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Chatfield East Well Co., Ltd. v. Chatfield East Property Owners Ass'n, 956 P.2d 1260 (Colo. 1998)

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whether the trial court erred in finding that the Bureau was in fact an indispensable party.

The appellate court found that the trial court had appropriately reviewed the propriety of the United States' participation in this action pursuant to the factors and considerations set forth in subdivision (b), section 389 of the California Code of Civil Procedure. Subdivision (b) states that if there is a party who cannot be joined in the action, and in whose absence complete relief cannot be accorded among those who are already parties to the action, the court shall determine whether, in equity and good conscience, the action should proceed among the parties who have been joined and are in front of the court, or whether the action should be dismissed without prejudice—the absent party having been thus determined indispensable. The appellate court characterized plaintiffs/appellants attempt to obtain a *de novo* review of the trial court's decision as an attempt to completely retry their case. The law is settled that it is within the trial court's discretion, as governed by the factors in subdivision (b) of Cal. C.C.P. section 389, whether to proceed in an action in the absence of a particular party. It would be illogical to grant a trial court this discretionary power to balance equities and then reject the court's evaluation and balance the equities anew. The rule provides for evaluations of situations on a fact specific basis. The appellate court reasoned that the trial judge is in a better position than an appellate panel to weigh the pragmatic considerations of a particular situation. Excluding the rare instances in which an abuse of discretion occurs, it would be counter-productive to second guess the trial court's management of a case.

Appellants argued that the factors considered by the trial court *could* have been weighed in a manner that would have favored their position. The appellate court held that this mere possibility did not amount to an abuse of discretion by the trial court. The language of the rule specifically granted the trial judge substantial discretion in considering which factors to weigh and how heavily to emphasize certain considerations. Accordingly, it was the trial court's decision to determine whether the action should go forward in the absence of a party needed for a complete adjudication of the dispute. Re-evaluating the trial court's consideration of the applicable factors would contravene the plain language of the rule.

Finding that the trial court had adequately considered the factors in subdivision (b), and that there was no abuse of discretion, the appellate court held that the action was properly dismissed.

Maureen D. McInerney

COLORADO

Chatfield East Well Co., Ltd. v. Chatfield East Property Owners Ass'n, 956 P.2d 1260 (Colo. 1998) (affirming the water court's order dismissing well company's application for decree allowing it to extract and use

not nontributary water from Arapahoe aquifer, one of the Denver Basin aquifers, underlying subdivision where well company held only possible inchoate right in nontributary groundwater).

This case arose from a dispute between a water company ("Chatfield Well") and residents of a subdivision located in northern Douglas County near the Chatfield Reservoir. The Development Company for the subdivision previously sold lots to various individual buyers between 1978 and 1981, and conveyed the common areas to the Chatfield East Property Owners Association ("POA"), which consisted solely of the homeowners. The deeds to the homeowners included the following language: "Reserving unto the Grantor all underground nontributary water and Grantees hereby consent to the use of said water upon any land or area, regardless of where located."

Denver Basin aquifer water is regulated as nontributary or not nontributary, depending on the aquifer characteristics and the applicable legal standards as provided in provisions of the Groundwater Management Act. If the withdrawal of Denver Basin aquifer water will not, within one hundred years, deplete the flow of a natural stream at an annual rate greater than one-tenth of one percent of the annual rate of withdrawal, then the water is nontributary under C.R.S. section 37-90-103(10.5). Conversely, under C.R.S. section 37-90-103(10.7), Denver Basin aquifer water is not nontributary if its withdrawal will cause a depletion in excess of that amount. The Development Company, in 1992, quitclaimed any interest it believed it held in the ground water to Chatfield Well. The main issues before the court were whether the Development Company had an ownership interest in water beneath the subdivision, and whether homeowner deeds in the subdivision reserved any rights to the Development Company in not nontributary water so that the Development Company could assign any such rights to Chatfield Well.

Chatfield Well initially filed an application for a decree, which would allow for extracting and using water from the Denver Basin aquifer underlying the subdivision. The District Court, Water Division No. 1, dismissed the application. Subsequently, Chatfield Well appealed to the Colorado Supreme Court.

The court held that Denver Basin aquifer water is a public resource, the ownership of which cannot be reserved in a deed conveying the surface estate to another person. Thus, no vested right. Furthermore, in the absence of a vested right to use the water, a title issue does not exist. Additionally, this case involved a water matter, the adjudication of the right to use water, which fell within the exclusive jurisdiction of the water court, an issue Chatfield Well had presented for review. Finally, the Development Company reserved at most the inchoate right to extract and use "underground nontributary water" under the subdivision. The court reiterated that a right to use nontributary groundwater outside of a designated basin is governed by statute and that landowners only have an inchoate right to extract and use the

nontributary water pursuant to the Groundwater Management Act. Landowners have no absolute right to ownership of water underneath their land.

According to the court, the state engineer and the water court acted within their authority in determining that the aquifer water under the subdivision was not nontributary. Additionally, the deeds did not "withhold from the homeowners their inchoate right to use the not nontributary water under their lots." Further, whether nontributary or not nontributary, an applicant for recognition of a right to use groundwater in the Denver Basin aquifers cannot receive a permit or decree unless he or she is the overlying landowner or has the landowner's consent. The Development Company and Chatfield Well owned no land in the subdivision when Chatfield Well filed its application for a decree with the water court, nor had either completed a well into the Arapahoe aquifer, nor had they obtained the consent of the homeowners to the application. Chatfield Well relied solely on the effect of its quitclaim deed from Development Company when asserting its entitlement to the groundwater.

Another issue brought on appeal by Chatfield Well dealt with the adoption of Senate Bill 96-74 prior to the trial of this case. The Bill amended the definition of nontributary ground water by stating that "not nontributary groundwater . . . in the Denver Basin shall not become nontributary groundwater as a result of the aquifer's hydrostatic pressure level dropping below the alluvium of an adjacent stream due to Denver Basin well pumping activity." The provisions addressed a previous issue that arose in prior augmentation cases involving not nontributary Denver Basin water in the context of considering an alleged break in the aquifer's connection with the natural stream system. Here, the court concluded that the intent of the legislature was that Senate Bill 96-74 should apply to pending decree and permit applications. Chatfield Well argued that if the Bill was applied retroactively, it would violate the Colorado Constitution. The prohibition of retroactivity set forth in the Colorado Constitution applied solely to statutes that impair or take away a vested right. Chatfield Well did not have any vested rights at the time this statute was enacted; thus the water court applied Senate Bill 96-74 to this case as the legislature had intended. The court determined that this is not unconstitutional as applied.

The deeds at question here did not withhold from the homeowners their inchoate right to use the not nontributary water under their lots. Subsequently, since the homeowners did not consent to Chatfield Well's application, the water court correctly dismissed the application.

Beth A. Bulmer

City of Grand Junction v. City and County of Denver, 960 P.2d 675 (Colo. 1998) (holding Denver's application for a refill right with re-