.BR/NB *

Decision No. 65774

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Walter A. Lively, Plaintiff, vs Palm Springs Water Company, Defendant.	Case No. 7556 Filed February 13, 1963 Answered March 14, 1963 Amended May 3, 1963

Peter M. Winkelman, for complainant.
Knapp, Gill, Hibbert & Stevens, by Wyman C. Knapp, for defendant.

O P I N I O N

Walter A. Lively, a subdivider doing business as Gateway Estates, and as Southland Development Company, and a licensed contractor,[1/] has filed this complaint against Palm Springs Water Company, a public utility water corporation, stating three causes of action as follows:

1. That after being billed by the defendant for the construction of a 10" pipeline in Palm Canyon Drive northerly from Yorba Road in the City of Palm Springs to the complainant's subdivision containing 76 lots and known as Palm Springs Gateway Estates, Unit No. 1, and after installing a water system in said subdivision, the defendant arbitrarily added the sum of $1,900 to its previous bill as an "overhead" charge. Complainant, therefore, prays for $1,900.

1/ Builder of some 22,000 houses in Lakewood, Santa Paula, San Dimas, and Duarte and served by public utility water companies pursuant to water main extension agreements therewith.

2. That prior to the extending of the aforesaid 10" line and an additional 10" line in Palm Canyon Drive southerly from Yorba Road to Racquet Club Road for which complainant executed an $8,000 promissory note to be deposited in escrow to secure performance of said latter extension in the event any additional lots were added to the 76 lots, there was sufficient water to supply the 76 houses in Gateway Estates without the necessity of building the extra line. Such 10" line construction resulted in an unwarranted expenditure on the part of the complainant in the sum of $20,000 in addition to the amount complainant would have had to pay to extend the existing 6" line to his subdivision. Complainant, therefore, prays for $20,000.

3. That defendant has not rendered to complainant a proper accounting with regard to the water receipts received from the said 76 lots nor from the other properties serviced by the said 10" line constructed by the defendant. Complainant, therefore, prays for an accounting in this regard.

In its amendment to the complaint, complainant as a fourth cause of action stated:

4. That it had agreed to pay defendant $320 from the proceeds of each escrow upon the sale of as many of the 76 lots, until such time as defendant had received the aforementioned $8,000; that said $8,000 had been so paid to defendant; that said moneys were to be used to pay for extending the 10" line from Yorba Road to Racquet Club Road, in the event that complainant constructed any additional houses adjacent to the said 76 houses; that, in this regard, complainant had an option to purchase an additional 200 (sic) lots[2/] immediately adjacent to the tract known as Palm Springs Gateway Estates consisting of the 76 lots; that it was not necessary

2/ The record shows in Exhibit No. 49 that the entire area was proposed to be developed into a total of 293 lots, including the 76 lots of Unit No. 1.

to so extend the said 10" line in order to service said 76 houses, that complainant had not developed nor would he in the future develop the said additional 200 lots; that without complainant's knowledge or permission, defendant had contracted with Hicks[3/] and Allred to extend and said Hicks and Allred had extended the said 10" line thus putting complainant to the unnecessary expense of $8,000. Complainant, therefore, prays for the sum of $8,000.

Public hearings were held before Examiner Warner on May 28 and 29 and June 3, 1963, at Los Angeles.

The record contains 63 exhibits including maps of defendant's water system as it existed in the area in 1959 prior to subdivision, in 1960 after subdivision, and in 1962 after connection with Desert Highlands Estates which was formerly served by Palm Springs Vista Mutual Water Company and later acquired by defendant and served through a 10" main installed in Indian Avenue and connected to the 8" main installed through complainant's subdivision. These maps are Exhibits Nos. 1, 2, and 3, respectively, which, together with Exhibits Nos. 4 through 17, and 52, 53, 53-A, B, C, and D, 54, and 57 through 60, were submitted by complainant.

