

MANDATORY “REAL PROPERTY” VENUE PROVISION DOES NOT APPLY TO CASES ALLEGING PERSONAL INJURY ARISING FROM THE USE OF REAL PROPERTY

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Nielson v. Hicks

Ct. Appeals, Div. One, September 21, 2010

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The Nielsons were injured in a plane crash in St. Johns, Arizona, when the plane struck power lines and crashed into a neighborhood adjacent to the runway. The Nielsons filed suit in Maricopa County against the City of St. Johns (which owned the airpark), Navopache Electric (which constructed the power poles), and Stantech (which prepared the master plan for the airpark). Stantech, a Maricopa County company, was served with the Nielsons' complaint in Maricopa County.

Navopache moved to change venue to St. Johns, Apache County based on the statute stating that any action concerning real property shall be brought in the county in which the real property is located. Navopache argued the statute applied because the Nielsons alleged negligence in identifying, locating, designing, and/or installing the power lines. The court changed venue to Apache County.

The court of appeals reversed. The real property venue statute refers to actions in which real property is the subject matter, or the basis of, an action, and is not merely peripheral to it. Here the Nielsons were seeking damages for personal injuries arising from the plane crash. The subject matter was not real property, but rather personal injuries allegedly occurring from defendants' negligence. That the alleged negligence arose from the use of the real property was peripheral, and so the real property venue statute did not apply.