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Becker v. Pieper, 32 P.3d 912 (Ore. App. 2001)

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with the DEP and the development company without the disagreement of the Property Owners. These facts entitled the Association to assume the role of assessing repair costs.

Stefania Niro

OREGON

Becker v. Pieper, 32 P.3d 912 (Ore. App. 2001) (holding the trial court erred when it relieved respondents of a default judgment against them in suit for reformation of contract, declaration of water rights ownership, and money judgment for unjust enrichment).

Becker owned a ninety-acre parcel of land and the water rights to that land. He intended to transfer the water rights from that land to another parcel of land he owned before subdividing and selling the ninety-acre parcel. He initiated a water rights transfer with the Oregon Water Resources Department, and then sold the subdivided parcels. Becker's initiation of the water rights transfer did not suffice to sever the rights from the subdivided property. Unbeknownst to Becker at the time, he conveyed the property's water rights to Pieper and the other defendants (collectively "Pieper") because the contracts for the sale of the land did not contain any language reserving the water rights to Becker. When Becker learned of the unintentional transfer of water rights to Pieper, he asked all the new property owners for permission to complete the transfer of water rights as he intended. All refused.

Becker filed suit for reformation of his sale contracts to Pieper, declaration he was rightful owner of the water rights, and a money judgment against Pieper on the theory of unjust enrichment. Becker and Pieper entered into binding arbitration pursuant to the sale documents. The arbitrator found in Pieper's favor and entered judgment with the trial court accordingly. The trial court granted the non-defaulting defendants' motion to dismiss Becker's suit for reformation and declaratory judgment, and entered judgment in their favor.

Seven defendants, respondents in the appeal ("Pieper et. al"), failed to appear which resulted in Becker obtaining default judgments against them. In addition to the default judgment, Becker obtained an "Acknowledgement of Reservation of Water Right," ("Acknowledgement") from four of the defaulting defendants, which declared defendants "recognized and acknowledged that the conveyance by which they purchased their lots reserved the appurtenant water right to plaintiff."

Pieper et. al., upon learning of the favorable outcome of the non-defaulting defendants, including those who signed the Acknowledgement, attempted to re-enter the case by moving for relief from default judgments. The trial court granted that motion,

concluding Pieper et. al. were “in the same legal and factual situation as the non-defaulting defendants.” Becker appealed judgment in their favor.

Becker contended on appeal the trial court’s ruling placing Pieper et. al. in the same position as non-defaulting defendants was error. He asserted each defendant occupied a different and distinct legal position with respect to the sales agreement for his or her lot, because Becker negotiated each sale on different terms. Pieper et. al. argued the trial court correctly concluded they were in the same position as non-defaulting defendants, therefore they were entitled to be acknowledged in the judgment.

The court determined, “in the same legal position” means that the grounds “on which a successful defendant prevails will necessarily apply to a defaulting defendant with the same force and effect,” meaning the same legal grounds would absolve defaulting defendants of liability as a matter of law. The court concluded Pieper et. al. were not in the same legal position as the co-defendants who “appeared and prevailed in the arbitration.” Becker alleged he or his agent notified each defendant of Becker’s intent to retain the water rights to the land when the land transferred ownership. Further, Becker asserted the non-defaulting parties who answered his complaint denied that allegation, but Pieper et. al. admitted the allegation. The court agreed with Becker. Therefore, the court concluded, all defendants were not so similarly situated as to be in the same legal position as to their defense against Becker’s reformation and declaratory judgments, and ordered reinstatement of the default judgments against Pieper et. al.

Rachel Sobrero

PENNSYLVANIA

Redstone Water Co. v. PUC, No. 531 C.D. 2001, 2001 Pa. Commw. LEXIS 789 (Penn. Oct. 30, 2001) (holding the Pennsylvania Public Utility Commission (“PUC”) lacks jurisdiction to issue orders based on water quality disputes, and a lack in adequate water pressure is not sufficient to uphold PUC orders).

Customers of Redstone Water Company (“Redstone”) brought a complaint citing their dissatisfaction with both water quality, and water pressure. The customers testified before an administrative law judge (“ALJ”) that the hardness of Redstone’s water caused considerable damage to hot water heaters and bathroom fixtures. Additionally, customers testified the water had both an unpleasant smell and taste, and had particles floating in it. Many refrained from washing clothing in Redstone’s water based on the fear the water would leave stains. Finally, customers testified as to their dissatisfaction with Redstone’s water pressure.