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Decision No. 67257

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PALM SPRINGS PANORAMA, A Limited Partnership, Complainant, -vs- RANCHO RAMON WATER COMPANY, A Corporation, PASSMORE DEVELOPMENT COMPANY, A corporation, JOHN MOORE ROBINSON and S.I. ROBINSON, Defendants.	Case No. 7438 (Filed September 11, 1962) (Amended September 27, 1963)

Jacob W. Silverman, for complainant.
Gibson, Dunn & Crutcher, by Raymond L. Curran, for defendants.

O P I N I O N

The complaint herein is by Palm Springs Panorama, a limited partnership (hereinafter sometimes referred to as complainant), against Rancho Ramon Water Co., a corporation (Rancho Ramon), Passmore Development Co., a corporation, sometimes doing business as Passmore Supply Co. (referred to hereinafter as Passmore), John Moore Robinson and S. I. Robinson.

A prehearing conference was held in Los Angeles before Examiner Rogers on March 19, 1963. Thereafter public hearings were held in Los Angeles on June 10, September 16 (with Commissioner Grover), September 17, 18, 23, 24, 25, 26 and 27, 1963.

On October 21, 1963, the matter was orally argued before Commissioner Grover and Examiner Rogers, and submitted.

The complaint relates to the installation by Rancho Ramon of domestic water systems in four subdivisions of complainant three to four miles east of Palm Springs, Riverside County, California. The area involved contains approximately 600 acres divided into 2,431 lots. Unit 1 contains 614 lots and is adjacent on the south to a pre-existing service area of Rancho Ramon. Unit 2 contains 646 lots and is immediately north of Unit 1. Unit 3, known officially as Tract 2040, contains 599 lots and is immediately north of Unit 2. Unit 4, known officially as Tract 2204, contains 572 lots and is immediately adjacent on the southeast corner to the northwest corner of Tract 2040.

Jacob W. Silverman, John Kagan and Sam Manchel, prior to August 11, 1959, were the members of a general partnership owning, acquiring, and subdividing land in Riverside County, California. On August 11, 1959, the general partnership became a limited partnership under the name of Palm Springs Panorama, with said Silverman, Kagan and Manchel as all the general partners. The original partnership of Messrs. Silverman, Kagan and Manchel executed a main extension agreement (Exhibit 1) with Rancho Ramon relative to Unit 1, the rights in which were subsequently assigned to complainant (Exhibit 5). Complainant and Rancho Ramon subsequently executed main extension agreements relative to Unit 2 (Exhibit 2), Unit 3 (Exhibit 3), and Unit 4 (Exhibit 4-A). After the execution of Exhibit 4-A, but prior to completion of the facilities, Rancho Ramon's systems in the area in question were acquired, on May 31, 1961, by Coachella Valley County Water District (District) for the sum of $2,060,084.42. At the time of this transfer, Rancho Ramon was obligated to make certain contingent refunds on 174 unrefunded advances for construction in the total

face amount of $1,240,112.83. In an application for approval of a depository agreement and to be relieved of liability (Application No. 43949), Rancho Ramon listed the four contracts herein referred to at their face amounts. The Commission, by Decision No. 64025, dated July 31, 1962, on said Application No. 43949, authorized an irrevocable depository arrangement subject to certain conditions, some of which are hereinafter referred to. That decision has not yet become effective.[1/]

In the first count of the complaint, as amended, complainant claims restitution and reparation in the amount of approximately $40,500, including $28,608.50 for installation of services and $11,864 for use of water trucks and other incidental equipment in connection with Unit 1.

In the second cause of action, the same charges are made in connection with Unit 2.

By the third cause of action, the complainant seeks to recover the cost of a pump and motor installed for use with a well in Unit 3 and to recover approximately $5,000 as the cost of subsequently repairing the pump and motor.

By the fourth cause of action, complainant seeks to recover the sum of $30,000 for the replacement of allegedly defective facilities in Unit 4 and for failure to install services.

