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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DOROTHY MARKOT, ET AL.,
Plaintiffs,
-VS-
SAN BERNARDINO COUNTY FLOOD CONTROL
DISTRICT, ET AL.,
Defendants.

Case No. RCV-06884

REPORTER'S TRANSCRIPT OF ORAL PROCEEDINGS
BEFORE HON. PAUL M. BRYANT, JR., JUDGE
DEPARTMENT 1
RANCHO CUCAMONGA, CALIFORNIA
MONDAY, JUNE 26, 1995

APPEARANCES:
For the Plaintiffs: LASKIN & GRAHAM
BY: RICHARD LASKIN
Attorney at Law
800 North Brand Boulevard
Suite 840
Glendale, Calif. 91203-1244
(818) 547-4800

(Appearances continued on
following page.)

ORIGINAL

DANA C. LUNDQUIST
REPORTER PRO TEMPORE
CSR No. 9782; RPR No. 817605

1 APPEARANCES: (Continued)

2 For the Defendant
3 COUNTY OF SAN BERNARDINO
4 FLOOD CONTROL DISTRICT:

OFFICE OF THE COUNTY COUNSEL
BY: ALAN L. GREEN
Deputy County Counsel
385 N. Arrowhead Avenue
4th Floor
San Bernardino, CA. 92415-0140
(909) 387-5288

6 For the Defendant
7 CHINO BASIN MUNICIPAL
8 WATERMASTER:

NOSSAMAN, GUTHNER, KNOX &
ELLIOTT
BY: JOHN OSSIFF
Attorney at Law
445 South Figueroa Street
31st Floor
Los Angeles, CA. 90071
(213) 612-7800

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1 RANCHO CUCAMONGA, CALIF.; MONDAY, JUNE 26, 1995; 8:30 A.M.

2 DEPARTMENT 1 HON. PAUL M. BRYANT, JR., JUDGE

3 APPEARANCES:

4 RICHARD LASKIN, Attorney at law,
5 representing the Plaintiffs
6 Dorothy Markot, et al.; ALAN L. GREEN,
7 Deputy County Counsel, representing the
8 Defendant San Bernardino County Flood
9 Control District; JOHN OSSIFF, Attorney at
10 Law, representing the Defendant Chino
11 Basin Watermaster.

12 (Dana C. Lundquist, CSR/RPR, Reporter Pro
13 Tempore, No. 9782)

14 -o0o-

15 THE COURT: Dorothy Markot versus San Bernardino
16 County Flood Control District.

17 MR. GREEN: Alan Green, County Counsel's Office, on
18 behalf of San Bernardino County Flood Control District.

19 MR. OSSIFF: John Ossiff of Nossaman, Guthner, Knox &
20 Elliott, on behalf of Defendant Chino Basin Watermaster.

21 MR. LASKIN: Richard Laskin, L-a-s-k-i-n, for
22 plaintiffs.

23 THE COURT: The matter's here on two motions for
24 summary judgment. The first was filed by the Chino Basin
25 Watermaster, was filed on March the 17th. The Court has, in
26 fact, reviewed each of the documents which were filed on that
27 date on behalf of the Watermaster.

28 On March the 17th, the County of San Bernardino Flood

1 Control District joined in the Watermaster's motion for
2 summary judgment and the motion for summary judgment overall.
3 The Court has reviewed each of the documents filed in relation
4 to that motion.

5 Court has also reviewed opposition that was filed to
6 Chino Watermaster's motion for summary judgment filed on
7 behalf of Plaintiffs on June the 12th, along with the
8 attachments thereto. The Court has also reviewed opposition
9 that was filed to San Bernardino County Flood Control
10 District's motion for summary judgment, again filed by the
11 Plaintiff on June the 12th.

12 The Court has read a reply that was filed on behalf of
13 the Watermaster on June the 21st, and also a declaration by
14 Abraham Meltzer on that same date.

15 Was there a reply filed by the County?

16 MR. GREEN: No, your Honor.

17 THE COURT: The tentative is as follows:

18 Watermaster's motion for summary judgment is granted.
19 The spreading of water is within the scope of the written 1940
20 easement that the San Bernardino County Flood Control District
21 holds on the East Etiwanda Creek Property. The Watermaster
22 has no control over or responsibility or liability for the
23 San Sevaine Project that has been proposed by the Flood
24 Control District. Referring to the Watermaster's Exhibit A in
25 Stewart's declaration, paragraph seven.

26 San Bernardino County Flood Control District's motion
27 for summary judgment is granted. The Flood Control District
28 has not moved to condemn the property and there have been no

1 unreasonable precondemnation activity. It appears the Flood ³
2 Control District could have and can accomplish the San Sevaine
3 Project simply by using the easement. Again referring to
4 Watermaster's Exhibit A and declaration of Neeb.

5 Assuming that remains the Court's order, then I will
6 ask the prevailing party to give notice and prepare an
7 appropriate order. That also being the tentative, I expect
8 counsel for Plaintiff wishes to be heard. You may.

9 MR. LASKIN: Well, your Honor, I thought I had said
10 it all in my responding papers. I am particularly concerned
11 about the Court's interpretation of the documents that grants
12 the easement.

13 The Court has made no comment about the fact that the
14 reservation of the right to spread water and the right to own
15 water is absolute in the grantor. Irrespective of what has
16 happened since then, no right to use water, no right to sink,
17 spring, or spread water is conveyed by the grantor under those
18 circumstances. The use of the term "water conservation" is
19 meaningless unless the Court -- and I don't understand. Well,
20 the Court --

21 THE COURT: I think you have to read water
22 conservation in light of the 1939 legislation creating flood
23 control district. I think if you do that, that term's not
24 without consent or meaning.

