

ORIGINAL

Decision No. 22248

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

T.J. PENFIELD, F.M. ARNOLD,  
R. SCHOBBER, M.M. MACK,  
MRS. A. PAUL, ALBERT PAUL,  
GUS ANDERSON, CHRIS BLAUFUSS,  
N.P. COLVIN, GEO. W. KELSEY,  
LILLIAN M. SALTER, HUGH L.  
McCONNELL,

Complainants

vs.

Case No. 2674.

OCCIDENTAL LIFE INSURANCE COMPANY,  
a corporation, and L.H. CHATTERSON,

Defendants.

Harold S. Morrison, for Complainants.

Anderson & Anderson, by T.G. Anderson,  
for Occidental Life Insurance Company,  
Defendant.

BY THE COMMISSION:

O P I N I O N

The above complainants, water users and property owners in what is known as Rivino Orchards Subdivision near Riverside, allege that defendant Chatterson, in selling them lots in said tract, agreed to and did for a period of one and one-half years supply them with water for domestic and irrigation purposes for compensation, and said complainants seek to have this Commission declare said Chatterson, as well as the defendant Occidental Life Insurance Company, to be furnishing them water as a public utility and enjoined and restrained in discontinuing said service.

The Occidental Life Insurance Company answered the complaint, denying that it is now or at any time has been a public utility subject to the jurisdiction of this Commission. Defendant Chatterson also answered the complaint, denying that he is rendering a public utility service.

A public hearing on said complaint was held before Examiner Gannon in Los Angeles.

The evidence presented in this proceeding discloses the following facts: In 1926, L.H. Chatterson was the owner and in possession of a tract of land comprising about 286 acres, mostly agricultural land set to fruit trees. On October 18, 1926, Chatterson executed a deed of trust to a portion of said tract containing about 100 acres to secure a loan in the sum of \$33,500., the Occidental Life Insurance Company being the beneficiary under such trust. The remaining portion of the original 286-acre tract was thereafter encumbered by deed of trust to secure a loan made by the Metropolitan Trust Company.

In accordance with the terms of the escrow instructions of the Occidental Life Insurance Company, said company withheld \$5,000. from the loan of \$33,500. "to be used by Mr. Chatterson to pay for the installing of good and sufficient pumping plants and wells on the property securing our loan", and said Chatterson in compliance therewith caused a well to be drilled on the tract covered by the Occidental trust deed and installed a pumping plant and reservoir. The well was completed in January, 1927. A pipe was laid from this well to connect with the pipe system installed by Chatterson on the adjoining Rivino Orchards tract, which he had subdivided in the meantime into some 44 parcels, and water was served from said well and reservoir to lot purchasers in the latter tract commencing early

in the spring of 1927. The Occidental tract was never subdivided by Chatterson and the deed of trust thereto does not indicate that any provision was made for a sale thereof in parcels, or that it was to be used for any purpose other than agricultural property. Through foreclosure proceedings the Occidental Life Insurance Company acquired the property covered by the deed of trust on about June 16, 1928. Upon acquiring possession, the Insurance Company for a time continued to operate the well for the purpose of furnishing water without charge to the consumers in the Rivino Orchards Tract and later served notice that it intended to discontinue all service ninety days after the 15th day of June, 1929.

The evidence is clear that Chatterson or his agents represented to all lot purchasers in the Rivino Orchard Tract that he would supply them, for compensation, with all water needed for domestic and irrigation purposes, and that he did supply them with water obtained from the well which he had drilled on the Occidental tract until his interest in the same was foreclosed by the sale under the deed of trust. Chatterson is no longer an owner in the Rivino Orchards property and has apparently abandoned to the lot owners all his rights in the water system therein. Though he filed an answer to the complaint, he did not appear as a witness in this proceeding.

There is no doubt that Chatterson did undertake to render to complainants a public utility water service, but, since the land upon which is located the well which served as a source of supply for Chatterson's water system is now in the possession of the Occidental Life Insurance Company, complainants seek to impose upon that company the same public burden. We are of the opinion that there is no duty resting upon the Occidental Life

Insurance Company to render a public utility water service throughout the area which Chatterson undertook to serve. Neither can it be said, in our opinion, that the well and reservoir situated upon the lands now owned by it were, while in the possession of Chatterson, so impressed with the public use as to compel it now to operate the well and to permit the owners in the adjoining tract to obtain water therefrom. At the time the Insurance Company made the loan to Chatterson there was no such servitude upon the property. From the evidence submitted we find that at the time the loan was made the Insurance Company had no knowledge of the intention of Chatterson to develop water on the property described in the deed of trust for sale in the adjoining Rivino Orchards Subdivision, and that it did not thereafter, prior to the foreclosure under the deed of trust, in any manner acquiesce in Chatterson's taking water from the newly developed well for delivery and sale upon other lands. The Insurance Company thus having had no knowledge of the public service undertaken by Chatterson, and the said company having made no representations to complainants or other purchasers in the Rivino Orchards Subdivision, and having received no benefits from the sales of property in said subdivision by Chatterson, there is no basis for the application of any estoppel against the Insurance Company. Without such evidence which would justify a finding of estoppel, we are aware of no principle of law which permits the author of the trust created to secure a loan, while remaining in possession of the property, to defeat or impair the security by dedicating a part thereof to public use.

As the defendant Chatterson has no further connection

with the utility system in the Rivino Orchards Subdivision, it would be an idle act to direct any order to him requiring him to obtain a water supply from another source and to continue service to complainants. As to defendant Occidental Life Insurance Company, we are of the opinion that the complainants have not shown that it is operating a public utility and that the complaint should, therefore, be dismissed.

O R D E R

A public hearing having been held upon the complaint as above entitled, the matter submitted upon briefs and now being ready for decision, and basing its order upon the findings and conclusions in the opinion above,

IT IS HEREBY ORDERED that said complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 22d day of March, 1930.

Ch. Seavey

Paul D. Lewis

M. J. Lane

Commissioners.