1/ That decision contains certain provisions which the Commission was unwilling to make final in the absence of actual execution of the depository agreement; accordingly, it was ordered that the decision would not become effective prior to such execution or prior to compliance with certain other conditions. The delay in consummating the proposed depository arrangements may be due to the pendency of this litigation involving Palm Springs Panorama. Now that the controversy concerning the Palm Springs Panorama contracts is being decided, Rancho Ramon will be expected in the immediate future either to execute a depository agreement or to advise the Commission that the authority granted by Decision No. 64025 will not be exercised.

By the fifth cause of action, complainant seeks to recover, for fraud, all moneys deposited on all four subdivisions, moneys advanced to Coachella Valley County Water District, and restitution and reparation for the cost of plastic pipe and facilities to irrigate the land.

Each of the defendants answered, setting up various defenses, including an objection by S. I. Robinson that she had never been personally served with a copy of the summons and complaint. S. I. Robinson and John Moore Robinson were, at all times mentioned in the complaint, acting solely as officers of corporations which had been in existence long before any of the agreements or negotiations referred to in the complaint occurred. There is nothing in the complaint or in the record herein which would warrant our holding either of said persons liable in their individual capacities.

Defendants also asserted that the complaint is barred by various statutes of limitation, namely, section 338, subsection (1), of the Code of Civil Procedure (three years), section 735 of the Public Utilities Code (two years), and section 736 of the Public Utilities Code (three years). Section 736 of the Public Utilities Code applies only to violations of sections 494 and 532 of that code, whereas section 735 applies to all other violations thereof; this case involves a claim for reparation arising because a public utility allegedly has collected unjust, unreasonable, and excessive charges and is therefore based on section 451 of the Public Utilities Code, so that the two-year limitation of section 735 is applicable.

The complaint was filed September 11, 1962. We need not be concerned with the applicability of section 735 as to Counts 3 and 4 of the complaint, for we are granting no relief on Count 3 and the contract which forms the basis of Count 4 was entered into April 27, 1961, well within the two-year period. The contract which forms the basis of Count 1 was executed on or about June 19, 1959, and the contract which forms the basis of Count 2 was executed on or about March 14, 1960. No completion date was set forth in either contract. Work commenced December 1959. By July 1960 complainant had become anxious about the completion date of the services in Units 1 and 2. Complainant discussed the matter with a representative of Rancho Ramon. At that time Mr. Robinson, acting on behalf of Rancho Ramon and Passmore, agreed to furnish the skilled worker (a welder) who would be required in connection with the installation and to furnish all of the necessary materials to complete the construction contemplated by the agreement. The evidence shows, and we find, that Rancho Ramon and Passmore did furnish some materials and a welder who worked on the project at least through December 1960. We find that the causes of action set forth in Counts 1 and 2 arose after December 1960, and that said causes of action are not barred by section 735 of the Public Utilities Code. (See Union Sugar Co. v. Hollister Estate Co., 3 Cal.2d 740, 745-746; Ottney v. Finnie, 5 Cal.App.2d 356, 364.)

Rancho Ramon claims that Count 1 of the complaint is barred by section 734 of the Public Utilities Code, which provides

that the Commission shall not recognize any assignment of a reparation claim (with certain exceptions not pertinent to this case). In support of this defense Rancho Ramon points to the fact that the contract which is the basis of Count 1 was entered into between Rancho Ramon and a partnership composed of Messrs. Silverman, Kagan, and Manchel whereas this complaint has been filed by Palm Springs Panorama, a limited partnership. However, the evidence adduced at the hearing shows that on or about June 19, 1959, Messrs. Silverman, Kagan, and Manchel, as a co-partnership, entered into the agreement; that the agreement was assigned by them to complainant, Palm Springs Panorama, a limited partnership, on or about August 15, 1959; and that Rancho Ramon thereafter dealt with Palm Springs Panorama in connection with the carrying out of the contract. Since no cause of action accrued relative to Count 1 prior to December 1960, any claim that did accrue belonged to complainant and not to the original partnership. It was the contract which was assigned, not the reparation claim.

We find that facts necessary to establish the claimed defenses of unclean hands, laches, waiver, and prematurity were not proved.

Complainant has requested interest on any monies found to be due. The evidence shows, however, that the amounts involved are of a non-liquidated nature; interest will be denied. (See MacIsaac and Menke Co. v. Cardox Corp., 193 Cal.App.2d 661, 672-673.)

First and Second Causes of Action

By the first cause of action, as amended on September 27, 1963, complainant seeks to recover $28,608.50 as the cost to it of installing service connections in Unit 1, together with $11,864 it expended on water trucks. By the second cause of action, as amended, complainant seeks to recover the same amounts relative to Unit 2. Inasmuch as work was performed simultaneously on these two tracts, neither complainant nor Rancho Ramon could segregate the costs for each one; the total costs for the two tracts have merely been halved to obtain the cost for each. Accordingly, these two causes of action will be discussed together.

The basis of these two causes of action is the allegation that, after complainant and Rancho Ramon executed the main extension agreements relative to said units and the required deposits were made by complainant, the work was only partially performed by Rancho Ramon. The area is subject to heavy winds, the soil is sandy, and as a result there is a serious erosion problem. In order to hold the soil in place, complainant intended to plant vegetation. Complainant's witness testified that Rancho Ramon was informed at the outset that there would be considerable landscaping and also testified that the utility advised complainant that there would be sufficient water available. In the spring of 1960, after the mains in the first and second units were installed, complainant's landscaping supervisor purchased trees, shrubbery, and grass seed, and then discovered there were no service connections in these units. Rancho Ramon, upon being contacted, informed complainant that complainant was not ready for service. Rancho Ramon

then told complainant that Rancho Ramon had too many other jobs at that time to do the work but that it would furnish the necessary pipe and fittings and a welder if complainant would furnish the other labor needed to make the connections. At that time, complainant had plantings in Units 1 and 2 and was forced to use water trucks to transport water from hydrants to water such plantings. Complainant seeks to recover the cost of installing the services in these two units.

The main extension rule in effect at the time the agreements herein were executed, as applied to subdividers, provided that the water company submit an estimate for construction of the necessary water mains, services and fittings and that the subdivider advance the estimated amount prior to construction. After construction of the water mains the utility was required to determine its actual cost; if the actual cost differed from the estimated cost, the utility was obligated to refund any overcharges or collect any undercharges. The rule provided that the utility might perform the contract through an independent contractor; in that case the contract price would constitute the actual cost of the construction and, in the absence of fraud or overreaching, would not be subject to later modification.

In the instant proceeding the evidence shows that Rancho Ramon engaged Passmore to do the work. Passmore submitted a bid which Rancho Ramon incorporated into its main extension agreement; this amount was advanced. It was agreed by all the parties that the bid submitted by Passmore would not be subject to later modification based on actual cost. We find that the amount advanced

pursuant to the agreements in question would have been the actual reasonable cost to Rancho Ramon of the construction contemplated by the agreements.

Complainant alleges that Rancho Ramon and Passmore are in fact one and the same entity because of identity of ownership and control, and that they should be so treated in this proceeding. Common ownership and control, however, are not the sole facts upon which the applicability of the alter ego doctrine turns. An additional issue is whether or not the identity of interest and control has frustrated the lawful operation of the utility rule here under consideration. (See The River Lines, Inc. v. So. Pac. Pipe Lines, Inc., Decision No. 66695, dated January 21, 1964, in Case No. 7238.) The evidence does not show that it has. Indeed, the only evidence on Passmore's "actual" cost was that it would have been greater than the amount advanced; treating Passmore as the alter ego of Rancho Ramon would therefore reduce, rather than enlarge, complainant's recovery herein.

