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United Water New Rochelle, Inc. v. City of New York, 687 N.Y.S.2d 576 (N.Y. Sup. Ct. 1999)

Sommer Poole

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regulations adopted under the Coastal Area Facility Review Act was misplaced. The regulations stated that coastal development adjacent to all coastal waters must provide "[a]ccess to the waterfront to the maximum extent practicable, including both visual and physical access." The court held the regulation did not impose an absolute prohibition against oceanfront development that interfered with the view of inland property owners.

Elaine Soltis

NEW YORK

United Water New Rochelle, Inc. v. City of New York, 687 N.Y.S.2d 576 (N.Y. Sup. Ct. 1999) (holding that contract provisions allowing the City to unilaterally discontinue water delivery to utility were unenforceable, contract provisions govern City's obligation to chlorinate water, and City is not entitled to recompense for the value of water they discarded in order to fulfill their obligations).

United Water New Rochelle ("United Water"), a privately owned public utility, and Briarcliff, a municipal corporation, supplied water to residents and businesses within its borders. New York City ("City") and its administrative agency, the Department of Environmental Protection ("DEP"), oversaw and administered New York's statewide water system. The City and DEP controlled much of the water flowing through New York's system of rivers, lakes, reservoirs, and aqueducts, including the Catskill and Croton Aqueducts. The City and DEP issued permits to United Water and Briarcliff allowing them to tap into the Croton and Catskill Aqueducts. United Water and Briarcliff received most of its water from these aqueducts.

The City's contract with United Water provided for partial chloride treatment of the water from the Croton Aqueduct. Briarcliff's contract with the City did not create an obligation for the City to chlorinate the water. The contracts specified that both United Water and Briarcliff were responsible for final chlorination at their own facilities. In July 1998, the DEP notified Briarcliff and United Water that it intended to shut down the aqueducts during September, the peak demand period of the year, in order to make repairs and provide better quality water. The health and safety risks to residents as a result of a prolonged shutdown caused United Water and Briarcliff concern.

United Water and Briarcliff sought declaratory and injunctive relief regarding the City's ability to shutdown the aqueduct. They argued that they were contractually entitled to receive potable water and requested the court to determine whether the City was obligated to chlorinate water in the aqueduct. The City counterclaimed to recover the value of potable water that United Water and Briarcliff discarded. The City agreed to continue supplying potable water in the

aqueduct until the matters were resolved. The parties then sought a judicial determination of their rights in order to avoid future conflict and litigation.

The court considered: (1) whether the contractual provisions allowing the City to unilaterally discontinue water delivery were unenforceable and invalid as contrary to public policy; (2) the City's obligations concerning the chlorination of the water in the Croton Aqueduct for United Water's and Briarcliff's use; and (3) whether United Water or Briarcliff was unjustly enriched by discarded water.

The court held that the contract provision allowing the City to unilaterally discontinue delivery of potable water to United Water and Briarcliff was unenforceable and invalid on public policy grounds. The courts will not enforce contracts that injuriously affect the public interest. The court recognized that the City could not deny applications from municipal corporations and water districts to tap into its system, but could establish reasonable rules and regulations governing the means by which the water was taken and the quantity. The court reasoned that because United Water and Briarcliff had limited alternative water sources and water storage capacity, a shortage during the peak demand period could pose severe health and safety risks for the communities served.

The court next considered whether the City was obligated to chlorinate water in the Croton Aqueduct. The court held that the City was not required to chemically treat the water as a condition of the State's delegation of eminent domain power. The court stated that the issue was one of cost, not public policy, and that unlike the obligations to permit access to and delivery of water, the City's obligations to chlorinate was established by the parties in the terms of their contracts.

The court determined that according to United Water's permit, the City was contractually bound to partially chlorinate the water available from the aqueduct. Because of the provision, United Water was not unjustly enriched, and not liable to the City for the cost of water discarded in order to fulfill the City's contractual obligations. Briarcliff, however, had no contractual provision requiring the City to chlorinate the water made available to them. Briarcliff asserted that the City could have provided a reduced volume of potable water without waste. The court remanded to determine whether Briarcliff was liable to the City for discarded water, and if so, how much it owed.

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Vinciguerra v. State of New York, 693 N.Y.S. 2d 634 (1999) (holding that head wall and culvert constructed partially on landowners' property by State was not a de facto appropriation, and resulted in acquisition of a prescriptive drainage easement).

Claimants purchased eight parcels of vacant, undeveloped land