

Douglas J. Parry, #2531
Dale F. Gardiner, #1147
PARRY ANDERSON & GARDINER
60 East South Temple, Suite 1200
Salt Lake City, Utah 84111
Telephone: (801) 521-3434
Fax: (801) 521-3484

Attorneys for Plaintiff/Counterclaim Defendants

IN THE THIRD JUDICIAL COURT, IN AND FOR SALT LAKE COUNTY
WEST JORDAN DEPARTMENT, STATE OF UTAH

HI-COUNTRY ESTATES HOMEOWNERS
ASSOCIATION, a Utah Corporation,

Plaintiff,

v.

BAGLEY & COMPANY, et al.,

Defendants.

FOOTHILLS WATER COMPANY, a Utah
Corporation,

Counter-claimant,

v.

HI-COUNTRY ESTATES HOMEOWNERS
ASSOCIATION, a Utah Corporation,

Counter-defendants.

FINAL JUDGMENT

Case No. 020107452

(Previous Case No. 850901464)

Honorable PAT B. BRIAN

The above-entitled matter came before the Court, the Honorable Pat B. Brian presiding, for trial on January 24-27, and February 1-2, and 16, 2005. Hi-Country Estates Homeowners Association (the "Association"), appeared through counsel, Douglas J. Parry and Dale F. Gardiner

001764

of PARRY ANDERSON & GARDINER. The Dansie Family Trust, whose beneficiaries are J. Rodney Dansie, Richard P. Dansie, Boyd W. Dansie, Joyce M. Taylor, and Bonnie R. Patkin (collectively, the "Dansies") appeared through counsel, Michael M. Later of ROOKER, LATER & RAWLINGS. Foothills Water Company and J. Rodney Dansie, individually, appeared through counsel, Val Antczak of PARSONS BEHLE & LATIMER.

The Dansies, Foothills Water Company, and J. Rodney Dansie, individually, filed an *Amended Counterclaim of J. Rodney Dansie, the Dansie Family Trust, the Dansie Family Group and Foothills Water Company* (the "Counterclaim"). The parties to the Counterclaim were referred to at trial, and are sometimes referred to collectively herein, as the "Plaintiffs," as the context may require.

At trial, the parties stipulated, and the Court certified, that the only issues remaining for trial were:

1. Is the Well Lease void as against public policy?
2. Did the Dansies agree to pay the cost of chlorination, pumping, testing and transportation "costs" (pro rata, actual or incremental) of transporting their water through the Homeowners' Water System?
3. If the Dansies did agree, what are the "costs" associated with transporting the water?
4. If the Dansies agreed to pay the "costs" of transporting the water, what "damages" did the Dansies sustain because the Homeowners refused/failed to transport water?

See Issues Certified For Trial, filed February 1, 2005.

The Court enquired of the parties on numerous occasions whether there were any remaining factual issues for trial, it being the Court's intention to resolve the entire matter at this trial. The parties represented to the Court that the foregoing issues were the *only issues* remaining for trial.

Upon conclusion of the trial, the Court took the matter under advisement and ordered the parties to simultaneously file blind post-trial memoranda. The Association and the Dansies subsequently filed their post-trial memoranda on March 25, 2005. No post-trial memorandum was submitted by J. Rodney Dansie, individually, or by Foothills Water Company.

After considering the testimony and exhibits presented at trial, the binding case history, the memoranda filed by the Association and the Dansies, and the applicable law, the Court issued its Memorandum Decision, Findings of Fact and Conclusions of Law on May 31, 2005. Based upon the Court's May 31, 2005, Decision, the Court now enters the following Judgment and Order.

JUDGMENT AND ORDER

1. The Well Lease is not void as against public policy. Specifically, the Well Lease is not void based on Utah Code Ann. §§ 54-3-8(1) and 54-3-1, the PSC's 1986 Order, or the unconscionability doctrine. The Well Lease is a valid and binding encumbrance on the Association's Water System. See *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 901 P.2d 1017, 1023, (Utah 1995); see also *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 928 P.2d 1047 (Utah Ct. App. 1996); May 17, 2001 Memorandum Decision.

2. The PSC has the power to construe contracts affecting rate-making. *Hi-Country Estates Homeowners Ass'n v. Bagley & Co.*, 901 P.2d 1017, 1023 (Utah 1995). The 1986 PSC

Order prohibits the Well Lease from affecting the rates paid by the customers, *i.e.*, the Association members. *Id.* at 1023.

3. Under the Well Lease, the Dansies are entitled to receive 12 million gallons of water per year, or such larger amount as the excess capacity of the Association's Water System will permit, only upon payment of their pro rata share of the Association's costs for power, chlorination, and water testing. Furthermore, all water transported outside of Hi-Country Estates is subject to a "fair use" transportation fee. *See May 17, 2001 Memorandum Decision*, p. 5. *See also October 31, 1990 Order* at 2. Further, under the Well Lease, the Dansies are provided a right of first refusal to purchase the Association's Water System and the right to receive 55 additional water connections from the Association, but only if the Dansies pay the Association for those connections at the Association's usual charge for each such connection.

4. The Association offered on several occasions to supply water to the Dansies if the Dansies would pay the same rate as other customers. The Dansies refused to do so. *See November 5, 2001 Memorandum Decision and Order*, p. 2.

5. In March 1994, the Association was forced to discontinue supplying water to the Dansies in order to comply with the 1986 PSC Order. *See November 5, 2001 Memorandum Decision and Order*, p. 2. Any damages suffered by the Dansies in not receiving the water they are entitled to under the Well Lease are not attributable to the Association. *Id.* p. 5.

6. The Dansies are entitled to receive water from Dansie Well No. 1 through the Association's Water System in accordance with the Well Lease only upon payment of the *pro rata* costs of transporting the water through the Association's Water System. *See Memorandum Decision*

Re: Hi-Country Estates Motion for Partial Summary Judgment Re: Damages for Costs of Transporting Water and Reimbursement for Water Lines, dated May 20, 2003.

7. The Dansies did not agree at any time to pay the costs of transporting water from Dansie Well No. 1 through the Association's Water System. Accordingly, the Association did not breach the Well Lease by disconnecting Dansie Well No. 1 from the Association's Water System.

8. The appropriate measure of costs for transportation of water from Dansie Well No. 1 through the Association's Water System is a *pro rata* share of the Association's costs for transporting the water.

9. *Pro rata* transportation costs are calculated by taking the Association's costs of operating the Association's entire Water System, subtracting the costs incurred by the Association to produce and treat the water from the Association's well, and dividing that remaining amount by the number of gallons transported through the Association's Water System.

10. Based on this methodology, a reasonable *pro rata* transportation fee as of the time of trial is \$3.19 per thousand gallons of water.

11. The Dansies have refused to pay any transportation fee for transporting water from Dansie Well No. 1 through the Association's Water System.

12. The Dansies failed to prove any damages proximately caused by the separation of the two water systems. The Dansies further failed to mitigate any other alleged damages.

13. Accordingly, the Dansies have not sustained any damages attributable to the Association as a result of the Association's separation of the two water systems.

14. In its *Memorandum Decision* dated July 26, 2000, the Court reaffirmed its award of \$15,080.18 in favor of Foothills Water Company for reimbursement of taxes paid by Foothills Water Company and further awarded Foothills Water Company pre-judgment interest in the sum of \$20,986.58 on that award.

Based upon the foregoing, it is hereby **ORDERED, ADJUDGED and DECREED** as follows:

1. The First Cause of Action of the Counterclaim, "Breach of Covenant Running with the Property to Provide Reasonable Amounts of Water for Dansie Family Members (Specific Performance)" is hereby **DISMISSED**, no cause of action. The Dansies are entitled to receive water from the Association's Water System only upon payment of the Dansies' *pro rata* share of the Association's costs of power, chlorination, water testing and transportation.

2. The Second Cause of Action of the Counterclaim, "Breach of Covenant Running with the Property to Provide Reasonable Amounts of Water for Dansie Family Members (Damages)" is hereby **DISMISSED**, no cause of action.

3. The Third Cause of Action of the Counterclaim, "Violation of Easement to Allow Water to be Transported Through the Water System From the Dansie Wells (Specific Performance)" is hereby **DISMISSED**, no cause of action. The Dansies are entitled to receive water from Dansie Well No. 1 and/or other Dansie wells through the Association's Water System only upon payment of the *pro rata* costs of transporting the Dansies' water through the Association's Water System, as determined by the operator of the Association's Water System (currently the Jordan Valley Water Conservancy District), using the methodology set forth above. The Dansies may connect lines from

Dansie wells to the Association's Water System only if those wells have a valid certification of acceptable water quality for each well from the State of Utah, Department of Environmental Quality, Division of Drinking Water. All water testing, monitoring, metering and billing shall be administered by the operator of the Association's Water System, currently the Jordan Valley Water Conservancy District. The Dansies are responsible for payment of all fees and costs associated with the certification and maintenance of acceptable water quality of the Dansie wells, including but not limited to Dansie Well No. 1. Finally, the Dansies must pay any costs incurred to reconnect the Dansie water system to the Association's Water System so that the Dansies' service will not be subsidized by the existing customers of the Association's Water System.

4. The Fourth Cause of Action of the Counterclaim, "Award of Attorneys' Fees" is hereby DISMISSED. Plaintiffs are not entitled to any attorneys' fees.

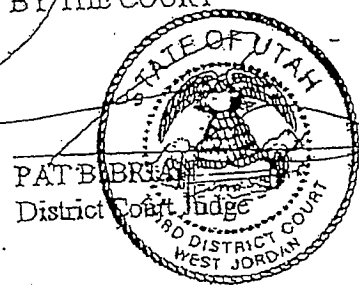
5. All of Plaintiffs' claims are hereby DISMISSED, with prejudice and on the merits.

6. Judgment in the sum of \$15,080.18 is entered in favor of Foothills Water Company for reimbursement of taxes paid by Foothills Water Company, together with prejudgment interest in the sum of \$20,986.58 as of July 26, 2000, together with post-judgment interest accruing at the judgment rate.

DATED this 5 day of January, 2006.

BY THE COURT

[Handwritten signature]



Final Judgment

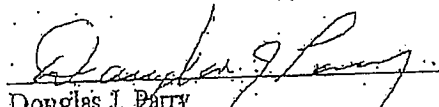
001770

District Court Judge

Approved as to Form:

PARRY ANDERSON & GARDNER

By:


Douglas J. Parry

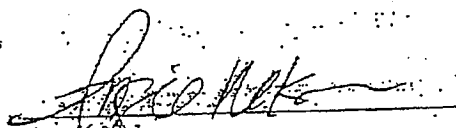
Attorneys for HI-Country Estates Homeowners Association

MICHAEL M. LATER

Attorney for Dansie Family Trust, Richard P. Dansie,
Boyd W. Dansie, Joyce M. Taylor and Bonnie R. Parkin

PARSONS BEHLE & LATIMER

By:


Angie Nelson

Attorneys for Foothills Water Company and
J. Rodney Dansie, Individually

Final Judgment

8

001771

Approved as to Form:

PARRY ANDERSON & GARDINER

By:

Douglas J. Parry
Attorneys for Hi-Country Estates Homeowners Association

MICHAEL M. LATER

Michael Later
Attorney for Dansie Family Trust, Richard P. Dansie,
Boyd W. Dansie, Joyce M. Taylor and Bonnie R. Parkin

PARSONS BEHLE & LATIMER

By:

Angie Nelson
Attorneys for Footfalls Water Company and
J. Rodney Dansie, Individually

Final Judgment

8

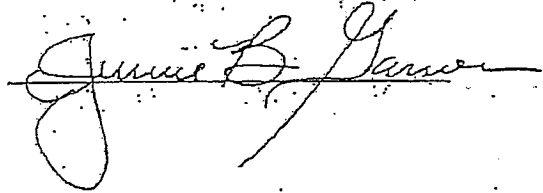
001772

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December 2005, I served the foregoing FINAL JUDGMENT by transmitting a true and correct copy thereof via e-mail transmission to the following:

Angie Nelson
PARSONS BEHLE & LATIMER
ANelson@parsonsbehle.com

Michael M. Later
michaellater@yahoo.com

A handwritten signature in cursive script, appearing to read "James B. Parson", written over a horizontal line.