

Decision No. 46156

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Thomas F. Bartlett, et al,)
Complainants,)
vs.)
Melvin Strong,)
Defendant.

Case No. 5305

Thomas F. Bartlett, in propria persona
and for certain water users
Melvin Strong, in propria persona.

O P I N I O N

Complainants ask the Commission to assume jurisdiction over defendant's water system at Pleasant View Subdivision, near Fortuna, to determine rates for water service and to require defendant to maintain the system so as to provide an uninterrupted flow of water. They allege that defendant and his predecessors, since July, 1948, have supplied water to residents in the subdivision, now numbering about 25 users;^{1/} that defendant has permitted the system to clog and that pressures are low at times; that defendant has threatened to turn off the water, remove the system and thus deprive complainants of water.

Defendant denies generally the allegations of the complaint. He avers, in a separate defense, that in 1948 he purchased a house and lot in the subdivision from F. C. Thornton, together with a well, pump and 14-inch pipe line then supplying five dwellings;

^{1/} There are 18 identifiable premises mentioned in the complaint, allowing for multiple signatures from 3 dwellings.

that he thereafter attempted to serve water to 18 homes in the subdivision and in so doing expended more than \$3,500; that early in June, 1951, the well sanded up and on June 12, 1951, became useless after attempts to clear it failed; that thereafter he abandoned all efforts to recondition the system and is not now operating it; that the cost of construction of a new well and of installing sufficient pipe in the subdivision would be in excess of \$5,000 and that such funds are not available to him. Defendant asks that the complaint be dismissed.

The case was submitted at a public hearing held August 7, 1951, at Fortuna before Examiner Gregory. Several of the complainants, including both users and nonusers of water from the system here involved, appeared at the hearing and testified. Testimony was also received from Frank C. Thornton, a predecessor of Melvin Strong, the defendant, and from Strong and his wife.

Pleasant View Subdivision is situated in a small valley about a mile west of Fortuna north of U. S. Highway 101. The original subdivider, Thompson, built a motel near the highway but did not develop a water system for the tract. After the close of the last war Frank C. Thornton, a builder, purchased from Thompson some land along the west side of the main road through the tract, built a home, dug a well about 700 feet to the north on the same side of the road and thereafter supplied himself and eventually four immediate neighbors with water through a 1½-inch pipe line. The record is silent as to whether Thornton charged these neighbors for water. Thornton testified that it had been his intention to sell lots and mutual water company stock, that he put in the well for that purpose, but that he abandoned the idea when Strong, the defendant, came along in the winter of 1948 and purchased his house and the water system, as then constituted, for \$3,000.

In the early part of 1948, Henry Briggs, Fred Scribner, and one or two other individuals who had purchased lots from Thompson north of Thornton's well, arranged with Thornton that if he would buy the necessary pipe they would pay the cost of its transportation to the tract, would dig a ditch and lay the pipe from the well to their premises and would pay Thornton \$2 per month each for water. Water deliveries commenced about July 1, 1948, pursuant to this arrangement. About two months later Thornton leased premises south of and adjacent to the well site to Vincent Scribner at a rental of \$15 per month for life, the rental to include water. Also, at about the same time, he built a home for Myrvin Winsby on the lot immediately north of the well and supplied water to Winsby at the rate of \$2 per month.

During the winter of 1948-49, defendant Melvin Strong purchased from Thornton a house and lot, together with Thornton's well, pump, and 1½-inch pipe line then serving five dwellings, for a total sum of \$3,000. He proceeded to install and connect an 8,000-gallon storage tank on a knoll west of the well and also replaced the main water line and installed meters. He arranged with Vincent Scribner to continue to supply Scribner with water in exchange for supervision of the pump and collection of water bills.

In March, 1949, Strong sold the water system to Eugene Smith for \$5,000, payable at the rate of \$50 per month. Strong reacquired the property in September of that year when Smith entered the service. At this time there were 15 consumers. In October, 1949, Strong raised the monthly rate from \$2 to \$3.25 in order to pay operating expenses. He testified that the \$2 rate had resulted in a loss of approximately \$2 per month per customer, without allowing for depreciation on his investment of about \$4,000, and that a monthly rate of \$4.06 would have been required in order to operate profitably.

In the summer of 1950 the well sanded and there were occasional low pressures on the system. On June 10, 1951, sand was again reported and in an attempt to clean the well a few days later the suction bailer became trapped above the gravel when the cable on the bailing apparatus parted. Strong then abandoned his efforts to recondition the well and about two weeks later removed the pipe connection.^{2/}

Several of the consumers had become increasingly dissatisfied with the operation of the system and with the \$3.25 rate charged by Strong. By the time of the hearing (August 7, 1951) seven residents, headed by Fred Scribner and Henry Briggs, had formed an association, called "The Mutual Home Association", for the purpose of supplying water to themselves and others who might later become members. The seven associates advanced \$250 each, plus their own labor, to construct a well and install a pump. Strong gave the group 700 feet of 1½-inch pipe in exchange for their meters. The members of the group each pay \$2 per month for all the water they can use and have adopted an irrigation schedule. At least three other residents on the west side of the road have developed their own supply of water from wells. Thomas Bartlett, whose premises are situated at the north end of the tract, obtains water from springs above his home. Of the seven residents located on the east side of the road, three are members of the mutual group and two obtain their supply of water from nearby springs.

^{2/} Strong had prepared a notice to his consumers, dated June 10, 1951, (the day sand was discovered in the well), informing them he would cease operations on September 15th due to continual loss of revenue and inability to absorb such loss. He did not deliver the notice as he considered further operation impossible because of the condition of the well and his lack of financial resources with which to develop a new source of supply.

The testimony of those who now have their own supply of water indicates that they no longer desire to pursue their complaint against Strong and, moreover, that they would not use his service even if it were again available.

We are not persuaded by the evidence of record that either Strong or his predecessors ever made an unequivocal dedication of their water facilities to the general public residing in Paradise View Subdivision so as to constitute the system a public utility subject to regulation by this Commission. There is no evidence that Thornton supplied water to his immediate neighbors, prior to December, 1947, other than by way of accommodation. The arrangements with Fred Scribner, Henry Briggs, and others early in 1948 appear to have been in the nature of a mutual undertaking to obtain water by residents to whom no other supply was then equally available.

It is also plain that rehabilitation of this system would entail a substantial capital outlay which Strong appears financially unable to undertake. Moreover, even if the system were placed in adequate operating condition its potential source of revenue has been severely depleted as a result of the development of private supplies of water by former users.

The complaint will be dismissed.

O R D E R

A public hearing having been held in the above-entitled and numbered proceeding, evidence having been received and considered, the matter having been submitted for decision, the

Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

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

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 4th day of September, 1951.

R. J. [Signature]
President.
Justice J. [Signature]
Harold P. [Signature]
[Signature]
[Signature]
Commissioners.