

Decision No. 57093

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ANTHONY GASTALDI and
HAZEL GASTALDI,
Complainants,

vs.

LUKINS BROTHERS WATER COMPANY,
a copartnership, and GLENN J.
LUKINS, JEANETTE LUKINS, MELVIN
L. LUKINS and HAZEL LUKINS,
owners of said LUKINS BROTHERS
WATER COMPANY,
Defendants.

Case No. 6029

Russel F. Milham, for defendants.

Beverly and Weidman, by Melvin E. Beverly and John C. Weidman, for complainants.

W. B. Stradley, for the Commission staff.

O P I N I O N

This matter involves the establishing of the water system in the Tahoe Island Park Subdivision and Additions Nos. 1, 2 and 3 thereto. The pleadings, in the main, raise complex issues of fact and are in conflict.

A duly noticed public hearing was held in this matter at Bijou on March 25, 1958 before Examiner Donald B. Jarvis.

No useful purpose would be served by attempting to summarize the conflicting pleadings and evidence before the Commission. Based upon the evidence of record the Commission enters the following findings and conclusions:

Findings of Fact

1. During the year 1953 complainants commenced developing the Tahoe Island Park Subdivision.

2. Complainants did not desire to engage in the public utility water business. In the spring of 1954 complainants and defendants entered into an oral agreement whereby complainants agreed to purchase the materials necessary for the water systems in the Tahoe Island Park Subdivision, and other contemplated subdivisions, and defendants agreed to install said materials and reimburse complainants for the cost thereof by annual payments equal to fifty percent of the system's gross revenue for 15 years with four percent interest on the unpaid balance and to pay any remaining balance in the 15th year.

3. During the fall of 1953 and spring of 1954, complainants purchased the materials for the water system in the Tahoe Island Park Subdivision and had installed by third persons the major portion thereof. Defendants later installed the tank and pump for said system. The cost of the materials purchased by complainants and the wellsite lot was \$8,600.

4. On March 25, 1954, complainants and defendants entered into a written agreement which superseded the oral agreement referred to above. This agreement was drafted by an attorney representing both complainants and defendants. The attorney had been representing defendants. Complainants paid the fee for drafting the agreement. The written agreement provided in part that complainants would sell to defendants for \$8,600 all the physical assets of the Tahoe Island Subdivision water system including the wellsite lot; that said \$8,600 was to bear interest upon the unpaid balance at the rate of four percent per annum and the principal and interest were to be paid over the course of 15 years; that defendants were not obligated to make payments unless the water system earned a profit and in such event defendants were to make minimum annual payments of at least one-half

of the gross proceeds received from the sale of water or water service to the subdivision; that all principal and interest would become due and payable at the end of 15 years; that defendants would assume the liability for the operation and maintenance of the water system; that complainants would convey Lot 66 in said subdivision for well-site purposes; that defendants would execute a deed of trust upon the unpaid balance of the purchase price; that defendants would execute a 15-year promissory note for \$8,600 with interest at four percent per year; that defendants would apply to this Commission for a certificate of public convenience and necessity to operate said water system; that the agreement would be presented to this Commission for its approval; and that any provisions of said agreement not approved by this Commission would be renegotiated.

5. On March 25, 1954, defendants executed a promissory note in favor of complainants. Said note was for \$8,600, payable in 15 years, and bore interest at the rate of four percent per annum. Said note recited various provisions of the aforesaid contract of March 25, 1954.

6. On March 30, 1954, defendants filed with this Commission Application No. 35298. The application sought a certificate of public convenience and necessity for the water system in the Tahoe Island Park Subdivision. The application alleged in part the purchase of the water system facilities and said Lot 66 by defendants from complainants for \$8,600. None of the other provisions of the contract of March 25, 1954 were referred to in the application.

7. On June 22, 1954, complainants and defendants entered into a written agreement concerning the water system in Addition No. 1 to Tahoe Island Park. Said agreement provided in part that complainants would sell and convey to defendants all the physical assets of the water system installed or to be installed in Addition No. 1 for the

actual cost of said assets; that the sum determined as said actual cost be paid with four percent interest on the unpaid balance; that defendants would make minimum annual payments on said amount of a sum equal to one half of the gross revenues derived from the water system in Addition No. 1; said principal and interest was due and payable on March 25, 1965; and that the agreement would be presented to this Commission for approval.

