

Appeal Of Charter's Exit From Tower Suit Premature: 7th Circ.

By Anne Cullen

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The Seventh Circuit has shut down an Indiana property owner's attempt to rope Charter Communications back into his suit over upgrades to a telecom tower on his land, as the panel said unresolved claims in the underlying case make his appeal premature.

Landowner Stephen West alleged in his suit that a fiber optic wire installed by a Charter Communications Inc. subsidiary on a utilities transmission tower on his property stepped outside the 80-year-old agreement governing the facility. And he sued the major telecom as well as the tower owner — Louisville Gas and Electric Co. — for violating the terms of the easement.

After Charter won its bid to escape West's claims, the landowner and LG&E inked a conditional dismissal of their dispute so West could appeal the decision letting Charter out of the case.

But on Thursday, a Seventh Circuit panel dismissed West's appeal, writing that the stipulation between West and LG&E doesn't qualify as a final judgment — one that ends the litigation on the merits and leaves nothing for the district court to do but execute the judgment — which is necessary to bring an appeal.

"West and LG&E have attempted to construct a nominally final judgment and open the door to an immediate appeal by bringing the proceedings in the district court as to the remaining defendant, LG&E, to a close, but on terms that leave West's options open as to LG&E depending on how he fares against the Charter defendants in this appeal," the three-judge panel wrote.

"The resulting judgment is not, in practical effect, a final one, and that deprives us of appellate jurisdiction," they said.

And the panel added that the agreement the two signed is exactly the kind of end-run around final judgments that the court refuses to allow.

"This conditional dismissal of the claims against LG&E represents the very sort of attempt to manufacture appellate jurisdiction of which our precedents have consistently disapproved," they said.

The judges noted that they were sympathetic to West's efforts to bring Charter back into the case before he fully litigates the overlapping claims against LG&E.

"West's desire to resolve the viability of its claims against the Charter defendants on appeal now is understandable, and perhaps even 'noble' to the extent it is consistent with an expeditious resolution of the case," they said.

But they said West could've asked the judge to certify the decision dismissing Charter for appeal rather than "pursue the same type of effort to fabricate a final judgment that we have rejected as a transparent effort to circumvent" the rules.

An attorney for West, John D. Cox of Lynch Cox Gilman & Goodman PSC, told Law360 on Friday that they "will continue down the path dictated by the court of appeals' decision."

"This does not impact what we are confident will be our client's ultimate success on the merits," Cox added.

Counsel and representatives for Charter and LG&E did not immediately respond to requests for comment Friday.

Judges Ilana D. Rovner, David F. Hamilton and Michael F. Brennan sat on the panel for the Seventh Circuit.

West is represented by John D. Cox, Scott D. Spiegel and Petersen S. Thomas of Lynch Cox Gilman & Goodman PSC, Michael E. Maschmeyer of Maschmeyer Law, and David Nachand of Nachand Law.

LG&E is represented by John W. Bilby and Amy L Miles of Stoll Keenon Ogden PLLC.

Charter is represented by Paul A. Werner and Abraham J. Shanedling of Sheppard Mullin Richter & Hampton LLP.

The case is Stephen West v. Charter Communications, Inc. et al, case number 18-1906, in the U.S. Court of Appeals for the Seventh Circuit.