

Decision 99-11-020 November 4, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PONDEROSA COMMUNITY SERVICES DISTRICT to the Public Utilities Commission.

Application 98-07-062
(Filed July 23, 1998)

OPINION

Summary

Rosella Water Company's purported transfer of a well site and related facilities to Fox is void pursuant to Pub. Util. Code § 851.

Background

On July 23, 1998, Ponderosa Community Services District (Ponderosa), as receiver for Rosella Water Company (Rosella),¹ filed this application with the Commission seeking a determination that any transfer of a well and wellsite from Rosella is void, pursuant to Pub. Util. Code § 851.²

On November 9, 1998, Ray and Juanita Fox (Fox) filed a petition to intervene in this proceeding in which they alleged that they were the owners of the real property in question and that the Commission lacked jurisdiction to resolve this complex matter of disputed land title. Fox alleged that they had loaned \$50,000 to DMC, Enterprises (DMC), a real estate developer. Donald G.

¹ Commission Resolution W-4053, dated July 16, 1997 approved the transfer of control from Rosella to Ponderosa ordered by Case No. 96-175503 of the Superior Court of the State of California in and For the County of Tulare.

² Unless otherwise indicated, all citations are to the Public Utilities Code.

Carter was the owner of Rosella Water Company and the president of DMC. The loan was secured by a deed of trust to the property in question and upon default of DMC, Fox had foreclosed on the deed of trust and was currently in possession of the property, including the wellsite.

On December 17, 1998, the assigned Administrative Law Judge (ALJ) conducted a prehearing conference at which the parties initiated settlement discussions. The parties agreed to meet and confer, and to obtain an appraisal of the well and well site.

Settlement negotiations proved unsuccessful. After consultation with the parties, the ALJ issued a procedural schedule pursuant to which the parties filed a stipulated factual record and briefed legal issues.

On July 6, 1999, the ALJ mailed her draft decision. Although not required by § 311(g), the ALJ determined that such mailing and comments would be useful to the Commission. Fox submitted comments on the draft decision in which they contended that this decision had "become a classic quiet title, contract, and equity case over which the P.U.C. does not have, and should not seek to exercise, jurisdiction." As noted in Conclusion of Law 3, the Commission's jurisdiction does not extend to determining interests in or title to real property. Section 851 does, however, empower the Commission to declare void transactions regarding public utility property transfers which have not been approved by the Commission.

Ponderosa submitted comments on behalf of Rosella which generally supported the draft decision and noted that the majority of Fox's comments focused on allegations of fraud and improper dealings by Carter. Ponderosa observed that these allegations may present a basis for an action against the estate of Carter but not against Rosella.

On September 19, 1999, the ALJ issued a ruling which noted that Exhibit 22 of the documents submitted by the parties was a grant deed to Ray E. Fox and Juanita M. Fox which was signed by Donald Geoffrey Carter for Rosella Water Company. The ruling went on to note that the Commission's files contained no record of Commission authorization for this individual to assume control of Rosella. Such authorization is required by § 854; absent authorization all purported actions are void. The Commission pointed out this requirement in Re Rosella Water Company, 45 CPUC2d 424, 425 (1992). The ruling allowed parties to brief this issue.

In their brief Fox stated "the validity of Fox's title to the property in question does not depend on the validity of the 1996 deed, but derives from the 1993 foreclosure and prior events." Fox Brief, October 7, 1999, at p. 8.

Ponderosa filed a brief and a reply brief, both of which contended that the Commission did not authorize Donald Geoffrey Carter to assume control of Rosella.

Chronology of Transactions

March 13, 1973	Earliest Commission decision for Rosella Water Company, a water utility owned by Donald G. Carter.
March 16, 1983	Fox lends \$50,000 to DMC Enterprises, secured by deed of trust to a 40-acre parcel of real property known as "Tract 652."
1986	Well drilled, pipeline installed on Tract 652.
August 1988	Subdivision map shows "well easement" and "waterline easement" as well as detail of well structure, dispute as to whether or not recorded.
June 20, 1989	Commission Staff report notes existence of well and

water system and that it is interconnected with Rosella's system, and that Rosella, not a new mutual water company, should serve the new development.

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|--------------------|---|
| December 4, 1989 | Rosella files Advice Letter 14 seeking authorization to expand its service area to include Tract 652 and the well facility. |
| January 24, 1990 | Commission issues Decision (D.) 90-01-033 which authorizes Rosella to serve Tract 652. |
| March 5, 1991 | Fox re-conveys deed of trust to DMC |
| March 5, 1991 | DMC executed new deed of trust in favor of Fox covering a 13-acre portion of the original 40-acre parcel. |
| April 18, 1991 | DMC filed subdivision map for 13-acre parcel which shows "well site and water line easement." |
| May 1, 1991 | Fox filed new deed of trust. |
| July 21, 1993 | DMC recorded easement to Rosella. |
| September 30, 1993 | Fox foreclosed on 13-acre parcel and took title. |
| March 18, 1996 | Donald Geoffrey Carter issued grant deed to Fox extinguishing 1993 easement. |

Commission Jurisdiction

The Commission has exclusive jurisdiction to authorize public utilities to "sell, lease, assign, mortgage, or otherwise dispose of or encumber . . . property necessary or useful in the performance of its duties to the public." Pub. Util. Code § 851. All such transactions undertaken without Commission authorization are void.

