PUBLIC UTILITIES

Public Utilities: Rates

City of Kissimmee v. Department of Environmental Regulations,
753 S.2d 770 (Fla. Dist. App. 5th 2000)

• A court that appoints a receiver to protect or collect property may issue orders that are "necessary and proper" for the property and for the interests of those concerned.

• When the public has an interest in an operating receivership, the operational expenses take priority.

• A court may order a city that is the receiver or lessee of a utility to increase rates that are paid by county residents because the city is severely delinquent on rent.

FACTS AND PROCEDURAL HISTORY

Kings Point Water and Sewer Systems operated a public utility to service part of Osceola County, Florida. However, because of its failure to correct a number of violations assessed by the Department of Environmental Regulation, the City of Kissimmee became the court-appointed receiver of the utility in 1991. "As receiver, the City was required . . . to 'charge, collect and receive the payments and any other monies arising from the operation of the [utility] and expend those monies as necessary for the operation, management and control of the systems.'" *Ash Chem., Inc. v. Dept. of Envtl. Regs.*, 706 S.2d. 362, 363 (Fla. Dist. App. 5th 1998). Four years later, the owner and lessor of the property, Ash Chemical, sought to evict the City and obtain rental payments that, it alleged, the City had not paid for four years. The trial court denied back rent and Ash Chemical appealed. The appellate court reversed the trial court and held that the trial court should reconsider Ash Chemical's claim for back rent. *Id.* at 364.

On remand, the trial court awarded Ash Chemical back rent and the Fifth District Court of Appeal affirmed. *City of Kissimmee*

v. Ash Chem., Inc., 747 S.2d 950 (Fla. Dist. App. 5th 1999) (table). Subsequently, in order to receive the back rent, Ash Chemical filed a "Motion for Order for Receiver to Increase Water and Sewer Rates" in circuit court. *City of Kissimmee v. Dept. of Envtl. Regs.*, 753 S.2d at 772. The trial court ordered the City to increase utility rates to pay the back rent and accrued interest. *Id.* The City appealed, primarily alleging that the trial court did not have jurisdiction to order the rate increase because setting utility rates is a legislative function pursuant to Chapter 180 of the Florida Statutes. *Id.*

ANALYSIS

The Fifth District Court of Appeal had not addressed whether a trial court may set rates for a public utility that is placed into receivership. The Florida Statutes provide that a municipality that operates a utility is limited in how it can set rates that are to be paid by citizens who are outside of the municipality, yet receive services from the utility. Fla. Stat. § 180.191(1) (2001). However, that statute applies only to "municipally owned" utilities. *City of Kissimmee*, 753 S.2d at 772–773 (quoting Fla. Stat. § 180.191(3)). Consequently, because the City was the court-appointed receiver and did not own the utility, Section 180.191(2) was inapplicable to these particular facts and did not preclude the trial court from ordering the rate increase.

Additionally, the trial court was within its discretion because the "City . . . failed to protect the interest of the customers [it] serviced." *Id.* at 772. When a court appoints a receiver, the court may issue all orders that are "necessary and proper for the property and interests of those concerned." *Id.* Furthermore, when the public has an interest in the operating receivership, the operating expenses "take priority." As a result, the trial court did not abuse its discretion when it ordered the rate increase despite the fact that the increase was to be paid by county residents.

RESEARCH REFERENCES

- 44 Fla. Jur. 2d *Receivers* § 76 (1996).
- Richard R. Powell, *Powell on Real Property* vol. 8, § 56.06[2] (Michael Allen Wolf ed., Matthew Bender 2000).

W. Holt Harrell