MRM/GEH

ORIGINAL

Decision No. 23132

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

H.S. JOHNSON, ARTHUR F. RHINEHART, J.M. CALVIN, HARRY H. HUNT, VIOLET LIGHT, J.S. CATLIN, W.B. WILLIAMS, JOE DUPONT, P.C. RANSDELL, JACOB HANSMAN, W.T. ANDERS, J.D. CLARK, Complainants, vs. SUBDIVISION REALTY COMPANY, a corporation, Defendant.	Case No. 2895.

James C. Hollingsworth and Don R. Holt, for Complainants.

C.F. Gerard, for Defendant.

LOUTTIT, COMMISSIONER:

O P I N I O N

The above named complainants are water users who allege that the Subdivision Realty Company, a corporation and defendant herein, has violated the agreements providing for water service made with them at the time they purchased from said defendant certain lots in Oak View Home Gardens Subdivision No. 1 and Subdivision No. 2, Ventura County, in that said defendant has failed to furnish a proper and adequate water supply. The Commission is asked to declare defendant to be a public utility and order it to take immediate measures to supply complainants and all of its consumers with a sufficient, adequate and dependable water service.

Defendant by way of answer has filed a general denial, alleging among other things, however, that it has never charged or received any compensation whatsoever at any time for such service but at all times has distributed water to the consumers free of charge. Defendant further denies that it is now or ever has been a public utility and therefore asks that this proceeding be dismissed.

A public hearing in the above entitled matter was held at Ventura, September 24, 1930.

The evidence submitted indicates that during or about the year 1927 Subdivision Realty Company subdivided approximately one hundred acres of lands in Ventura County which lands are designated as Oak View Home Gardens, Subdivision No. 1 and Subdivision No. 2. A well was drilled on these properties and a complete water system installed to supply the purchasers of lots therein and for a period of about a year and a half a supply of water was provided ample for all the domestic and other requirements of the various resident consumers. However, as a result of the serious deficiency in the annual rainfall during the past two years throughout this general territory, the water level in the well has receded to such an extent that defendant is now unable to furnish sufficient water to properly meet the demands of its consumers now numbering approximately one hundred and thirty-five, including a school and certain stores.

There is no dispute over the claim of defendant that such water as has been supplied has been distributed free and without direct charge to the consumers. Complainants contend, however, that they have paid for the water system and for water service through the payments made for their lots upon the grounds

that defendant devoted a part of the funds realized from lot sales to finance the installation and operation of the water works and included these expenses in the purchase price of the lots. It is further claimed that these acts have constituted sales of water for compensation and for this reason defendant is actually a public utility and under the jurisdiction and control of the Railroad Commission.

It appears that out of a total of one hundred and thirty-four sales contracts used in connection with the sale of lots in the above subdivisions eight thereof contain a clause substantially as follows:

> "The party of the first part agrees to install at its own cost and expense a water system to furnish water to above described lot on or before 30 days hereof and cause to be installed an electric energy system on or before one year from date hereof, also to surface the middle 20 ft. of the street in front of said lot and leading to Nordhoff Road with gravel on or before six months from date hereof."

None of the other contracts or deeds contain any provisions whatsoever relative to the supplying of water to the particular lot or lots involved.

Mr. Wm. H. Moffitt, President of the Subdivision Realty Company, testified that the said company had spent a considerable sum of money to develop a water supply and to install a water system in the tracts in question and that the costs thereof necessarily were considered to be a part of those expenses incident to improvement of the raw land necessary to make the property attractive and marketable. The witness further testified that it was his intention as well as that of the defendant company to continue as in the past to serve water to all consumers without charge until such time as a mutual company may be duly

organized, at which time the entire water system would be turned over without cost to said mutual company. In this connection it appears that during the past year defendant did in fact attempt to form such a mutual water company among the consumers resident in these two tracts, but the efforts were unsucessful through failure to receive the unanimous approval of the water users.

There is no doubt that defendant and its agents promised to provide the purchasers of lots in its two tracts with an adequate water supply and that its failure so to do has in the past and is now working a manifold hardship upon those people who live in and have invested money in this property. Unfortunately, however, there is nothing in the evidence presented in this proceeding which would justify a finding that defendant has at any time ever intended to dedicate or by any overt act or acts at any time ever did dedicate this water supply and service, or any part thereof, to the public use. No such dedication can be construed from any of the clauses in the purchase contracts relating to the supplying of water to lot purchasers or presumed from the fact that the company in the development of its project expended a part of its funds for the installation of a water system to serve the purchasers of lots therein, a practice commonly followed by most subdividers of real property. While it is a much regretted fact that the existing water service is most unsatisfactory, it is clear that defendant is not at this time operating as a public utility and is therefore not under the jurisdiction and control of the Railroad Commission. Perhaps some cause of action may lie in the civil courts against defendant for breach of contract or to compel the fulfilment of the agreements as to water service.

GEH

There is therefore no alternative other than to dismiss the matter. The following form of Order is recommended.

O R D E R

Complaint as entitled above having been made to this Commission, a public hearing having been held thereon, the matter having been submitted and the Commission being now fully advised in the premises,

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

The foregoing opinion and order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 1st day of December, 1930.

Commissioners.