

Decision No. 55001

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FORREST E. JOHNSTON,)
)
 Complainant)
)
 vs.)
)
 PARK WATER COMPANY, a public)
 utility corporation,)
)
 Defendant)

Case No. 5880

Lech T. Niemo, for complainant.
William S. Cook, for defendant.
Charles Drake, for the Commission
 staff.

O P I N I O N

By the complaint herein, filed on January 15, 1957, complainant alleges that he is the owner of a portion of Lot A, Tract No. 7028, County of Los Angeles, California; that said tract is served by the defendant with domestic water; that his portion of Lot A has been divided into three parcels for the purpose of erecting three houses with the consent of the Regional Planning Commission of the County of Los Angeles; that said plot of land includes that parcel known as 10949 Rio Hondo Drive; that the subject property is not part of a subdivision since the complainant would never be able to build more than three houses on the property without rezoning by the Los Angeles County Planning Commission; that the defendant was requested on January 7, 1957, to supply water to a house at 10949 Rio Hondo Drive; that on January 8, 1957, the defendant refused to serve the complainant with water; that the requested main extension to serve the complainant will be less than sixty-five feet from an

existing main; and that the denial of service causes inconvenience and unreasonable expense. The complainant requests that defendant be ordered to serve the complainant with water for his house at 10949 Rio Hondo Drive, County of Los Angeles, under defendant's main extension Rule (Rule and Regulation No. 15 filed with this Commission on November 21, 1954, pursuant to Decision No. 50580).

The complaint was mailed to the defendant on January 25, 1957, together with an order to satisfy or answer (Rules of Procedure, Rule 12). The defendant did not file an answer (Rules of Procedure, Rule 13).

However, a public hearing on the complaint was held before Examiner Kent C. Rogers in Los Angeles on March 14, 1957, and the matter was submitted subject to the filing of Exhibit No. 5. This exhibit has been filed and the matter is ready for decision.

Defendant was given authority to furnish domestic water to consumers in Tract No. 7028 by Decision No. 32911, dated March 19, 1940, in Application No. 22589. The property herein referred to as Lot A is included in said tract, all of which is in Los Angeles County in the vicinity of the Rio Hondo and Firestone Boulevard (Exhibit 1).

The evidence presented at the hearing shows the following facts which we find to be true.

Mr. Leonard L. Gupton is an individual doing business as the Tri-City Construction Company. Some time prior to the middle of 1956, he purchased Lot A of Tract No. 7028, which is a large lot containing approximately 1-1/4 acres of land. Early in 1956 he

deeded a portion of Lot A to the Los Angeles County Flood Control District. He retained the remainder of Lot A having approximately the following dimensions: 110 feet on the north side, 255 feet on the west side, 154 feet on the south side, and 340 feet on the east side (Exhibit 1A). The portion of Lot A retained by Mr. Guiton is situated on the west side of Rio Hondo Drive. The west end of Pellet Street, an east-west street, terminates at Rio Hondo Drive at a point approximately 150 feet from the south end of Lot A. Mr. Guiton owns a parcel of land on the southeast corner of Rio Hondo Drive and Pellet Street described as Lot 57 (Exhibit 1A). The defendant company has a 6-inch main on Pellet Street terminating approximately 59 feet from the east curb line of Rio Hondo Drive. Complainant's lot to which he seeks to have service extended is on the west side of Rio Hondo Drive directly opposite the west end of Pellet Street, and it is 109 feet from the end of the defendant's main on Pellet Street to the curb line of Rio Hondo Drive directly in front of complainant's lot to which he seeks service (Exhibit 1A).