Where a purchaser, lessee or encumbrancer deals with public utility property in good faith and for value, the property will be presumed to be not

necessary or useful to the public utility in the performance of its duties. Thus, a good faith purchaser for value may obtain the property notwithstanding the lack of Commission authorization.

In exercising its jurisdiction under § 851, the Commission may determine a public utility's right to sources of water as a necessary incident to its regulation of public utility assets. This statute, particularly when read together with § 761 requiring adequate service, "unquestionably permits the Commission to prevent disposal of such property by indirection, as by failure to exercise or safeguard rights possessed by the utility." (Camp Meeker Water System, Inc., v. Pub. Util. Com., 51 Cal 3d 845, 862 (1990).)

The Commission's jurisdiction does not, however, extend to determining the validity of contracts, whether claims may be asserted under a contract, or interests in or title to property. (Id. at 861.) In briefs and declarations, Fox contends that this case raises "complex issues of real estate law, equity, and constitutional law" which should be resolved by a court of general jurisdiction. We would also observe that probate law may also be implicated.

These issues are beyond the Commission's jurisdiction pursuant to the Public Utilities Code. Our decision is limited to the parameters of § 851. Other claims and defenses against these parties and others must be pursued in the appropriate court.

Was the Well Necessary and Useful in Rosella's Performance of Its Duties to the Public?

DMC, the real estate developer, drilled the well in 1986. At that time, DMC contemplated creating a new mutual water system to serve the new development, with a system entirely separate from Rosella. Subsequently, for reasons unclear on this record, DMC interconnected the well system with Rosella's. When inspecting Rosella's system to prepare its report for Rosella's

1989 rate case, Application 89-04-032, Commission staff observed this interconnection and, because Staff believed that the new mutual system was still being contemplated, they recommended that the interconnection be severed.

On December 4, 1989, Rosella filed its Advice Letter 14 which extended its service area to include Tract 652 and included the well and storage tank as part of the utility property. The Commission recognized the change in plan from a new mutual company to Rosella in an interim opinion issued in the 1989 rate case proceeding:

Since submission, applicant has abandoned his plans to start a mutual; applicant [Rosella] has instead filed an advice letter to serve the new market. This outcome is in the public interest and we commend applicant.

* * *

The connection to the systems serving Tract 652 is of potential use to customers for back-up supply and for use against wildfires. It should not be severed.

* * *

The new well in what was to be the mutual service area provides enough water to serve that area applicant [Rosella] should be permitted to expand.

(D.90-01-033, mimeo at 15, Findings of Fact 6, 15.)

In the final decision on the Rosella's rate case, the Commission again recognized that the developer had abandoned its plans to create a new mutual water system, and that instead Rosella would serve the new development. The decision stated that "the proposed mutual had the best well in the area. That supply is now available to all customers." (D.92-09-042, at p.16.) Accordingly,

the well and its related facilities became part of the Rosella system on the effective date of the interim decision, January 24, 1990.

The next question is whether Rosella ever abandoned the well. Fox alleges that, if the well and related facilities were ever necessary and useful, Rosella abandoned the facilities at some point in 1993 when electricity service was terminated and the interconnection severed and capped. Fox, however, has provided no evidence that Rosella intended to abandon the well. Moreover, by its application, Ponderosa is asserting on Rosella's behalf its desire to use this resource.

Transactions After January 24, 1990

As of January 24, 1990, the developer and Rosella had committed to public service the well site and easement, subject to Fox's deed of trust which pre-dated the transfer of the well from DMC to Rosella. On March 5, 1991, Fox re-conveyed his deed of trust to DMC, thus relinquishing all his interest in the property, including the well site, insofar as the documents show.³ Section 851 did not apply to that transaction because no public utility transferred property; Fox is not a public utility. Thus, the document is effective to extinguish Fox's interest in the property: "having received from holder of the obligations thereunder a written request to reconvey, reciting that all sums secured by the deed of trust have been fully paid, and said deed of trust and the note or notes secured thereby having been surrendered to said trustee, for cancellation, does hereby reconvey without warranty . . ." DMC recorded the reconveyance on March 14, 1991.

³ Fox raises in a footnote the possibility that either the 40 acre parcel or the 13 acre parcel may be subject to equitable lien. This contention is not developed, nor is the Commission's jurisdiction to consider such a remedy.

Also on March 5, 1991, DMC executed in Fox's favor a deed of trust to the remaining 13-acre parcel. Fox recorded the 13-acre deed of trust on May 1, 1991.

Neither party has presented for the record any document whereby Rosella appears to approve the encumbrance of its well site and easement by Fox. Similarly, the Commission's records do not reveal any Commission authorization of such an encumbrance. Accordingly, the March 5, 1991, deed of trust between Fox and DMC does not affect the property of Rosella. A similar result also occurs regarding Fox's foreclosure on the deed of trust to the 13 acre parcel.

Transfer of Developer's Interest to Rosella

In comments on the draft decision, Fox raises the issue of compensation to the developer (DMC) for the transfer of the well to serve Tract 652. Typically, developers donate facilities to the water utility which will serve a new development. The developer receives the compensation of water service to the development. Tariff Rule 15 contains standard contracts for the contribution of facilities which are required to be signed prior to submission of the Water Supply Questionnaire upon which service area expansions are based. Where a standard contract is used, the actual agreement transferring the contributed assets, which often includes water supply, is not filed with the Commission but rather is retained by the utility. Here, the records of Rosella which should have included this document are apparently unavailable. The Commission decision, however, is clear that the well had become Rosella's property and was available to all its customers.

Good Faith for Value Exception to § 851

There is one exception to the harsh results of § 851:

[A]ny disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee, or encumbrancer dealing with the property in good faith for value.

In apparent reliance on this exception, Fox has attempted to show that he was a good faith encumbrancer for value with the 1991 deed of trust.

Turning first to the 1991 deed of trust, the statute requires that the transaction be with the public utility. That document is executed only by DMC Enterprises, Inc. Rosella was not a party to that transaction. Thus, the terms of the statute do not apply.

The 1993 Easement and 1996 Grant Deed

Neither Fox nor Rosella claim that these documents have any effect on the issues in this case. Accordingly, questions regarding the validity of the 1993 and 1996 documents are not before us.

Findings of Fact

1. DMC developed residential real estate.
2. Donald G. Carter was the owner of Rosella Water Company and president of DMC.
3. In 1986 DMC drilled a well and constructed well-related facilities, including a large tank on a 40-acre parcel of real property which included "Tract 652."
4. Some time prior to June 20, 1989, Tract 652 well and water system were interconnected with Rosella's system.

5. On December 4, 1989, in its Advice Letter 14, Rosella sought Commission authorization to expand its service territory to include tract 652 and 638 which included representations that the real estate developer, DMC, had contributed the well and related facilities as a "new source of supply provided in support of this subdivision."

6. On January 24, 1990, the Commission approved Rosella's extension of service territory to include tract 652 and 638.

7. Fox loaned DMC \$50,000 on March 3, 1983, which was secured by a deed of trust to the 40-acre parcel, which he reconveyed to DMC on March 5, 1991, in exchange for a deed of trust to the 13-acre parcel known as Tract 652, on which Fox foreclosed in 1993.

8. No evidence was presented that the Commission authorized any encumbrance on Rosella's facilities located in Tract 652.

9. No evidence was presented that the Commission authorized Rosella to dispose of its Tract 652 property.

10. Rosella's Advice Letters 14 and 14A and Commission D.90-01-033 define Rosella's facilities as an 100 gpm well and related storage tank and connection pipes.

11. No real property is described in Advice Letters 14 and 14A as being transferred to the Rosella.

12. Rosella's facilities can not be accessed without crossing Tract 652 property.

Conclusions of Law

1. The Commission has exclusive jurisdiction to authorize public utilities to sell, lease, assign, mortgage, or otherwise dispose of or encumber all property necessary or useful in the performance of its duties to the public. Absent such

authorization the transaction is void, except as regards good faith purchasers or encumbrancers for value.

2. As an incident of this jurisdiction and for these purposes only, the Commission may interpret transactions related to public utility property.

3. The Commission's jurisdiction does not extend to determining interests in or title to property.

4. The Commission authorized Rosella to extend its service territory to include tract 652 and 638.

5. The Commission determined that the well and related facilities on Tract 652 were necessary and useful in serving Rosella's customers in the additional areas as well as Rosella's other customers.

6. Rosella did not execute the 1991 deed of trust to Fox, nor did Rosella execute any other document which purported to encumber its Tract 652 property.

7. The Commission did not authorize Rosella to encumber its facilities on Tract 652.

8. Pursuant to § 851, the purported 1991 encumbrance of Rosella's property is void.

9. Rosella received no value for the purported encumbrance.

10. Fox is not a good faith encumbrancer for value under the 1991 purported encumbrance.

11. As the 1991 encumbrance is void as regards Rosella's property, the 1993 foreclosure of the deed of trust is similarly void.

12. Fox does not claim title to the well pursuant to the 1996 deed.

13. Questions regarding the validity of the 1993 easement and the 1996 deed are not before us.

14. The record shows that Rosella is the sole owner of the well and related facilities on Tract 652.

15. It is necessary for Rosella to have access to operate, maintain, and reasonably expand its Tract 652 facilities.

16. It is reasonable to conclude that such access was granted from DMC when it transferred the well and related facilities to Rosella.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The 1991 deed of trust is void as regards Rosella Water Company's (Rosella) property.

2. Ponderosa, the receiver for Rosella, is directed to reclaim control of Rosella's facilities and to employ those facilities in the service of Rosella's existing and future customers.

3. This proceeding is closed.

This order is effective today.

Dated November 4, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners