

THE SUPREME COURT OF THE STATE OF DELAWARE

WOODWERX, INC., a Delaware	§	
corporation, and JAMES R. WOOD,	§	
	§	No. 520, 2006
Plaintiffs Below,	§	
Appellants,	§	Court Below: Court of Chancery of
	§	the State of Delaware in and for
v.	§	Kent County
	§	
DELAWARE DEPARTMENT OF	§	C.A. No. 1580
TRANSPORTATION, an agency of	§	
the State of Delaware, and CAMDEN	§	
SERVICE ROAD ASSOCIATES,	§	
L.L.C., a Delaware limited liability	§	
company,	§	
	§	
Defendants Below,	§	
Appellees.	§	

Submitted: February 28, 2007

Decided: March 29, 2007

Before **STEELE**, Chief Justice, and **HOLLAND** and **JACOBS**, Justices.

**ORDER**

This 29<sup>th</sup> day of March 2007, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Plaintiffs below-appellants, Woodwerx, Inc., a Delaware corporation, and its owner, James R. Wood, (collectively, “Woodwerx”) appeal from a Chancery Court order granting motions to dismiss filed by the defendants,

Delaware Department of Transportation (“DeIDOT”) and Camden Service Road Associates, LLC (“CSRA”).<sup>1</sup>

2. In their Court of Chancery action, Woodwerx sought to enjoin DeIDOT from spending public funds for an unconstitutional purpose, namely, constructing and improving a road that (Woodwerx claims) serves primarily a private purpose.<sup>2</sup> The Court of Chancery dismissed Woodwerx’s complaint under Court of Chancery Rule 12(b)(6) for failure to state a claim upon which relief may be granted. On appeal, Woodwerx argues that the trial court erroneously held that Article VIII, § 4 does not prohibit DeIDOT from expending public funds on a project whose alleged beneficiaries were almost exclusively private developers and commercial tenants. We conclude that because the construction of the road constitutes a valid public purpose authorized by the Delaware legislature,<sup>3</sup> and because Woodwerx’s contrary arguments rest solely on conclusory allegations, the motions to dismiss were properly granted. Therefore, we affirm.

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<sup>1</sup> Defendant CSRA is the entity responsible for the design and implementation of the service road at issue and named as a nominal defendant.

<sup>2</sup> Woodwerx also sought to enjoin DeIDOT from undertaking this road construction that would adversely affect access to Woodwerx’s place of business. To the extent that Woodwerx’s complaint presented a claim for inverse condemnation, the Court of Chancery dismissed it for lack of subject matter jurisdiction under Court of Chancery Rule 12(b)(1). Woodwerx has not appealed from the dismissal of that claim.

<sup>3</sup> See 73 Del. Laws, c. 95, § 94 (effective July 2, 2001), amended by 73 Del. Laws c. 224, § 4 (2001); 17 Del. C. § 145.

3. Woodwerx is a residential home-building business with offices located at the southwest corner of U.S. Route 13 and Lochmeath Way in Kent County. On the other side of Lochmeath Way, and west of U.S. Route 13, a major commercial development is underway. That development includes two shopping centers, “Camden Town Center” and “Camden Station,” each of which is anchored by major retail stores such as Wal-Mart Super Center and Lowe’s Home Center Store.

4. Because of the increased traffic generated by the shopping centers, DelDOT decided to make improvements that would adversely affect access to Woodwerx’s property.<sup>4</sup> The improvement at issue here is a service road, named Wal-Mart Drive, that was constructed to run from Lochmeath Way to the Wal-Mart store located in the Camden Town Center. That service road (Wal-Mart Drive) also provides access to the Camden Station shopping center where the Lowe’s Home Center store is located. When fully operational, Wal-Mart Drive will run through a 204-home and 38-townhouse residential subdivision called Newell’s Creek, and from there, to Route 13A. The property on which Wal-Mart Drive is located has been dedicated to the public.

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<sup>4</sup> Specifically, DelDOT plans to place a traffic signal at the intersection of U.S. Route 13 and Lochmeath Way and to separate the east and westbound lanes of Lochmeath Way on the west side of U.S. Route 13. Those improvements will deprive Woodwerx and its customers of the ability to turn left onto the property or to exit the property westbound on Lochmeath Way. Access from southbound U.S. Route 13 may also be affected.

5. On August 24, 2006, the Court of Chancery, after hearing oral argument on the defendants' motions to dismiss, granted the motions. The trial court held that Woodwerx's conclusory allegation that Wal-Mart Drive was being constructed for a "private" purpose failed to state a claim upon which relief could be granted. Woodwerx appeals from that ruling.

6. This Court reviews *de novo* the dismissal of a complaint under Rule 12(b)(6).<sup>5</sup> In deciding a motion to dismiss, all well-pled allegations must be accepted as true and the court must draw all reasonable inferences in favor of the moving party.<sup>6</sup> The court is not required, however, "to accept as true conclusory allegations 'without specific supporting factual allegations.' Moreover, a trial court is required to accept only those 'reasonable inferences that logically flow from the face of the complaint' and 'is not required to accept every strained interpretation of the allegations proposed by the plaintiff.'"<sup>7</sup>

7. Woodwerx argues that DelDOT's expenditure of public funds to construct a road (Wal-Mart Drive) that primarily benefits private interests

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<sup>5</sup> *In re General Motors (Hughes) S'holders Litig.*, 897 A.2d 162, 167-68 (Del. 2006).

<sup>6</sup> *Id.* at 168.

