunity to
24 investigate that further.

25 MS. HUNTER: Your Honor, if I may.

1 THE COURT: Go ahead.

2 MS. HUNTER: We were here, I think, two
3 weeks ago on the same matter. And the motion to
4 continue was asked for then and it was granted.
5 We worked hard to find this date for everybody to
6 appear. MODOT is not a party to this case. The
7 discovery that is allowed for an initial hearing
8 for condemnation is so narrow, it's only whether
9 Everyg would have authority to condemn. But, Your
10 Honor, that is -- we talked about this two weeks
11 ago, these are public records. I don't see how
12 any additional time is necessary or that it would
13 be -- that discovery would be required for public
14 documents.

15 MR. SULLIVAN: Judge, I'm prepared to
16 respond.

17 THE COURT: Go ahead and finish.

18 MS. HUNTER: Several of the Defendants
19 have had a matter pending with the Public Service
20 Commission since June or July. Those documents
21 are readily available. We are ready to proceed
22 today.

23 MR. SULLIVAN: Judge, in Plaintiff's
24 petition they refer to a project and that project
25 is a MODOT project, and it says it's necessary for

1 Evergy to acquire interest in our clients'
2 properties because of that project, and we believe
3 that MODOT has no intention of moving forward with
4 the alleged project, and we need the opportunity
5 to investigate that further. It goes directly to
6 the heart of the necessity of the matter.

7 MS. HUNTER: They are defining project
8 fairly broadly. The project, Evergy has no
9 control over what MODOT does. Evergy is
10 reinstalling lines.

11 THE COURT: But is the reason or the
12 need to reinstall the lines going to be there if
13 there is not a change in the Highway 13?

14 MS. HUNTER: Those are wholly separate.

15 MR. SULLIVAN: Judge, you are right on
16 point.

17 THE COURT: Maybe I misunderstood. I
18 thought you guys were wanting -- not only wanted
19 but needed to change some lines because there is
20 going to be some change in Highway 13. Is that
21 not accurate?

22 MS. HUNTER: There -- I think I said
23 this at the last hearing, I cannot testify about
24 -- I don't know about MODOT. I know that the age
25 of these lines and, I mean, our witnesses here

1 today will testify as to the necessity to rebuild
2 these lines. Some of these lines were built in
3 the '50s.

4 THE COURT: Why not rebuild them where
5 they are at?

6 MR. SULLIVAN: They can, Judge. You are
7 right on point.

8 MS. HUNTER: Because the code has
9 changed from the '50s to now. So additional
10 safety factors, there is additional regulations
11 that Evergy has to follow now as opposed to what,
12 when the lines were constructed in the '50s and
13 '70s.

14 THE COURT: So you are telling me that
15 there is not going to be any evidence presented
16 that Evergy needs to change their easement because
17 of proposed highway department project? Because
18 if that is the situation, then I don't think they
19 need discovery. But if that is going to be part
20 of your reason, then I think there is going to
21 have to be some evidence that there is going to be
22 a highway department project or some plans and --

23 MS. HUNTER: The Evergy witnesses are
24 not going to testify about MODOT's plans.

25 THE COURT: Okay.

1 MR. SULLIVAN: However, Judge, their
2 pleading, right on point -- it says in order to
3 perform the project it is necessary for Evergy to
4 acquire new interest.

5 THE COURT: I don't think that is part
6 of their claim anymore. That is what they are
7 saying.

8 MR. SULLIVAN: It certainly is what they
9 alleged.

10 MS. HUNTER: Paragraph 35, the project
11 is defined as rebuilding lines.

12 MR. SULLIVAN: Judge, there is no
13 pleading that describes any necessity other than
14 arising out of the project.

15 MS. HUNTER: The public utility can
16 testify as to the necessity.

17 THE COURT: You are doing a lot of
18 talking in Paragraph 35 about the highway changes.

19 MS. HUNTER: Your Honor, but that is --
20 Evergy acts wholly independently from MODOT.

21 THE COURT: I understand that. But what
22 I'm saying -- hold on. My turn. What I'm saying
23 is, are you going to say in your hearing that the
24 necessity for the easement or additional easements
25 is because of highway changes or just because you

1 need to fix some lines, different codes? If that
2 is the case, we can proceed on that. But we are
3 not going to have evidence with regards to Highway
4 Department, then, because you don't have anybody
5 here from the Highway Department to testify.

6 MS. HUNTER: Right, the latter is
7 accurate. I don't have anybody here from MODOT to
8 testify.

9 MR. SULLIVAN: Judge 35, 36, and 37 are
10 the basis of their case. 37 says it's necessary
11 for Evergy to do it because of the project. If
12 those three paragraphs are struck from their
13 petition, there is nothing left. There is no more
14 foundation.

15 MS. HUNTER: Those paragraphs can't be
16 struck. It's defining a broader activity, but we
17 cannot -- we can't testify as to MODOT. I mean,
18 if Evergy makes a determination that the lines
19 need to be rebuilt regardless of whether MODOT is
20 doing work on Highway 13, they have -- they can
21 make that determination.

22 MR. SULLIVAN: Judge, Evergy is talking
23 about both sides of their mouth. No, we are not
24 basing it on this. No, we don't want to strike
25 the allegations in the petition, and that is

1 because the foundation for their claim, whatever
2 that is, is all based on MODOT action. And that
3 is what we need discovery on. It is also in many
4 ways, Judge, the basis upon our motion to dismiss.

5 THE COURT: But my understanding from
6 Ms. Hunter, she is saying that is not the basis
7 anymore and that they just need to repair, update,
8 replace certain lines. And because there is
9 different codes, it is going to require a little
10 bit different easement.

11 MR. SULLIVAN: They can do that in their
12 current easement, Judge.

13 THE COURT: That's what you are saying,
14 but I don't know that that's what the evidence is
15 going to be. But it is my understanding there is
16 not going to be evidence that the need for the
17 change in the easement is because of the Highway
18 Department making some changes. That is being
19 abandoned, is what it sounds like.

20 MR. SULLIVAN: 35, 36, 37 have to be
21 struck from Plaintiff's Petition.

22 THE COURT: I don't know they are
23 struck, but they are not going to be the basis for
24 granting the easement.

25 MR. SULLIVAN: But it is the only basis

1 they've pled. If they want to plead something
2 else, they can have an opportunity to re-plead
3 but...

4 THE COURT: Ms. Hunter, what else do you
5 have pled?

6 MS. HUNTER: Your Honor, they've got --
7 let me grab my copy of my petition really quickly.
8 Your Honor, I think that their -- the review of
9 that section -- they are reviewing it too broadly.
10 The project is defined in the second to last
11 sentence of Paragraph 35 as the overhead lines
12 will be relocated currently extending from a sub
13 station along the south side -- the project is
14 defined as relocating lines.

15 THE COURT: Why are they relocating
16 lines?

17 MS. HUNTER: I mean, I have an engineer
18 and I have a real estate manager here to testify,
19 but, Your Honor, they would be relocating,
20 rebuilding the lines due to the age.

21 MR. SULLIVAN: That is maintaining or
22 upgrading. That isn't moving the easement.
23 Judge, I believe this discussion has made it very
24 evident with their current pleadings that we are
25 entitled to an opportunity to engage in discovery.

1 MS. HUNTER: But, Your Honor, I think if
2 -- I guess my question is, MODOT is not a party to
3 this. This is not a MODOT petition.

4 THE COURT: I understand that.

5 MS. HUNTER: I don't know what type of
6 discovery they need.

7 THE COURT: I don't know that you need
8 any more discovery. If they are not providing the
9 need for the change in easement because of the
10 change in the road, and they are saying they are
11 not going with that, then I'm not sure how they
12 are going to get an additional easement either,
13 but I have to hear the evidence to know for sure.

14 MR. SULLIVAN: That is the bottom line,
15 Judge. If they are abandoning those, I don't know
16 what their evidence is going to support.

17 THE COURT: We'll find out. All right.
18 Based upon the understanding from counsel for
19 Plaintiff that they are not intending to use as
20 evidence a change in the Highway 13 Roadway as
21 basis for their need for a change in the easement
22 or addition to the easement, I'm going to deny the
23 motion for continuance and we are not going to
24 hear evidence with regard to changing the road.

25 MR. SULLIVAN: Judge, for simplicity can

1 we just have a continuing objection throughout all
2 evidence to anything relating to the MODOT use of
3 the road?

4 THE COURT: Sure.

5 MR. REDDOCH: Judge, with this exception
6 of evidence on cross-examination that the roadway
7 is the reason they gave all of these people why
8 they were having to have a new easement, so I
9 think that is legitimate cross, because that is
10 contrary to what they are now saying in court. I
11 think that is legitimate cross-examination
12 material. So I just want to make sure if I'm
13 being prohibited from that cross-examination on
14 the roadway, when they've said that is the reason,
15 that is the representation they've made to these
16 people.

17 THE COURT: But as far as I'm
18 understanding, Ms. Hunter, that is not your reason
19 today?

20 MS. HUNTER: That is not the -- MODOT is
21 not the reason for this condemnation.

22 THE COURT: Okay. The change in the
23 Highway 13 is not the reason for you needing a
24 change in your easement?

25 MS. HUNTER: Correct.

1 THE COURT: Okay. Let's go. First
2 witness.

3 MR. REDDOCH: Judge, may I invoke the
4 rule?.

5 THE COURT: Yeah. Which isn't going to
6 get rid of many people, because most of them are
7 parties. Anybody not testifying and not a party,
8 so everybody that is a party listed on the
9 petition, you get to stay. And any witnesses that
10 are going to be testifying that are not parties
11 need to step out.

12 (Recess.)

13 THE COURT: Everyg

14 MS. HUNTER: We'll consent to their
15 motion to continue.

16 We will asking leave of court to file an
17 amended petition.

18 THE COURT: okay.

19 MS. HUNTER: I can get it on file by the
20 end of the week. Are there any objections?

21 MR. SULLIVAN: He is going to give you
22 that permission anyway.

23 (Discussion.)

24 THE COURT: We just need to get it done
25 right. Everyg by close of business on the 22nd.

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Representative Defendants will have an answer on
file the 29th.

* * *

C E R T I F I C A T E

I, NICOLE CALCARA, Certified Court Reporter, do hereby certify that I appeared at the time and place hereinbefore set forth; I took down in shorthand the entire proceedings had at said time and place, and the foregoing 14 pages constitute a true, correct and complete transcript of my said shorthand notes.

Certified to this 28th day of September,
2023.

/s/Nicole M. Calcara
Nicole M. Calcara, CCR
Certified Court Reporter No. 930
State of Missouri