It is beyond the jurisdiction of the Commission herein to award damages for injuries suffered as a result of failure to install a water system pursuant to an extension agreement. In general, the Commission is not a body charged with the enforcement of private contracts (A.T. & S.F. Ry. Co. v. Railroad Comm., 173 Cal. 577, 582), and it cannot grant damages for breach of contract. (Berkeley Olive Asso. v. Calif. Water Service Co., 39 C.R.C. 358, 366.)[2/] We may, however, award "reparation" where charges by a

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2/ Since the 90-day requirement of the last sentence of Section 737 of the Public Utilities Code has not been met in this case, we need not consider the Commission jurisdiction there conferred with respect to complaints for damages.

public utility are unreasonable, excessive, or discriminatory. (Public Utilities Code sec. 734.) Inasmuch as the amounts advanced by complainant pursuant to the main extension agreements involved herein were the actual reasonable costs to the utility of the construction contemplated by the agreements, an unreasonable and excessive charge was collected by Rancho Ramon to the extent that any of the contemplated construction was not performed. Reparation is due complainant in an amount equal to this unreasonable and excessive charge. (East Side Canal & Irrig. Co., 25 C.R.C. 626.)[3/]

The determination of that portion of the advances attributable to the installation of services in Units 1 and 2 has been made difficult by the fact that no breakdown of the advances for construction was introduced by either party. The evidence on the subject produced by complainant was that complainant expended approximately $80,000 to install the services in Units 1 and 2; of this amount over $1,000 was spent for materials used in the installation. Defendants, through their expert witness, introduced an exhibit indicating that the reasonable cost to the utility of labor, equipment, and overhead for the installation of the services in Units 1 and 2 would have been $13,200. Complainant asserts that defendant's expert based his estimate on 59 fewer services than were actually installed.

3/ In the East Side Canal case the water utility collected for water in advance and then failed to deliver such water; the Commission awarded as reparation that portion of the advance charge which was attributable to the amount of water not delivered. (Cf. Oklahoma Nat. Gas Co. v. Oklahoma, 258 U.S. 234, 66 L.Ed. 590.)

After consideration of all the evidence we find that the portion of the advances for construction for Units 1 and 2 attributable to the services contracted for, but not installed by, defendants was $20,000. To that extent the advance collected by Rancho Ramon was unreasonable and excessive.

Third Cause of Action

By the third cause of action, complainant seeks to recover the cost of a pump and motor installed in a well on one of complainant's subdivisions, Unit 3 (Tract 2040), and the cost of repairing the motor and pump. The water main extension rule in effect on the date of the agreement, November 22, 1960, provided that an applicant for a main extension to serve a subdivision should advance the estimated reasonable cost of water main facilities and that, if additional facilities were required, the cost thereof might be included in the advance upon authorization by the Commission.

The evidence on behalf of Rancho Ramon was that the agreement did not include the cost of a well and related production facilities. The complainant's witness testified that the parties never discussed the well "point blank" and that Mr. Robinson was very evasive.

We find that said well and related facilities for Tract 2040 were not included in the main extension agreement for said tract. Complainant is not entitled to reparation in connection with said tract.

Fourth Cause of Action

Tract 2204 (Unit 4) is a 160-acre parcel divided into 572 lots, including 515 residential and 57 large commercial lots occupying a total of 20 acres of land. The main extension agreement relative to this unit (Exhibit 4-A) was dated April 27, 1961, and the amount to be deposited was $109,985, of which $10,000 was paid in cash and the balance was paid by a series of notes to Passmore. The complainant has refused to pay the amounts due on the notes. On May 31, 1961, prior to completion of the tract, a final order of condemnation was entered by which Coachella Valley County Water District acquired the system and properties of Rancho Ramon in Riverside County. It was contemplated that, from the moneys to be received from the District, the sum of $1,240,112.83 would be deposited in trust to pay refunds as they become due on 174 of Rancho Ramon's main extension agreements, including the agreement for Tract 2204. (See Decision No. 64025, dated July 31, 1962, on Application No. 43949.)