<sup>7</sup> *Id.*, quoting *In re Santa Fe Pac. S'holder Litig.*, 669 A.2d 59, 65-66 (Del. 1995) and *Malpiede v. Townson*, 780 A.2d 1075, 1083 (Del. 2001).

is unconstitutional under Article VIII, § 4 of the Delaware Constitution.<sup>8</sup> Specifically, Woodwerx alleges that DelDOT's use of public money to build Wal-Mart Drive was improper because: (a) DelDOT "unilaterally decide[d] to start showering influential developer interests with public money to build shopping centers" and (b) the sole purpose for constructing Wal-Mart Drive was to provide a "free road for the direct benefit of private real estate developers, their private business tenants, and the tenant's private business invitees."

8. Cutting through the extraneous facts and commentary alleged in its submissions, Woodwerx's core claim is that DelDOT acted without the proper grant of authority required by Art. VIII, § 4 of the Delaware Constitution.<sup>9</sup> If DelDOT acted without proper authority, then any use of public monies to build Wal-Mart Drive would be unconstitutional because (Woodwerx contends) the road serves primarily a private purpose. Woodwerx's argument lacks merit.

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<sup>8</sup> Article VIII, Section 4 states:

No appropriation of the public money shall be made to, nor the bonds of this State be issued or loaned to any county, municipality or corporation, nor shall the credit of the State, by the guarantee or the endorsement of the bonds or other undertakings of any county, municipality or corporation, be pledged otherwise than pursuant to an Act of the General Assembly, passed with the concurrence of three fourths of all the members elected to each House.

<sup>9</sup> Woodwerx cites *Aetna Casualty and Surety Co. v. Smith*, for the proposition that the framers of the Delaware Constitution intended to prohibit the use of public monies for the benefit of any "county, municipality, or corporation" without the three-fourths vote of the legislature. 131 A.2d 168 (Del. 1957) (interpreting Art. VIII, § 4 and holding that a tax increase paid over directly to a volunteer fire company required a three-fourths majority vote).

9. Building Wal-Mart Drive was constitutional because the service road construction served a valid public purpose as a matter of law. Woodwerx contends that for the expenditure of public funds to be proper under the Delaware Constitution, the public purpose “must be the primary purpose of the expenditure and not incidental or subordinate.”<sup>10</sup> But, Woodwerx cites no authority holding that the construction of a public road, on a public right of way, for use by the public, is not a valid public purpose. Indeed, courts of other jurisdictions have recognized that road construction is a valid public purpose.<sup>11</sup>

10. The Court of Chancery found that where, as here, a service road is open to the public, it is a public road and that *ipso facto*, its construction serves a valid public purpose.<sup>12</sup> The case law of other jurisdictions is in accord. For example, in considering whether a service road along a limited access highway benefiting a

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<sup>10</sup> See *McClelland v. Mayor and Council of Wilmington*, 159 A.2d 596, 601 (Del. Ch. 1960).

<sup>11</sup> See, e.g., *McLeland v. Marshall County*, 201 N.W. 401, 405 (Iowa 1924) (holding that “the construction and maintenance of public roads and highways is a public purpose, within the meaning of the law, requires no citation of authority”); *City of Venice v. State*, 118 So. 308 (Fla. 1928) (finding that “[t]here is nothing which is more universally recognized as a public purpose than is the construction of streets. . . .”).

<sup>12</sup> *Quist v. Fuller*, 220 N.W.2d 296, 300 (Minn. 1974) (“[I]t is ‘the right of travel by all the world, and not the exercise of that right, which constitutes a road a public highway’”) (citations omitted); *Gerres Constr. Co. v. Div. of Highways*, 1976 WL 5207 (Del. Ch. Aug. 18, 1976) (holding that it was not improper for the State to expend funds to construct a 325-foot access road that would connect a Delaware highway with a 400-home residential subdivision located entirely in Maryland).

single property owner constituted a valid public purpose, the Supreme Court of Virginia held:

Whether a road sought to be constructed is a public road or one merely for the benefit of a private individual is not tested by the fact that such an individual will receive a greater benefit than the public generally. The test is not the length of the road, or how many actually use it, but how many have the free and unrestricted right in common to use it. It is a public road if it is free in common to all citizens.<sup>13</sup>

11. This Court has held that the “alleviation of intolerable local traffic conditions” is a proper public purpose.<sup>14</sup> Here, the record contains sufficient evidence to conclude that Wal-Mart Drive is being used as an alternative to U.S. Route 13 and, thus, alleviates traffic congestion.

12. The Court of Chancery properly found that the construction of Wal-Mart Drive was for a valid public purpose, and that Woodwerx’s conclusory allegations that the road is private were insufficient to survive a motion to dismiss. Specifically, that Court observed:

[T]here is no allegation that the roads will be private roads and not open to the public. There is no allegation that the title to the land underneath the roads will be privately held. There is no allegation that the public will not be able to freely travel on the roads. Indeed, there is no allegation that the roads cannot be used as a shortcut or an alternative route from Route 13 to Lochmeath Way. Instead, the complaint, at paragraph 29, alleges dedication of the roads.

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<sup>13</sup> *Stewart v. Fugate*, 187 S.E.2d 156, 159 (Va. 1972).

<sup>14</sup> *State v. George F. Lang Co.*, 191 A.2d 322, 326 (Del. 1963).

The Court of Chancery further found that “[t]he allegation that that the sole benefit is for private enterprise, however many times Woodwerx repeats this claim and in how many forms it repeats it, is nothing more than the type of conclusory allegation which the General Motors (Hughes) case teaches us this Court need not accept.” We agree.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice