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ORIGINAL

Decision No. 65943

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

D AND E CORPORATION, a California corporation, and YOUNG-LOFTUS CONSTRUCTION CO., a corporation,

Complainants,

vs.

PARK WATER COMPANY, a California corporation; L. A. DECOMPOSED GRANITE CO., INC., a California corporation; H. H. WHEELER; HOMES OF MERIT, INC., a corporation; JOHN DOE I; JOHN DOE II; ROE CORPORATION; ROE II CORPORATION; FOE, a copartnership; and FOE II, a partnership,

Defendants.

Case No. 7361
(Filed May 18, 1962)

OPINION

The complaint herein contains 21 counts. By counts 1 through 10, D and E Corporation, as assignee of various subdividers, seeks to collect money paid by said subdividers to the defendants, or some of them, for the construction of public utility water systems pursuant to agreements which contain no refund provisions. By counts 11 through 19, Young-Loftus Construction Co. seeks the same type of relief. In count 20, complainants allege that H. H. Wheeler was the alter ego of each of the other defendants, and in count 21, complainants allege the defendants conspired together to violate the rules of the Commission.

Counts 11, 12, 14 and 16 charge that the various contracts therein referred to were executed during the period between

December 28, 1942, and September 15, 1951, when Park Water Company's main extension rule provided for refunds on a proportionate cost basis for a period of 10 years after completion of the installation.

Counts 1 through 5 and Counts 13 and 15 charge that the various contracts therein referred to were executed during the period between September 15, 1951, and November 21, 1954, when Park Water Company's main extension rule provided for refunds for subdivision main extensions on the basis of 35 percent of revenue for a period of 10 years after completion of the installation. Counts 6 through 10 and Counts 17 through 19 charge that the various contracts therein referred to were executed between November 21, 1954, and February 10, 1963, during which period Park Water Company's standard main extension rule, as required to be filed by this Commission by Decision No. 50580, was in effect.

The total amount claimed to be due under the D and E Corporation group of counts is $165,127.26 and under the Young-Loftus Construction Co. group of counts is $124,487.22.

The last date on which money was paid by an assignor, under contracts entered into while the first main extension rule was in effect, was May 5, 1950; while the 35 percent rule was in effect, was January 13, 1955; and while the Decision No. 50580 rule was in effect, was April 21, 1958.

The matter is now set for hearing on September 10, 1963, having been continued to said date from prior hearing dates to enable the defendants to file a motion for dismissal.

On April 1, 1963, defendants filed a motion to dismiss the complaint, accompanied by affidavits and points and authorities in support thereof, together with affidavits of service on

complainants. On June 14, 1963, complainants filed, in reply to defendants' motion, a motion for summary judgment.

The defendants' motion alleges that the claims asserted by complainants are barred by the statutes of limitations; that the complainants are estopped to assert the claims advanced or to obtain any relief and that the claims are nonassignable.

In a declaration in support of defendants' motion, Mr. H. H. Wheeler, president of Park Water Company, asserted, among other things, that the extensions of water service to which the 21 causes of action in the complaint relate all are, and have been for periods of from 5 to 12 years, in operation and satisfying the needs of the users of the system; that under the terms of the agreements entered into by Park Water Company, no obligation of Park Water Company to complainants, or their assignors, are executory and the only obligation of Park Water Company is to continue to provide service to the users of the system; that the amounts referred to and for which claim is made represent contributions and are reflected on the books of Park Water Company as acquired on a contributed cost basis, and such sums are not included in the rate base of Park Water Company; that Park Water Company entered into all agreements in good faith; and that the extensions of service referred to were to areas outside Park Water Company's dedicated service area.

The foregoing contentions that the agreements contain no obligations of Park Water Company except to furnish water, that they refer to areas outside the service area, and that they were entered into in good faith furnish no grounds for dismissal. It is elementary that one is presumed to know the law. The rules and regulations of the Commission have the force and effect of law and, during

all periods referred to, various main extension rules were in effect specifically providing that refunds must be made to subdividers under specified terms and conditions. The Supreme Court of California has held that when a public utility water company undertakes to extend its mains beyond its dedicated area, it may do so only on the terms and conditions stated in its main extension rule on file with the Commission unless provisions deviating therefrom are approved by the Commission. (Cal. Water and Tel. Co. v. P.U.C., 51 Cal. 2d 478, 501 [1959].)

Whether or not the claims are barred by the statutes of limitations is not shown by the pleadings and hence that alleged defense cannot at this time be the basis for dismissal of any counts. Counts 1 through 5 and Counts 11 through 16 are based on the main extension rules in effect between December 28, 1942, and November 21, 1954. These rules provided that for a period of ten years from and after the date of completion of the main extension, the company would pay certain sums. No count in the complaint alleges the date of completion of the particular installation. Instead, each count alleges the date of the agreement and the date of deposit. There is, therefore, nothing from which to determine when the extensions were completed and when the ten-year periods commenced to run. The same situation applies to those extensions made after November 21, 1954, except that such payments could continue for 20 years after completion of the main extensions.

Under the terms of the three main extension rules in effect, refund payments become due and payable each year after completion of the mains in each subdivision, so that each year a new obligation arises and the obligee then has the period of the

appropriate statute of limitations during which to commence action thereon. For the purposes of this motion, the parties should be treated as if they did, in fact, comply with the law and execute appropriate refund agreements.

We conclude that the motion to dismiss should be denied.

We have considered complainants' motion for summary judgment and defendants' reply thereto. We find that this case should be determined on the merits, after public hearing, and that that motion also should be denied.

ORDER

IT IS ORDERED that:

1. The motion of the defendants for an order dismissing the complaint is denied.

2. The motion of the complainants for summary judgment is denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 3rd day of September, 1963.

William M. Bennett
President

Peter E. Mitchell

Everett C. McKeage

George G. Grover

Frederick B. Holoboff
Commissioners