In June or July, 1956, Guiton sold approximately the north 1/2 of Lot A remaining after the sale of a portion thereof to the flood control district to a Mr. Lilly. Some time thereafter, but prior to October 6, 1956, he sold the south 1/2 of such remaining portion to the complainant herein. Guiton has no interest in any portion of Lot A other than as a possible builder. Originally, when Guiton bought the land, he intended to hold the land for speculation. Complainant and said Lilly have each divided his respective portion of Lot A into three parcels. Each did so with the consent of the Los Angeles County Regional Planning Commission. Guiton has divided Lot 57 into three parcels also. On October 30, 1956, Guiton's son gave defendant an application for water service at 10939 South

Rio Hondo Drive (Exhibit No. 2). This address is in the parcel owned by Lilly (Exhibit 1A). Defendant requested that Guiton furnish him with a description of the property to be served, or a map thereof. The map, Exhibit No. 1A, was subsequently given to defendant. On or about December 27, 1956, Guiton's son called at defendant's place of business and stated that service was needed at 10939 Rio Hondo Drive and pointed out on Exhibit No. 1A two other places needing service in a short time. Guiton's son was told by defendant's agent that he would receive a main extension contract. The next day defendant wrote a letter advising Guiton of the amount of deposit required and stated that service would be extended pursuant to defendant's main extension rule for service to subdivisions (Exhibit No. 4). On or about January 7, 1957, complainant requested that defendant furnish water to a single house he was constructing for sale at 10949 Rio Hondo Drive. He is also building a house for sale at 11003 Rio Hondo Drive. On January 8, 1957, defendant advised the complainant that Tri-City Construction Company (Mr. Guiton) had applied for service; that the company records show that complainant's lots are part of a quasi-subdivision; and that if that is true the service would be extended under the defendant's main extension rule for service to subdivisions (Exhibit No. 3).

From the foregoing facts it appears, and we find, that complainant is entitled to have water furnished to his lot at 10949 Rio Hondo Drive by defendant pursuant to defendant's Rule and Regulation 15B1, Extensions To Serve Individuals, and it will be so ordered. Defendant's Rule and Regulation 15C1 provides that an applicant for a main extension to serve a new subdivision shall advance a sum of money sufficient to cover the estimated cost of the installation in the entire subdivision. A subdivision is not therein

defined. Section 11000 of the Business and Professions Code provides that "'subdivided lands' and 'subdivision' refer to improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels." While there is no restriction in this section requiring one owner to hold title to all of said lots it appears obvious that where there is a bona-fide sale of parcels of land originally comprising one lot to separate owners and thereafter each of said bona-fide owners splits his land into 4 or less lots that the subdivided parcels would not constitute a subdivision. Here the former owner of the total tract testified that he retained no interest in the land after its sale in 1956 to the complainant and the other purchaser. The defendant presented no evidence to controvert this statement except to show that the former owner, who is also a builder, applied in his name for water service to one of the present parcels in Lot A after title to said land had passed to complainant and another party. It is our opinion that the sales by the former owner were bona-fide, and that under the terms of Section 11000 of the Business and Professions Code the parcels of land owned by complainant are not a "subdivision" and, therefore, complainant is entitled to have water furnished by defendant pursuant to defendant's Rule and Regulation 15B1.

This opinion is strengthened by the provisions of Section 11535 of the Business and Professions Code (the Subdivision Map Act) which, while not governing here (See Section 11501 Business and Professions Code) defines a subdivision as follows:

"'Subdivision' refers to any real property, improved or unimproved, or portion thereof, shown on the latest adopted county tax roll as a unit or contiguous units, which is

divided for the purpose of sale or lease, whether immediate or future, by any subdivider into five or more parcels within any one year period."

It should be noted that this section refers to "any subdivider." It appears obvious that such a situation would not cover a case where, as here, two separate and distinct individuals own the lots involved.

O R D E R

A complaint having been filed, a public hearing having been held thereon, and based upon the findings in the opinion;

IT IS ORDERED that within ten days after the effective date hereof defendant shall extend domestic water service to complainant at complainant's property at 10949 Rio Hondo Drive, such extension of service to be in accordance with defendant's Rule and Regulation No. 15B now on file with this Commission.

The effective date of this order shall be twenty days after service by registered mail of a copy of this decision on defendant at its place of business as such address is shown on the records of this Commission.

Dated at San Francisco, California, this 21st day of MAY, 1957.

[Signature]
President
[Signature]
[Signature]
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Commissioners