

Decision No. 13632.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

R. Z. ADAMS CO., INC.,

Complainant,

vs.

BELVEDERE WATER COMPANY,
a corporation, and
JANSS REALTY AND FINANCE CO.,

Defendants.

Case No. 1939.

James P. Fitzpatrick, and Dockweiler &
Dockweiler & Finch, by John F. Dock-
weiler, for complainant.

Gibson, Dunn & Crutcher, by H. F. Prince,
for defendants.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Commission is asked to order the refund to complainant of certain sums of money paid for the installation of water mains in Tract No. 4607, Los Angeles County.

The complaint alleges in effect:

That complainant is engaged in the real estate business and owned and subdivided an area of land known as Tract No. 4607, in Los Angeles County, and in order to secure a water supply for purchasers of lots in the subdivision, entered into an agreement with Janss Realty and Finance Company on March 9, 1922, whereby the latter concern agreed to construct a pipe system for the dis-

tribution of water in the tract. Complainant obligated itself to pay to Janss Realty and Finance Company the actual cost of the installation plus ten per cent. thereof, and Janss Realty and Finance Company agreed to supply water to consumers in the tract, under the rules of the Belvedere Water Company then in force or any that may be sanctioned later by the Railroad Commission, and at the rates for water used as set forth in the agreement.

It is further alleged in effect that Janss Realty and Finance Company is the owner of all the capital stock of Belvedere Water Company, a public utility, which was granted a franchise by the Board of Supervisors of the County of Los Angeles, February 10, 1915, to construct and operate water pipes in a territory which includes Tract No. 4607. Complainant states that it has paid to the Belvedere Water Company, through the Janss Realty and Finance Company, the entire cost of the pipes in the tract, which cost was not charged against the lots sold nor was it pro-rated among or paid by the purchasers of lots.

Complainant asks that there be refunded to it the cost of the installation of the pipe lines in Tract No. 4607 when the revenue from sales of water therein equals a "certain percentage" of the cost of installation in accordance with the rules prescribed by this Commission and in accordance with the rules of Belvedere Water Company.

The answer of defendants constitutes a general denial of many of the allegations of complainant, and it is urged as a special defense that the contract referred to in the complaint was entered into between R. Z. Adams Company and the Janss Realty and Finance Company for and on behalf of the last mentioned concern, in its individual capacity as a private corporation and not for or on behalf of Belvedere Water Company, which had no interest in or to the contract.

A public hearing in this matter was held at Los Angeles before Examiner Williams, at which both oral and documentary evidence was presented, briefs have been filed, the matter has been submitted and is now ready for decision.

The testimony shows that the R. Z. Adams Company is a corporation organized in the early part of 1922 for the purpose of engaging in the business of buying and selling real estate. The company owned Tract No. 4607, Los Angeles County, and subdivided the same into 105 lots, which were then placed on sale, mostly upon contracts providing for deferred payments. In the receipts given purchasers at the time the initial payments were made, the Adams Company agreed to provide a water supply for residents on the tract.

On March 9, 1922, the Adams Company entered into a contract with Janss Realty and Finance Company under the terms of which the Janss Company agreed to install a water system, and further agreed to supply water for domestic and business purposes to the consumers in this tract. When the contract was entered into, approximately 12 lots had been sold and several dwellings were in the process of construction. At the time the present proceeding was instituted there were 63 users of water, and all lots with the exception of one had been sold by the Adams Company.

The testimony shows that the necessary pipe lines were duly installed in Tract No. 4607 and that the Adams Company has paid the Janss Realty and Finance Company therefor the sum of \$2,302.39. It was also shown that bills for service rendered had been presented to consumers by Belvedere Water Company, a public utility, or its successor, the Belvedere Water Corporation, which is now impressed with the public utility obligations of its predecessor. The evidence further indicates that Tract No. 4607 is within the area covered by county franchise or franchises of Belvedere Water Company.

Complainant's allegation that Janss Realty and Finance Company is the owner of all the capital stock of the Belvedere Water Company and that the officers of the Janss Realty and Finance Company transact and carry on all the business of the Belvedere Water Company, was not supported by the evidence, which indicates that the two concerns are separate and distinct entities. It was also shown that the Janss Realty and Finance Company is not and never has been a public utility.

The Janss Realty and Finance Company does not claim ownership in the water pipes installed in Tract No. 4607. On the other hand it asserts that the pipe lines were installed by it for the R. Z. Adams Company and are now owned by that concern. Title to the pipe lines has never been passed to the Belvedere Water Company or its successor, the Belvedere Water Corporation, by either the Janss Realty and Finance Company or the R. Z. Adams Company.

Careful consideration of the evidence submitted leads to the conclusion that the Belvedere Water Corporation, successor in interest of the Belvedere Water Company, is now supplying water developed outside of Tract No. 4607 to consumers located thereon, through water pipes or mains constructed in the tract by the Janss Realty and Finance Company for and on behalf of the R. Z. Adams Company. The evidence also indicates that the Janss Realty and Finance Company is a private corporation and that the contract between itself and the R. Z. Adams Company, executed March 9, 1922, is a private contract and not subject to regulation by this Commission.

Under the circumstances it is unnecessary for the Commission to pass upon the ownership of the pipe lines in question in this proceeding and this question may be pursued further by the R. Z. Adams Company, if it is judged advisable so to do, in the civil courts.

O R D E R

R. Z. Adams Company, Incorporated, having made complaint against Belvedere Water Company, a corporation, and Janss Realty and Finance Company, a corporation, a public hearing having been held thereon, briefs having been filed, the matter having been submitted and the Commission being now fully informed in the matter,

It Is Hereby Found as a Fact that a certain contract between R. Z. Adams Company, Incorporated, and the Janss Realty and Finance Company, a corporation, executed March 9, 1922, and made a part of the complaint herein, is a private contract and not subject to the jurisdiction of this Commission.

Basing the order upon the foregoing finding of fact and upon the statements of fact set out in the preceding opinion,

IT IS HEREBY ORDERED that the above entitled complaint be and the same is hereby dismissed.

Dated at San Francisco, California, this 31st day of May, 1924.

C. Seaver

H. B. Rindick

James Martin

J. E. Whittier
Commissioners.