8. The cost of the materials used for the water system in Addition No. 1 was \$5,648.

9. On June 22, 1954, defendants executed a promissory note to complainants in the sum of \$5,648 with interest at four percent per annum. The note recited the payment provisions in the contract with regard to Addition No. 1; that any unpaid balance was due and payable on March 25, 1969; and that the note was to also insure the payment of the purchase price of Lot 34, Tahoe Island Park Subdivision, Addition No. 1.

10. A public hearing was held in Application No. 35298 on July 7, 1954. The matter was consolidated for hearing with another application filed by defendants, which other application has no relevance to the case at bar. Complainants were not a party of record in said application proceeding. Complainants had actual knowledge of the time and place of said public hearing. Defendants represented to complainants that it was not necessary for complainants to be present at said hearing and that defendants would advise this Commission of the agreements and documents executed by complainants and defendants and seek approval thereof. Complainants relied upon said representations and did not attend said hearing. Defendants did not introduce in evidence at said hearing the written agreement of March 25, 1954; the promissory note dated March 25, 1954; the

written agreement dated June 22, 1954; the promissory note dated June 22, 1954; and none of said documents was presented to this Commission for approval. Application No. 35298 and some of the testimony at said hearing presented some, but not all, of the matters covered by the agreement of March 25, 1954. The application was orally amended to seek a certificate of public convenience and necessity for Tahoe Island Park Subdivision Addition No. 1.

11. On September 21, 1954, this Commission entered Decision No. 50561. The opinion recited that:

"1. The issuance of a promissory note in the sum of \$3,000, without interest, to M. A. Lindberg, owner of the portion of Tamarack Subdivision herein involved, in payment for the facilities now installed in such subdivision. Such note is payable in annual installments of a sum equal to one half the net revenue applicants derive from water service supplied to such subdivision with all balances remaining due and payable 15 years after date."

* * * * *

"3. The issuance of a promissory note in the sum of \$8,600, without interest, to Anthony Gastaldi and Hazel Gastaldi, owners of Tahoe Island Park Subdivision, in payment for the facilities presently installed in such subdivision. Such note is payable in the same manner as that set forth in number 1 hereof."

The order granted defendants a certificate of public convenience and necessity to operate a public utility water system in areas which included Tahoe Island Park Subdivision and Tahoe Island Park Subdivision Addition No. 1. It further provided that:

"Applicants are authorized to issue their unsecured non-negotiable promissory notes to the persons named, in the amounts shown, payable in the manner indicated, and for the purposes mentioned, in the opinion preceding this order, it being the opinion of the Commission that the money, property or labor to be procured or paid for by the issuance of such promissory notes is reasonably required by applicants for the purposes stated herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income."

12. On March 20, 1955, complainants executed a deed conveying Lot 34 of Tahoe Island Park to defendants. Said deed was duly recorded in the Official Records of El Dorado County on March 27, 1956.

13. The conveyance of said Lot 34 for water purposes was a donation by complainants to defendants.

14. A copy of Decision No. 50561 was served upon defendants at the time it was issued. Complainants, not being parties of record in the Application No. 35298 proceeding, were not served with a copy of said decision.

15. Defendants did not fully understand Decision No. 50561. Subsequent to the receipt by defendants of said decision, they represented to complainants that this Commission had approved the agreement of March 25, 1954. Complainants did not have actual knowledge of the contents of said decision until sometime during the first quarter of 1957.

16. On May 1, 1955, complainants and defendants entered into a written agreement concerning the water system in Addition No. 2 to Tahoe Island Park. In the negotiations leading to the agreement, defendants represented to complainants that rules of this Commission prohibited the payment of interest in the type of agreement under consideration. Said agreement provided in part that complainants would sell and convey to defendants all the physical assets of the water system installed or to be installed in Addition No. 2 for the actual cost of said assets; that the defendants would make minimum annual payments on said amount of a sum equal to one half of the gross revenues derived from the water system in Addition No. 2; that all of the remaining balance on said amount be due and payable on May 1, 1965; and that the agreement be presented to this Commission for approval.