The distribution system for the entire tract was completed, except for the 57 commercial lots. As to these 57 lots, Rancho Ramon installed only mains and fire hydrants; it did not install the services called for by the plans on which the deposit was based. Complainant contends that, in order to correct the deficiencies in the tract, it was required to install facilities and expend money at a total cost to it of $13,997.96. This sum does not include the cost of the 57 services omitted by defendants. As of the date of submission of this case, these services were not yet installed.

The record shows that after the agreement (Exhibit 4-A) was executed and prior to the installation of services in Tract 2204, said judgment of condemnation became final. Rancho Ramon installed only the mains in the commercial area and installed service lines in the remainder of the tract. Thereafter, complainant attempted to secure a complete installation as provided in the agreement, as well as service valves not included in the agreement, and in order to do so expended the above-mentioned sums for labor and material. The resulting system, according to complainant, was a makeshift system, but the purpose of the system was to enable it to secure water to raise vegetation which would prevent the sand from blowing.

The facilities, as originally installed, were described by a witness who was a salesman for a pipe company. He stated that shortly prior to February 1, 1962, complainant's manager, Larry Hughes, and Mr. Robinson ordered the materials for service connections (Exhibit 8) and told the witness to bill complainant, and that they wanted inexpensive valves that could be turned on and left on and that they would be used for irrigation. The witness said that the valves furnished were not the type ordinarily used for domestic purposes. The witness further testified that he was familiar with the valves and pipe itemized in the invoice (Exhibit 7); that he had visited Tract 2204 and was told by Mr. Hughes that the facilities were to be used to water the grass in the tract and that the complainants wanted the least expensive system possible for this purpose; that he could find only fire hydrants to hook up to; that the invoice costs (Exhibit 7) included

all labor to install the facilities; and that the labor was furnished by the pipe company.

Some five or six months after the valves were installed, about September, 1962, Mr. Hughes advised Mr. Robinson that the 550 valves (Exhibit 8) were not working and asked Mr. Robinson what he intended to do about it. Mr. Robinson told Mr. Hughes that it was not Rancho Ramon's responsibility and, thereafter, the complainants replaced the valves (Exhibit 10).

We find that the facilities installed in Unit 4 by complainant, at a cost of $13,997.96, were not included in the water main extension agreement and were not contemplated by the parties to be installed by defendants or paid for out of the money advanced under the agreement. Complainant is not entitled to reparation based upon this expenditure.

Defendants at no time installed services in the 57 commercial lots. These services were included in the main extension agreement and had not been installed at the time Coachella Valley County Water District acquired possession of the tract. A witness for defendants testified that as far as the main extension agreement was concerned, everything was installed except the services in the 57 commercial lots; that Coachella Valley County Water District wanted in that commercial area a type of service facility different from that contemplated by the water plan drafted by Rancho Ramon; that Rancho Ramon gave the District 6-inch pipe worth approximately $1,000; and that the District agreed to hold Rancho Ramon harmless. At no time did anyone contact complainant relative to this modification, nor ask complainant

if the modification was acceptable. The evidence of defendants' witnesses indicated that the reasonable cost of 57 services would range from $915 to $1,197.

We find that the portion of the advance for construction for Tract 2204 attributable to the 57 services contracted for but not installed by defendants was the sum of $1,197, and that Rancho Ramon's charge for the main extension in Tract 2204 was unreasonable and excessive by $1,197.