25 MR. LASKIN: Well, but water conservation read in
26 light of sinking or spreading water, water conservation is
27 general; sinking or spreading water is specific. The right to
28 sink or spread water is specifically reserved to the grantor,

1 my client's predecessors. The general or the specific
2 controls the general. It's right in here.

3 I don't know how else I can argue it other than to say
4 that we have the specific activity that they are doing
5 reserved to us, not to them, spreading water and sinking
6 water.

7 The general proposition of water conservation is
8 fine. Then I argued the easement. The very top of the
9 easement talks about maintenance of official channels. The
10 very end of the easement talks about the right to construct,
11 reconstruct, maintain and repair a channel and related works.

12 That's basically -- the Court, I think, is
13 interpreting this document without hearing all of the evidence
14 that is appropriate. In other words, I don't think that the
15 Court has before it a pure matter of law to be determined
16 outside of other facts.

17 The easement, in my opinion, on the face of it,
18 doesn't give them what they say they have got. I don't know
19 what else to say.

20 As far as the San Bernardino County is concerned, I
21 don't know how anybody can get around the Peninsula
22 Enterprises that says if you've got acquiring stage, if you
23 made an offer, you're beyond planning.

24 The whole purpose of the Klopping case was to prevent
25 public agencies who have a need or desire to acquire property
26 from stalling property owners for years, from coercing them
27 into taking a lesser amount for the property.

28 Here is an agency that has gone out and has appraised

1 the property along with another property. There are two
2 properties being appraised. This is a regular project, not
3 just simply a single favor they are doing to somebody. They
4 have made the offer, they still have the offer open. They
5 have even gone so far as to send them a grant deed. That is
6 one of the exhibits here to be signed by these owners.

7 Now what more is there that I can argue to say that
8 the property in the project is in that acquiring stage?

9 THE COURT: I didn't say that you hadn't adequately
10 covered your position in your paperwork. That wasn't my
11 allegation. My allegation was -- or my indication was -- I
12 shouldn't say allegation -- indication was that if you wish to
13 be heard, you have that right and I give you that
14 opportunity. That's not to say that you haven't covered it
15 adequately or to challenge you to say what more you could say.

16 MR. LASKIN: Well, that's about all I got, your
17 Honor. I think that it's clearly -- the deed that does not --
18 I think the deed is being given an opposite construction.

19 I mean, I cannot understand why somebody would give
20 away most of his property to be used by a public agency and
21 continue to pay taxes on it for the next 27 years, or more.
22 The Court would be -- the Watermaster would have the Court
23 believe that the original grantor gave virtually his entire
24 property for the construction of a -- for this use, leaving
25 himself no use whatsoever, the bear legal title of which to
26 pay property taxes for 55 years.

27 I don't know what more there is to argue, your Honor.
28 I thought I did a good job.

1 THE COURT: You did do a good job. Thank you, sir.
2 Did either one of you wish to be heard?

3 MR. OSSIFF: Your Honor, there are a number of
4 responses. Unless the Court's inclined to change its ruling
5 and wants to hear more in response, I submit.

6 MR. GREEN: I join with Mr. Ossiff.

7 THE COURT: The tentative is, in fact, the order of
8 the Court.

9 Have a good day.

10 (The proceedings were concluded.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DOROTHY MARKOT, ET AL.,)
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 Plaintiffs,)
)
 -vs-)
)
 SAN BERNARDINO COUNTY)
 FLOOD CONTROL DISTRICT,)
 ET AL.,)
 Defendants.)

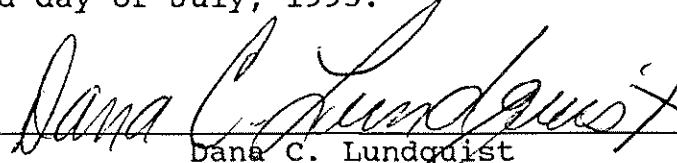
Case No. RCV-06884

County of San Bernardino)
) SS.
 State of California)

REPORTER'S CERTIFICATE

I, Dana C. Lundquist, a Certified Shorthand Reporter, pro tempore for the County of San Bernardino, State of California, do hereby certify that the foregoing pages 1 through 6, inclusive, comprise a full, true, and correct transcript of the proceedings taken in the matter of the above-entitled matter on June 26th, 1995.

Dated this 2nd day of July, 1995.


Dana C. Lundquist
Reporter Pro Tempore, CSR #9782

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PROOF OF SERVICE

I, Nick O'Connor, declare:

1. I am employed in the County of Los Angeles, State of California, by Nossaman, Guthner, Knox & Elliott, 445 South Figueroa Street, Thirty-First Floor, Los Angeles, California 90071-1602. I am over the age of 18 and not a party to this action.

2. On today's date, I served the REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION BY DEFENDANT CHINO BASIN MUNICIPAL WATER DISTRICT FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION OF ISSUES by placing a true and correct copy of same in sealed envelopes addressed as follows:

Richard Laskin, Esq.
John S. Peterson, Esq.
Laskin & Graham
800 North Brand Boulevard, Suite 840
Glendale, CA 91203-1244

Alan Green, Deputy County Counsel
Alan K. Marks, County Counsel
385 North Arrowhead Avenue
San Bernardino, CA 92415-0140

3. I then placed said envelopes for collection, processing and mailing by Nossaman, Guthner, Knox & Elliott personnel with the United States Postal Service on today's date, following Nossaman, Guthner, Knox & Elliott's ordinary business practices. Pursuant to these practices, with which I am familiar, sealed, addressed envelopes are deposited in the ordinary course of business with the United States Postal Service on the same date they are collected and processed, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this 14th day of August, 1995, at Los Angeles, California.

Nick O'Connor