Exhibit No. 4 is a letter dated March 23, 1960 from defendant to complainant advising the latter that it would be necessary to make the entire installation in Section 34 when the first unit was subdivided, and Exhibit No. 5 is a standard form water main extension agreement entered into between defendant and

3/ The record shows this to be no relation to Harold J. Hicks, defendant's president and major stockholder.

complainant dated May 25, 1960, providing for the advance by the complainant of the sum of $31,613.73 for the installation and extension of mains and services to and in Unit No. 1 pursuant to the sketch of the water system and the subdivision attached to the agreement as Exhibit A. This amount is refundable over a 20-year period based on 22% of the estimated annual revenue received from sales of water to customers within the subdivision. This agreement also provides for the advance by the subdivider of the sum of $1,950 for the construction and installation of fire hydrants, which said sum was not refundable.

Exhibits Nos. 6 through 13 are copies of correspondence between the parties and, also, with the Commission as an informal complaint.

Exhibits Nos. 14 and 15 are copies of the contract executed by defendant with the contractor, Hicks and Allred, for the water system installation by the latter, and some accounting adjustments thereto.

Exhibits Nos. 16 and 17 are maps and hydraulic engineering calculation submitted by complainant purporting to show the proper water system requirements to serve the initial subdivision of 76 lots and the additional 200 lots (sic). These exhibits were supplemented by Exhibits Nos. 53, and 53-A, B, C, & D, to present more complete calculations based on those actual conditions developed in the record.

Exhibits Nos. 18 through 51 were submitted by defendant. They comprise copies of defendant's tariff service area maps; copies of all correspondence between defendant and the complainant in defendant's files together with copies of correspondence with the

Commission in answer to the informal complaint made by defendant to the Commission; original maps of the proposed development of not only the Gateway Estates Unit No. 1, but also the total of 293 lots; a signed copy of the water main extension agreement (Exhibit No. 5) as Exhibit No. 21; an annotated copy of the Hicks and Allred contract (Exhibit No. 14) as Exhibit No. 25; copies of letters to contractors seeking bids on construction; copies of escrow instructions to Security First National Bank, North Palm Springs Branch; copies of invoices from a pipe company; and copies of a letter to defendant from Webb & Associates, consulting engineers for Messrs. Broxmeyer & Neal, former owners of Unit No. 1 and owners of the balance of the area originally proposed to be subdivided into a total, including Unit No. 1, of 293 lots.

Exhibit No. 52 is a brochure of Palm Springs Water Company in which the statement is made that the average home owner's total consumption per month is 16,000 to 20,000 gallons of water costing $5 to $6.

Exhibits Nos. 53, 53-A, B, C, & D, have been heretofore referred to.

Exhibit No. 54 is a statement of excess costs calculated by complainant's engineering witness based on four alternate assumptions set forth on Exhibit No. 53 and in Exhibits Nos. 53-A, B, C, & D.

Exhibit No. 55 is a map and hydraulic engineering calculation submitted by defendant of the water system installation requirements to serve the maximum demands of 293 lots of Gateway

Estates shown on Exhibit No. 49 and to provide fire flow of 500 gallons per minute, resulting in 20 pounds per square inch of residual pressure at the extremities of the subdivision.

Exhibit No. 56 is a copy of accounting records submitted by defendant supporting its allocation of overheads and total charges to complainant's water system installation jobs including the initial construction, excluding fire hydrants, and including the costs associated with the 10" main installation south of Yorba Road to Racquet Club Road covered by the $8,000 note.

Exhibits Nos. 57 through 60 submitted by complainant are copies of a Grant Deed dated February 9, 1960, by Stanley Broxmeyer to complainant of the property comprising Palm Springs Gateway Estates Unit No. 1; a copy of a Title insurance policy thereon; the final subdivision public report issued by the State Division of Real Estate on Unit No. 1; and the subdivision report of the Federal Housing Administration.

