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City of Portland v. The Boeing Co. & Cascade Corp., 2002 U.S. Dist. LEXIS 2209

City of Portland v. The Boeing Co. & Cascade Corp., 2002 U.S. Dist. LEXIS 2209 (denying summary judgment because plaintiff presented sufficient evidence to create a genuine issue of material fact as to whether groundwater contamination by defendants had any effect on the district's decision to seek alternative sources of water).

In 1999, the city of Portland, Oregon ("City") filed suit against the Boeing Company and Cascade Corporation (collectively "Boeing") in the United States District Court for the District of Oregon seeking damages of over six million dollars resulting from Boeing's contamination of part of the City's water supply. Less than a year later, the City added a claim of fifteen million dollars in lost revenues that was caused when the Tualatin Valley Water District ("District") and the Powell Valley Road Water District ("Powell") decided to obtain a majority of their water from sources other than the City. In response to the new claim, Boeing filed a motion for summary judgment, alleging that the City failed to establish a causal relationship between the pollution and the water districts' decisions to seek water elsewhere. Defendants subsequently withdrew their motion for summary judgment with regards to Powell, and therefore the only issue before the court was whether the City provided enough evidence to create a genuine issue of material fact as to whether the contamination caused by Boeing had any effect on the District's decision to seek alternative water supplies.

The City owns a field of wells located near Boeing's property, which are used as emergency backup supplies to the Bull Run River. In the mid-1980's, groundwater contamination was discovered on Boeing's property. The wells themselves were not contaminated, but the existence of groundwater contamination so close to the wells prevented the City from using the wells to capacity. As a result, the City was forced to obtain alternate water supplies and impose restrictions on water use.

In 1991, The Wolf Creek Highway Water District ("Wolf") and the Metzger Water District ("Metzger") merged to form the District. Prior to the merger, both Wolf and Metzger entered into contracts with the City under which the City would sell them its surplus water. The contracts had a provision requiring Wolf and Metzger to buy minimum amounts of water from the City or pay a penalty based on how much water was obtained by other sources. When Wolf and Metzger merged, the District inherited the contracts.

In 1992, the onset of drought in the region, in addition to the inability to fully utilize the wells due to contamination, led the City to ease its minimum purchase requirements contained in the contracts. As a result, the District was able to purchase large amounts of water from other sources. The City's additional fifteen million dollar claim represented the revenue lost when the District decided to purchase a majority of its water from other sources during the post drought period, even though the City had adequate amounts of water to supply

the district during that time.

Boeing argued that the City failed to show that the reason the District decided to obtain water from other sources after the drought was not due to the restrictions imposed during the drought. Boeing contended that the District decided to seek alternative sources before the drought: (1) due to concerns that the pipeline from the City could not handle increased capacity due to population growth; and (2) because the District wanted a source to the west of the Willamette River that had better quality water. The City responded by arguing that although the District may have had many reasons for obtaining alternate sources, the inability to use the wells, coupled with the elimination of minimum purchase requirements due to the drought, played a significant part in the District's decision to use other sources after the drought.

Boeing presented testimony from the District's directors that the contamination was not a factor in the District's decision to obtain water from sources other than the City after the drought had ended. One director stated that the main motivation was to develop a source independent from the City. Another director stated that the primary reason for finding other sources of water was the need to get water to Washington County. The City countered with testimony that the District did not invest any money in other expansion projects until after the drought in 1992, and that the final agreement between the District and new suppliers was not approved until 1994.

In order to prevail on a motion for summary judgment, a movant must establish that there is no genuine issue of material fact. Once the movant has met its burden, the onus is on the opposing party to establish that there is a genuine issue of material fact. In this case, the court found the City's evidence very thin on the issue of whether the contamination together with the drought caused the District to buy a majority of its water from sources other than the City. However, the court was required to look at the evidence in a light most favorable to the City, and in doing so, the court found the City had met its burden. As a result, Boeing's motion for summary judgment was denied.

David M. Jacob

United States v. Alpine Land & Reservoir Co., 279 F.3d 1189 (9th Cir. 2002) (holding that while equity was inappropriate in the abandonment context, equity may be appropriate in the forfeiture context, if the landowners can show on a case-by-case basis that they were prevented from complying with transfer requirements).

In the mid-1980s, a number of landowners in the Newlands Reclamation Project in Nevada submitted applications to transfer water rights between different parcels of property. The Pyramid Lake Paiute Tribe of Indians ("Tribe") protested the applications under the