

STATE OF MICHIGAN  
IN THE DISTRICT COURT FOR THE 39TH JUDICIAL DISTRICT

MICHIGAN BELL TELEPHONE COMPANY,  
a Michigan corporation,

Plaintiff,

v

Case No. 84-1100-CZ

ROADWAY EXPRESS, INC.,  
a foreign corporation,

Defendant.

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OPINION ON MOTION  
FOR SUMMARY DISPOSITION

The plaintiff was represented by William Nole Evans and the defendant by C. F. Boyle, Jr.

Plaintiff is suing for damages to its cables, caused by an operator of a Roadway Express, Inc., vehicle. Plaintiff sues for the damages done to its cables, and the cost of repair. The defendant brings a Motion for Summary Disposition in this matter, alleging that the cause of action is controlled two provisions of Michigan law. The first is MCL 500.3123 (3), which provides:

"Property protection insurance benefits are not payable for property damage to utility transmission lines, wires, or cables, arising from the failure of a municipality, utility company or cable television company to comply with the requirements . . . MCL 247.186."

The second provision is MCL 247.186, which provides:

"In no case, shall any poles or other structures be placed above the ground or road grade, between the curb or a road shoulder lines, or closer than 15 feet from the center line of the roadway; and in no case shall any wires, cables or other fixtures be placed, or be permitted to remain, at less height than 15 feet above any part of the traveled portion of the road."

There does not to be any dispute as to the height of the trail which is 13 feet, six inches.

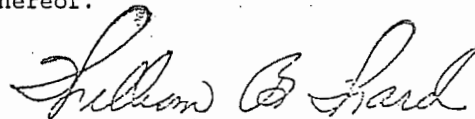
This appears to be a case of first impression, raising the question whether or not wires strung by a utility company must be at least 15 feet above the ground, in an area open to the public, but not a travel portion of the road.

The Motor Vehicle Code of the State of Michigan does extend into areas other than street, highway or roadways. Certain offenses, such as DUIL, Reckless Driving, can take place in an area open to the public.

Oftentimes, it is said that it is better to deny a Motion for Summary Disposition, and let a jury resolve it at trial. In this particular case, it is clear that a jury instruction will be sought by the various sides as to the proper height for the lines to be erected. Therefore, the Court is confronted with exactly the same legal issue as here presented.

There appears to be no reason that there would be a double standard for the height of wires within the State of Michigan. The Court therefore finds that the statute is applicable in spirit, to the situation here presented.

Defendant may present an order for Summary Disposition within 21 days from date hereof.



WILLIAM B. WARD  
District Judge

Dated: April 18, 1986