The record discloses that in August, 1959, the owners of the portion of the south half of Section 34, Township 3S, Range 4E, SBB&M, Messrs. Broxmeyer & Neal, took the map, Exhibit No. 49, to defendant, and discussed the installation by defendant of a water system to serve the 293 lots shown on said exhibit. Later in 1959, complainant represented himself as owner, subdivider, and developer of Unit No. 1, the original 76 lots shown on Exhibit No. 49, and sought water service thereto; he was advised by defendant's general manager that it would be necessary for defendant to install a water system of sufficient capacity to serve the entire area proposed to be developed; that the subdivider would be required to advance the cost of installing a pipeline of sufficient size therefor from defendant's nearest pipeline of sufficient capacity; that this was

required by defendant's rules for water main extensions to subdivisions on file with this Commission; that, because complainant was short of cash, a full-sized main would not be required to serve the original 76 lots; that the cost of increasing the size of the 10" main in Palm Canyon Drive from Yorba Road south to Racquet Club Road could be deferred and financed by the execution of the $8,000 note, as heretofore outlined; and that the cost of installing 6 fire hydrants in Unit No. 1, amounting to $1,950 to be advanced by complainant, would not be refundable. The Agreement, Exhibits Nos. 5 and 21, was entered into on May 25, 1960, and the water system installation was completed by the end of the year 1960. Water service for construction purposes was immediately furnished to complainant by defendant, and, thereafter, and upon completion of the water system installation, service was and is being furnished to approximately 2/3 of the 76 houses built in Unit No. 1. In May, 1961, the note deposited in escrow by complainant of $8,000 and dated May 26, 1960, was cancelled and a new note, providing that it be paid off from the proceeds of the sale of lots in Unit No. 1 rather than waiting for the sale of lots in Unit No. 2, was executed and placed in escrow. All but $1,280 of the note has been paid. When full payment has been made the total amount of the note will be added to complainant's subdivision main extension agreement and will be refundable.

Upon a review of the record we find that defendant correctly represented its policy with respect to initial extensions to subdivisions which are represented to it to be prospectively expanded. This policy is consistent with the meaning and intention of public utility water company main extension rules authorized and prescribed by this Commission. Such rules are designed to protect

the utility's present ratepayers from bearing the burden of subdivision speculation. Despite complainant's allegations that he had not developed nor would he in the future develop the total of 293 lots, it is evident that in the preliminary discussions between Broxmeyer and Neal and defendant the former submitted Exhibit No. 49 showing the proposed development into a total number of 293 lots; complainant told defendant of his option to purchase the entire property; and complainant entered into the escrow agreement which provided for the installation of the additional 10-inch line in the event any additional lots were added to the original 76 lots. We find that complainant intended to develop the 293 lots. The fact that all houses built on the 76 lots have not been sold, and that complainant gave up his option late in 1962, should not be permitted to redound as a burden on defendant's customers.

We find that the claimed 1,950 overcharge on fire hydrants is unsubstantiated. It is true that complainant may have been confused by some of defendant's attempted explanations on the status of his account, particularly as set forth in Exhibit No. 12, which is ambiguous, but subsequent explanations which are set forth in the correspondence, which are exhibits herein, clarify such confusion and ambiguity, particularly in Exhibit No. 45.

We find that the calculations of water system pipeline size requirements submitted by complainant meet minimum standards only. Good engineering practice in this hot, windy, and sandy area, requires a greater margin of operating water pressure. Such greater margin, which we find to be prudent and in the public interest, has been provided in the design and installation made by defendant.

We find no error or excess charge of overheads.

We find no false or incorrect accounting of or for the proceeds from the $8,000 note executed by the complainant and placed in escrow.

We find no support for the complaint and it will be dismissed.

O R D E R

IT IS ORDERED that Case No. 7556 is dismissed.

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

Dated at San Francisco, California, this 30th day of July, 1963.

President

Commissioners

I concur in the order.
George D. Grover
Commr.