Fifth Cause of Action

Complainant's fifth cause of action prays for a total of $669,013.87. This sum is itemized as follows:

1. For restitution and reparation of funds paid under the refunding agreement covering Unit 1, $69,887.99.

2. For restitution and reparation of funds paid under the refunding agreement covering Unit 2, $76,455.17.

3. For restitution and reparation of funds paid under the refunding agreement covering Tract 2040 (Unit 3), $95,185.71.

4. For restitution and reparation of funds paid under the refunding agreement covering Tract 2204 (Unit 4), $109,985.

5. For restitution and reparation of funds advanced to Coachella Valley County Water District, $117,500.

6. For restitution and reparation for plastic pipe, materials, etc., on all four units, $200,000.

The record herein shows that the systems were installed as agreed, in the four tracts which form the basis of the action herein, except for the omissions referred to in the foregoing discussion of Units 1, 2 and 4. We have determined that reparation

is due for those omissions. No further discussion of subdivisions 1, 2, 3 and 4 of the Fifth Cause of Action is necessary; we have no jurisdiction herein to award damages or restitution other than said reparation.

The record shows that complainant was required to advance $117,500 to Coachella Valley County Water District for well construction so that complainant might obtain water. There is no evidence in the record to show that the wells covered by this advance were contemplated in any of said main extension agreements. As no money was collected by Rancho Ramon to cover the cost of these wells, no reparation may be ordered by this Commission. The same is true of complainant's claim for reparation for plastic pipe and appurtenant material installed on complainant's tracts. If complainant has a cause of action for these items, jurisdiction is in the courts.

In its prayer complainant requests an accounting by Rancho Ramon and an order for inspection of books and records of Rancho Ramon. In view of our order herein, said requests, other than to the extent heretofore granted, are moot and we will make no further order regarding inspection or accounting.

Complainant also prays that we require Rancho Ramon to comply with Decision No. 64025, Application No. 43949, insofar as said decision affects complainant; that we impress a lien in complainant's favor on funds due from Coachella Valley Water District to Rancho Ramon; and that we impress a lien in complainant's favor on funds being held by the Bank of America pursuant to a trust agreement entered into between Rancho Ramon and the Bank of America,

the beneficiaries of which are certain creditors of Rancho Ramon. Even if it be assumed that the Commission has the power to grant such relief, no facts have been presented on this record to warrant our doing so. Incidentally, by its terms, Decision No. 64025 is not yet effective.4/

The various motions which have not been heretofore disposed of or are not disposed of by the order herein are hereby denied.

Upon the record herein, the Commission finds as follows:

1. Rancho Ramon is, and was at all times mentioned herein, a public utility water corporation subject to the jurisdiction of this Commission.

2. Palm Springs Panorama is, and was at all times subsequent to August 11, 1959, a limited co-partnership, with Jacob W. Silverman, John Kagan and Sam Manchel as the general partners therein.

3. Prior to August 11, 1959, said Silverman, Kagan and Manchel were general partners in a partnership composed of themselves.

4. On or about June 19, 1959, said Silverman, Kagan and Manchel, and Rancho Ramon executed a main extension agreement relative to Unit 1, located in the vicinity of Palm Springs and containing 614 lots.

5. On or about August 15, 1959, Silverman, Kagan and Manchel assigned their right, title and interest in said main extension agreement to complainant, Palm Springs Panorama.

4/ See footnote 1, above.

6. On or about March 14, 1960, Palm Springs Panorama and Rancho Ramon executed a main extension agreement for Unit 2, containing 646 lots.

7. On or about November 22, 1960, Palm Springs Panorama and Rancho Ramon executed a main extension agreement for Tract 2040 (Unit 3), containing 599 lots.

8. On or about April 27, 1961, Palm Springs Panorama and Rancho Ramon executed a main extension agreement for Tract 2204 (Unit 4), containing 572 lots.

9. Said four agreements concern installation of water distribution facilities in said tracts. They do not concern the construction of wells, plastic pipe, irrigation valves or fittings required or installed by complainant for irrigation purposes in the parcels involved herein.

10. Rancho Ramon contracted with Passmore to construct said water distribution facilities.

11. Passmore agreed to construct said facilities for the amounts stated in said agreements.

12. Rancho Ramon is a party to said agreements. Rancho Ramon agreed that the work contemplated therein would be performed, and it collected the advances therefor. Rancho Ramon selected Passmore to perform the actual construction.

13. Had all of said facilities been constructed by Passmore, the amounts stated in said agreements would have been the actual reasonable cost to Rancho Ramon of the total construction contemplated by said agreements.

14. In installing facilities pursuant to said agreements for Units 1 and 2, Passmore and Rancho Ramon failed to install the services contemplated by said agreements; the advances made by complainant to Rancho Ramon included funds for such services.

15. The amount included in the main extension agreements for the services in Units 1 and 2 which were contemplated by the agreement but not installed by Passmore or Rancho Ramon was $20,000.

16. Rancho Ramon and Passmore performed work upon Units 1 and 2 pursuant to the main extension agreements through December 1960. After said date they failed and refused to comply with their obligations under said agreements.

17. The charge collected by Rancho Ramon from complainant for Units 1 and 2 was unreasonable and excessive in the amount of $20,000.

18. In connection with Units 1 and 2, complainant is entitled to reparation from Rancho Ramon in the sum of $20,000. Said amount should not be deducted from the amount of the advance for said units which is subject to possible refund pursuant to said agreements.

19. In installing facilities pursuant to the agreement covering Tract 2204 (Unit 4), Rancho Ramon and Passmore failed to install 57 services contemplated by said agreement. The advance by complainant to Rancho Ramon included funds for such purpose.

20. The amount included in the main extension agreement for Tract 2204 which was attributable to said 57 services not installed by Rancho Ramon or Passmore was $1,197.

21. The charge collected by Rancho Ramon from complainant for Tract 2204 was unreasonable and excessive in the amount of $1,197.

22. In connection with Tract 2204, complainant is entitled to reparation from Rancho Ramon in the sum of $1,197. Upon being paid by Rancho Ramon to complainant, said amount should be deducted from the amount of the advance which is subject to possible refund pursuant to said main extension agreement.

23. As to complainant, the close relationship between Rancho Ramon and Passmore has not led to an inequitable result.

24. No reparation is due from defendants, or any of them, to complainant under any cause of action alleged herein other than as stated in Findings 18 and 22.

The Commission concludes as follows:

1. The complaint is not barred by sections 735 or 736 of the Public Utilities Code or by section 338, subdivision (1), of the Code of Civil Procedure.

2. The provision of Public Utilities Code section 734 prohibiting this Commission from recognizing the assignment of reparation claims is not applicable to this proceeding.

3. The complaint as against S. I. Robinson, John Moore Robinson, Passmore Development Co., and Passmore Supply Co. should be dismissed.

4. Rancho Ramon should pay complainant as reparation the sum of $1,197 on account of 57 services paid for by complainant but not installed by Rancho Ramon or Passmore in Tract 2204 (Unit 4).

The amount subject to possible refund pursuant to the main extension agreement relative to said tract should be reduced by such $1,197 when paid by Rancho Ramon to complainant.

5. Rancho Ramon should pay complainant as reparation the sum of $20,000 on account of services paid for but not installed by Rancho Ramon or Passmore in Units 1 and 2. The amount subject to possible refund pursuant to the main extension agreement relative to Units 1 and 2 should not be reduced by reason of such payment to complainant.

6. In all other respects the complaint should be dismissed.

O R D E R

IT IS ORDERED that:

1. Rancho Ramon Water Co., a corporation, shall pay to Palm Springs Panorama, a limited partnership, as reparation, the sum of $21,197.

2. The main extension agreement between complainant and Rancho Ramon Water Co. and relating to Tract 2204, near Palm Springs, Riverside County, California, shall be modified from time to time by deducting from the amount therein which remains subject to refund any amount or amounts paid from time to time to complainant pursuant to Paragraph 1 of this order, subject to a maximum deduction of $1,197.

3. In all other respects the complaint herein is dismissed.

The Secretary of the Commission shall cause a certified copy of this decision to be served upon each of the parties. The effective date of this decision, as to each party, shall be twenty days after the date of such service upon such party.

Dated at San Francisco, California, this 21st day of MAY, 1964.

President

Commissioners