17. The cost of the materials used in the water system in Addition No. 2 was \$4,610. Said water system was completed on or about May 1, 1955.

On May 1, 1955, defendants executed a promissory note to complainants in the sum of \$4,610.10. The note did not provide for interest. It recited certain of the payment provisions in the contract with regard to Addition No. 2. Any unpaid balance was due and payable on May 1, 1970.

18. The agreement of May 1, 1955, and the promissory note dated May 1, 1955, were not presented to this Commission for approval.

19. On or about August 1, 1956, defendants installed a water system in Tahoe Island Park Addition No. 3. Complainants paid for the materials used in said system. The cost of said materials was \$3,991.65. There was no written agreement between complainants and defendants in connection with this system.

20. On June 14, 1957, defendants filed with this Commission First Supplemental Application No. 35298. This application alleged matters contained in Decision No. 50561 and the fact of the conveyance of Lot 66 of Tahoe Island Park Subdivision from complainants to defendants. It asked Commission approval for a promissory note from defendants to complainants for \$8,600 without interest. It further asked permission for defendants to give complainants a deed of trust on said Lot 66 to secure the unpaid balance on said note.

21. On July 22, 1957, this Commission entered Decision No. 55287 which granted defendants the authority to issue the promissory note and deed of trust set forth in the application.

22. On August 1, 1957, defendants executed a promissory note to complainants in the sum of \$8,600. Said note was without interest and provided that defendants should make annual payments equal to

one-half the net revenue from the water system in Tahoe Island Park Subdivision and that any unpaid balance was due and payable on March 25, 1969.

23. On March 25, 1954, defendants executed a deed of trust in favor of complainants on Tahoe Island Park Subdivision Lot 66. Said deed of trust was duly recorded in the Official Records of El Dorado County on March 20, 1956.

24. On August 1, 1957, defendants executed another deed of trust in favor of complainants on Tahoe Island Park Subdivision Lot 66. Said deed of trust was duly recorded in the Official Records of El Dorado County on August 2, 1957.

25. There was never any agreement between complainants and defendants to compensate defendants for any services rendered or labor performed in connection with the installation of the water systems in Tahoe Island Park Subdivision and Additions Nos. 1, 2 and 3 thereto, and defendants are not entitled to any compensation or credit therefor.

26. Complainants did at no time desire to engage themselves in the public utility water business in connection with Additions Nos. 1, 2 and 3.

27. The Commission takes official notice (Rule 64, Rules of Procedure) of the fact that on May 26, 1954 defendants filed, as a public record with this Commission, its tariff which contained therein a main extension rule. Said tariff became effective on June 1, 1954. On December 8, 1954, defendants filed, as a public record with this Commission, a revised tariff which became effective on December 12, 1954. Said tariff adopted and set forth as its Rule 15 the main extension rule promulgated by this Commission in Decision No. 50580 in Case No. 5501. Said main extension rule has been in effect from December 12, 1954 to date.

28. Additions Nos. 1, 2 and 3 to Tahoe Island Park Subdivision are contiguous to said subdivision or previous additions thereto.

Conclusions of Law

1. In resolving the matter, this Commission, within its jurisdiction, should enter an order which will preserve the existence of the water systems involved for the benefit of the public, as well as determining the rights of the parties.

2. Insofar as any portions of Decision No. 55287 and Decision No. 50561 conflict with the order hereinafter entered, said portions of those orders will be set aside and vacated.

3. The agreement of March 25, 1954 between complainants and defendants was one for the purchase of a substantially completed water system together with wellsite Lot No. 66. Defendants should be ordered to pay the remaining unpaid balance on said purchase price without interest. The remaining unpaid balance should be paid in full on or before March 25, 1969. Defendants should be ordered to make minimum annual payments upon said obligations equal to one half of the gross revenues from the Tahoe Island Park Subdivision, excluding any additions thereto or any other part of defendants' system but including any additional connections made to the original mains in said Tahoe Island Park Subdivision. Defendants should be ordered to execute a promissory note containing said terms. The deed of trust executed upon Lot 66 should be continued in effect to secure the unpaid balance of said purchase price.

