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## Jubilee Hous., Inc. v. Dist. of Columbia Water and Sewer Auth., 774 A.2d 281 (D.C. 2001).

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injury. Baseline Farms asserted this legal standard was inapplicable where private parties were acting as private attorneys to enforce state water and health control standards.

The court disagreed, holding that the applicable water quality statutes, Colo. Rev. Stat. §§ 25-8-611 and 25-8-612, did not specifically dispense with the irreparable injury requirement and that this case did not involve an action undertaken by a government agency pursuant to a special statutory procedure. The articles here were not intended to create new rights or to enlarge existing private rights. The provisions of the articles also did not authorize injunctions or create a private cause of action to proceed in the public interest. The articles did recognize, however, that no private rights have been lost by enactment of the Water Quality Control Act, and water violation determination should not benefit anyone other than the state. Through this statutory analysis, it was clear that based on the Colorado Rules of Civil Procedure, there must be a showing of a real, irreparable injury in order to support a preliminary injunction. Thus, this court affirmed the trial court's dismissal of the case.

*Michael Sheehan*

## DISTRICT OF COLUMBIA

**Jubilee Hous., Inc. v. Dist. of Columbia Water and Sewer Auth., 774 A.2d 281 (D.C. 2001)** (holding the Water and Sewer Authority was not exempt from following the specific statutory requirement that all rate changes be preceded by notice and public hearing).

Jubilee Housing, Inc. ("Jubilee"), a non-profit housing organization, brought this action against the District of Columbia Water and Sewer Authority ("Authority") following the Authority's termination of preferential water rates for non-profit housing organizations. The Authority did not provide a public hearing and only provided notice to some, but not all, organizations affected by the termination.

Under section 43-1686 (a) and (b) of the District of Columbia Code ("DCC"), the Authority was allowed to collect and abate fees and establish and adjust retail water and sewer rates "following notice and public hearing." The only issue the Authority raised in defense was whether the temporary termination of preferential water rates constituted "establishing" water and sewer rates for purposes of section 43-1686 (b) of the DCC.

The court held that the termination of the preferential rates did constitute establishing water and sewer rates under the code and therefore, the Authority was required to provide notice and public hearing prior to the termination of the rates. The court reasoned that the termination of the rates would impose a new obligation on Jubilee

and others similarly affected, and therefore, the statute required a public hearing before any change could take place.

*Sarah A. Hubbard*

## FLORIDA

**VLX Properties v. S. States Utilities, Inc., 792 So. 2d 504 (Fla. Dist. Ct. App. 2001)** (holding the grantee, VLX Properties, acquired property subject to a flowage easement, to which its grantor agreed by way of a joinder agreement and, thus, VLX's action for inverse condemnation must fail).

This case arose out of an inverse condemnation action between the possessor of a certain property interest and the holder of a flowage easement across the property. Appellant VLX Properties, Inc. ("VLX") owned the property, which included a portion of James Pond—the property at issue in this case. VLX obtained its interest from Lawyers Title Investment Fund ("LTIF"). However, prior to granting a portion of the pond to VLX, LTIF conveyed a portion to Glen Abbey Golf Course, Inc. ("Glen Abbey"). LTIF and other adjacent landowners retained ownership of the remaining portion of the pond.

For many years Glen Abbey used wells to irrigate the golf course. However, once reclaimed water became available, Glen Abbey was administratively prohibited from continuing to draw groundwater and thus was required to use reclaimed water to irrigate its golf course. Glen Abbey contracted with Appellee Southern States Utilities, Inc. ("Southern Utilities") to provide the irrigation services. Subsequently, LTIF conveyed its remaining portion of the pond to VLX.

The reclaimed water flowed over both the portion of the pond LTIF conveyed to Glen Abbey and that portion which LTIF later conveyed to VLX. Thus, VLX sought compensation by way of inverse condemnation because the water was permitted to flow over its portion of the pond. In essence, VLX contended a dam should have restricted the water's flow. The primary issue was whether VLX's grantor, LTIF, agreed to the flowage easement into James Pond. The Florida Court of Appeals held the facts were sufficient to find LTIF joined in the agreement between Glen Abbey and Southern Utilities and, thus, consented to the flowage easement into James Pond. In order to make this determination the court examined the agreement between Glen Abbey and Southern Utilities and its effect on contiguous property owners.

Since Glen Abbey only owned a portion of James Pond, it was essential LTIF joined in the agreement between Glen Abbey and Southern Utilities. LTIF also had to obtain flowage easements from all the other owners of James Pond who were not involved in the LTIF/Glen Abbey sales agreement. These two requirements were