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DEC 19 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Sheila Kurwitz
 Millsaps doing business as BL&E
 to sell and Bud Peltonen to buy
 the water system in Humboldt
 County.

Application 84-01-68
 (Filed January 31, 1984)

ORIGINAL

O P I N I O N

Sheila Kurwitz Millsaps seeks authority to sell the water system of BL&E, Inc. to Bud Peltonen who joins in the application. The system is located near Trinidad in Humboldt County and serves 24 customers in Big Lagoon Park Subdivision, Block A.

Seller

The applicant seller, Millsaps, is the widow of Richard Kurwitz, who purchased all the stock in BL&E, Inc. from Georgia-Pacific Corporation. (Decision 81917, dated September 25, 1973, in Application 54285.) In 1975 Richard Kurwitz was killed in a traffic accident, and his widow, since remarried to Ron Millsaps, now operates the system.

Millsaps is not the proper seller, a fact which she recognizes. In her answers to interrogatories propounded by Administrative Law Judge (ALJ) Baer, Millsaps states that: "The designation in the caption, 'Application of Sheila Kurwitz Millsaps, dba BL&E...' is in error. The application should read and request is hereby made to amend the application to 'Application of Sheila Kurwitz Millsaps, as Administratrix of the Estate of Richard A. Kurwitz, the sole shareholder of BL&E, Inc., a corporation.'"

We will, however, overlook this technical defect since it is imperative that this system be placed in the hands of someone who is willing to operate it in the public interest. Moreover, since

1975 Sheila Millsaps has held herself out as the sole person with any right, title, or legal interest in BL&E, has corresponded with the Commission staff on behalf of BL&E, has operated the water system, and is deemed by the customers to be responsible for it.

Buyer

Bud Peltonen is a 44 year-old resident of the subdivision served by BL&E's system. He alleges that, after examining all other alternatives, he believes it is in his best interest as a resident to attempt to rejuvenate the system and to put it on a break-even basis. He also believes that he is the best qualified resident of the subdivision to operate the system and cites his experience as a land surveyor (15 years), as an operator of 40 to 60-foot boats with many and complex pumping systems (10 years), and as an unlicensed, self-employed builder. Peltonen's financial statement is attached to the application. It shows assets of \$327,000, liabilities of \$30,000 (owed on a house in Eureka) and net worth of \$297,000. Listed as real property owned by himself is BL&E at a cost of zero and present value of \$35,000. The application states that the original cost of the water system is \$38,000, but that the depreciation reserve is unknown. Thus, the net book cost is unknown.

Description of Water System

In the application the applicants state that the system consists of one well, 12 inches in diameter and 108 feet deep; two pumps, one at 15 hp and one at 5 hp, producing a total of 360 gallons per minute; two storage tanks with total capacity of 28,000 gallons; 3,334 feet of 6-inch asbestos-cement mains; and 24 services, 22 of which are metered.

Since the filing of the application, Peltonen informed the ALJ that he had constructed and connected a second well to the system. This information was confirmed in the verified answers to interrogatories filed by Millsaps.

Transaction

From a deed attached to the application, it appears that Sheila Millsaps conveyed an interest in BL&E's real property to Peltonen on August 23, 1983. The deed was recorded September 6, 1983. A bill of sale dated October 3, 1983 and signed by Sheila Millsaps for BL&E transfers all water system facilities to Peltonen. The purchase price for all transferred real and personal property is zero. It is clear that applicants expect us to ratify a transaction that has already occurred in fact, if not in law.¹

Discussion

Certain aspects of this transaction are disturbing. We note, first, that in the Corporation Grant Deed attached to the application and by which Peltonen allegedly obtained an interest in the real property of BL&E devoted to water service, the grantor is not BL&E, Inc. but Klamath Cutters, Inc., a California corporation, which was at one time 100% owned by Richard Kurwitz. According to an unsigned copy of BL&E's 1982 Federal Income Tax Return attached to the application, the estate of Richard Kurwitz owned 100% of the common stock of Klamath Cutters, Inc. as of December 31, 1982.

¹ Every sale of utility property, with certain exceptions not relevant here, is void without authority. Public Utility Code § 851.

Second, in that same deed, the property is not conveyed in fee simple absolute. Rather, Peltonen is granted:

"...all that real property situated in the unincorporated area of the County of Humboldt, State of California, described as follows:

"The exclusive right to use, repair, alter, reconstruct, replace and maintain the existing tanks, wells, springs, water collection and distribution systems, with related appurtenances such as pumps, pipelines and miscellaneous equipment located in, on and under those parcels of land described as follows:

"BEGINNING on the South line of Park Drive, as shown on the Map of Tract No. 22 (Big Lagoon Park Subdivision - Block A)..." (The remainder of the legal description is in metes and bounds.)

Even assuming that Klamath Cutters, Inc. had any title to convey, the above-quoted language does not appear to convey anything but an easement or license.

Third, we note the Bill of Sale, by which Peltonen became the owner of BL&E's physical plant recites: "For value received..." Because the application shows no monetary payment being made by Peltonen to BL&E for either the plant or the real property, we are left to wonder what thing of value he gave or promised to give in exchange for the rights he purports to receive.

However, a staff investigation by the Commission's Transportation Division representative in Eureka and answers to the ALJ's interrogatories have answered some of the questions raised by the application. A staff search of the probate file reveals that Richard Kurwitz died intestate on August 19, 1975. On September 19, 1975, Sheila Kurwitz filed a petition for letters of administration. On November 18, 1975, the court appointed her administrator of the estate of Richard Kurwitz.

On May 9, 1978, Sheila Kurwitz filed a petition for order directing conveyance of real property. She alleged that certain real property recorded in the name of Richard Kurwitz was in fact the property of Klamath Cutters, Inc., a California corporation. She further alleged that:

"The court will not, by issuance of the requested order, lose jurisdiction over said property because one hundred percent (100%) of the ownership of the outstanding capital stock of Klamath Cutters, Inc., is a community property asset of the probate estate of the decedent and of petitioner."

She asked the court for an order directing her to execute and deliver a conveyance of the real property to Klamath Cutters, Inc. The real property involved consisted of four parcels. Parcel 2 is the parcel that is involved in this application. By order dated May 30, 1978, the court directed Sheila Kurwitz to convey the four parcels to Klamath Cutters, Inc.

Much later, by Corporation Grant Deed dated August 23, 1983, Klamath Cutters, Inc. conveyed Parcel 2 to Bud Peltonen. The deed is signed by Sheila Kurwitz Millsaps, President and Secretary of Klamath Cutters, Inc.

For our purposes it is sufficient that information in our formal file or in the probate file (of which we may take official notice) shows that on December 14, 1963, Louisiana-Pacific Corporation conveyed the real property in question to Richard A. Kurwitz; that upon his death in 1975 his estate succeeded to his interest in that property; that the probate court directed Sheila Kurwitz Millsaps, as administratrix, to convey the property to Klamath Cutters, Inc; and that acting as president of Klamath Cutters, Inc. Sheila Kurwitz Millsaps conveyed that property to Peltonen.

It is clear from the copies of deeds in the file that Richard A. Kurwitz only owned an easement or license in the real property used by the BL&E water system. The language describing the real property in the grant deed from Louisiana-Pacific Corporation to Kurwitz is identical to the legal description in the corporation grant deed from Klamath Cutters, Inc. to Peltonen.

We believe the above account adequately disposes of our first and second concerns described above. Our third concern was the price paid, if any, for the water system. The application shows that Peltonen paid nothing for the system, which has a value of \$35,000. The ALJ asked by interrogatory: "What thing of value did Bud Peltonen give or promise to give in exchange for the physical plant and real property of BL&E, Inc.?" Millsaps answered: "In consideration of Mr. Peltonen's receiving all of the assets of BL&E, Inc., he would take over and assume all responsibilities in connection with the operation, maintenance and improvement of the water system. Applicant is informed and believes that he has fulfilled his terms of the agreement by improving the system and constructing a backup well and performing other miscellaneous improvements."

Thus, Millsaps was apparently willing to convey the water system facilities to Peltonen gratis in exchange for his promise to assume the responsibility to operate, maintain, and improve the system.

While this transaction is not entirely free of questions, the staff nevertheless supports the transfer as a means of placing the system in the hands of a person who is willing to operate it for the benefit of the ratepayers. The applicants have represented to the ALJ and to the staff that Peltonen has completed a second well and has connected it to the system. This will allow the restriction upon the number of customers to be lifted and property owners will be permitted to develop or sell their lots in the subdivision served by BL&E.

Findings of Fact

1. Peltonen has the financial and technical ability to operate the water system of BL&E, Inc.
2. Peltonen is already operating the water system and the transfer for which authority is sought has already occurred in fact, if not in law.

3. Peltonen is willing to assume the public utility obligation associated with the water system and to operate it in the public interest.

4. The seller has in the past been unresponsive to staff correspondence, customer complaints, and Commission orders and has not been able to operate the system in accordance with her statutory obligation nor with the rules, regulations, and orders of the Commission.

5. There are no protests. A public hearing is not necessary.

Conclusions of Law

1. The application should be granted.

2. The transfers of real property and water system facilities described in the application as having occurred in 1983 without Commission authority should be ratified.

O R D E R

IT IS ORDERED that:

1. The application is granted and the transfers of real property and water system facilities occurring in 1983 between Sheila Kurwitz Millsaps, seller, and Bud Peltonen, buyer, as set forth in the application, are hereby ratified.

2. Buyer shall assume the public utility obligations of seller.

3. Buyer shall either file a statement adopting seller's tariffs or refile those tariffs under its own name as prescribed in General Order Series 96. Rates shall not be increased unless authorized by this Commission.

4. Seller shall deliver to buyer, and buyer shall keep, all records of the construction and operation of the water system.

5. Within 90 days after the effective date of this order, buyer shall file in proper form, an annual report on the water system's operations for the calendar year 1983.

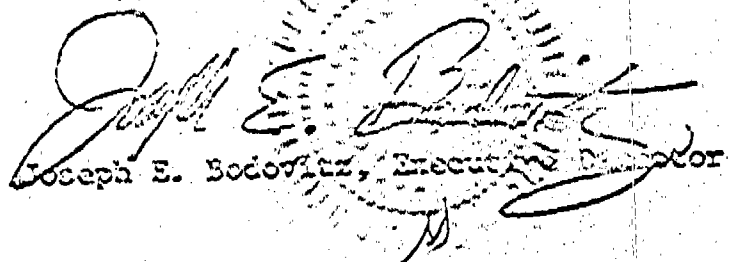
6. When this order has been complied with, seller shall have no further obligations in connection with this water system.

This order becomes effective 30 days from today.

Dated DEC 19 1984, at San Francisco, California.

DONALD VIAL
President
VICTOR CALVO
PRISCILLA C. GREW
WILLIAM T. BAGLEY
FREDERICK R. DUDA
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director