4. The written agreement of June 22, 1954, the promissory note dated June 22, 1954, the written agreement of May 1, 1955 and the promissory note dated May 1, 1955 all violated defendants' then existing tariffs. None of said documents was ever presented to this

Commission for approval and none of said documents ever became effective.

5. Regardless of any act or omission on the part of defendants, there were only two alternatives available to complainants by which they could obtain water and thereby develop Additions Nos. 1, 2 and 3: (1) Obtain a certificate of public convenience and necessity and operate their own water system, or (2) Have an existing utility extend its services to said additions. It has heretofore been found as a fact that complainants did not desire to or in fact engage in the public utility water business. Therefore, the extension of water service to Additions Nos. 1, 2 and 3 was governed by the provisions of the main extension rule as it existed at the time of each extension whether complainants dealt with defendants or any other private water utility company, and the terms of said main extension rule could not be varied by agreement between the parties. The exact costs of said additions have been determined and the order hereinafter entered will provide refund thereof in accordance with the main extension rule as it existed at the time of each extension.

O R D E R

Based upon the foregoing findings and conclusions,
IT IS ORDERED that:

1. Defendants, who as of March 25, 1954 entered into an obligation to pay \$8,600 to complainants and who have made certain payments thereon, shall pay the remaining balance without interest of said \$8,600 on or before March 25, 1969. Defendants shall make minimum annual payments upon said obligation equal to one half of the gross revenues from the Tahoe Island Park Subdivision, excluding any additions thereto or any other part of the defendants' system but

including any additional connections made to the original mains in said Tahoe Island Park Subdivision. Defendants shall, within thirty days after the effective date of this order, execute a promissory note in conformity with the directions hereinbefore set forth and, within ten days thereafter, shall file with this Commission a copy of the note as executed. The deed of trust heretofore executed upon Lot 66 in said Tahoe Island Park Subdivision shall remain in full force and effect to secure the unpaid balance of said obligation and promissory note to be executed.

2. Defendants shall pay to complainants annually, commencing with the date of completion of the main extension, 35% of the annual gross revenues of Tahoe Island Park Subdivision Addition No. 1. Said revenues shall only include revenue derived from connections made to the original mains in said Addition No. 1. Defendants shall examine their records and, within forty-five days after the effective date of this order, render complainants an accounting of amounts due to date. Any arrears so determined shall be paid to complainants within one year from the effective date of this order. The total amount of the annual payments shall not exceed the amount advanced. In no event shall any payment be made hereunder after a period of ten years from the date of completion of the main extension.

3. Defendants shall pay to complainants annually, commencing with the date of completion of the main extension, 22% of the annual gross revenues of Tahoe Island Park Subdivision Addition No. 2. Said revenues shall only include revenue derived from connections made to the original mains in said Addition No. 2. Defendants shall examine their records and, within forty-five days after the effective date of this order, render complainants an account of amounts due to date. Any arrears so determined shall be paid to complainants within one year from the effective date of this order. The total

amount of the annual payments shall not exceed the amount advanced. In no event shall any payment be made hereunder after a period of twenty years from the date of completion of the main extension.

4. Defendants shall pay to complainants, commencing with the fiscal year 1956-1957, 22% of the gross revenues of Tahoe Island Park Subdivision Addition No. 3. Said revenues shall only include revenue derived from connections made to the original mains in said Addition No. 3. Defendants shall examine their records and render an account of amounts due to date. Any amount so determined shall be paid to complainants within one year from the effective date of this order. Defendants shall continue said payments until the termination of the fiscal year 1975-1976. In no event shall any payment be made hereunder for any period after said fiscal year 1975-1976.

5. Insofar as any portions of this order are in conflict with Decision No. 55287 or Decision No. 50561, said decisions are hereby set aside and vacated as to said conflicting portions. In all other respects said decisions shall remain in full force and effect.

The effective date of this order shall be twenty days after the personal service thereof upon one or more of the defendants herein.

Dated at San Francisco, California, this 5th day of August, 1958.

[Signature]
President
[Signature]
[Signature]
[Signature]

Commissioners

-12- Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.