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Watson v. Vouga Reservoir Ass'n, 969 P.2d 815 (Colo. Ct. App. 1998)

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water court approved the stipulation effective as of March 1971.

The stipulation stated that Englewood, Denver, and Climax would not make a call on the waters of Beaver Creek to supply any of their water right priorities in the Fraser River Basin, if the call would prevent owners of specified water rights from making maximum use of the water claimed under said rights. This stipulation was to apply regardless of priority dates.

Subsequently, in 1991, Sloan sold USI certain water rights subject to the stipulation. USI sought various changes in the point of diversion and the place of use. As a result of the opposition to the application, USI and Englewood entered into a stipulation regarding diversions to particular ditches. In 1995, USI sought clarification of the Englewood stipulation in an effort to prevent Englewood from asserting specific water rights. The court found that the stipulation, by its own terms, applied only to Beaver Creek and did not affect Englewood's rights on the Fraser River.

USI sought the same clarification from the court regarding the stipulation with Climax and Denver. It asserted that the stipulation applied to the Fraser River as well as Beaver Creek. Adhering to basic contract interpretation, the court found no ambiguity in the stipulation and the plain and ordinary meaning limited the effect of the call provision in the stipulation to the waters of Beaver Creek.

Tracy Rogers

Watson v. Vouga Reservoir Ass'n, 969 P.2d 815 (Colo. Ct. App. 1998) (holding association's assessment for restoration of reservoir outlet was a "repair" within the meaning of the statute which allowed forfeiture of shareholder's shares for nonpayment).

The Vouga Reservoir Association ("Association") organized under Colorado's Ditch and Reservoir Companies statute. Plaintiff, Watson, owned thirty-five percent of the company's shares. In 1994, the Colorado State Engineer discovered a defect in the reservoir's outlet pipe. After failed attempts to correct the defect, the Colorado Division of Water Resources ordered that the Association could not store water in the reservoir until it took appropriate remedial measures.

The majority shareholders authorized that the Association levy a pro rata assessment on the shareholders pursuant to Colo. Rev. Stat. § 7-42-104(1) to pay for the remedial measures, which cost in excess of $1 million. Watson refused to pay his pro rata assessed amount, and the Association forfeited his shares as allowed under the statute.

Watson sued to enjoin the dam repair and to dissolve and liquidate the Association. He also alleged conversion of his shares by the Association. Watson argued that the extent of the work constituted a reconstruction rather than a repair authorized by the statute. The trial

court agreed that the Association had exceeded its authority and found the Association had committed theft and conversion of Watson's shares.

The appellate court reviewed de novo the trial court's interpretation of the statute. Rather than interpreting only the word "repair," it examined the phrase of the statute which allowed a reservoir company "to keep its reservoir in good repair." The court held that the meaning of the phrase was apparent on its face. The Association existed solely to supply water for irrigation to its shareholder's land. To fulfill its sole purpose the statute must allow the assessment to keep the reservoir in good condition. The court held the statute authorized the assessment, including the forfeiture of Watson's shares.

Darrell Brown

GEORGIA

City of Centerville v. City of Warner Robins, 508 S.E.2d 161 (Ga. 1998) (upholding a consent judgment which designated to one municipality all the service area outside another municipality's exclusive service area).

In 1995, the Superior Court of Houston County entered a consent order ("1995 Order") submitted by the City of Centerville ("Centerville") and consented to by the City of Warner Robins ("Warner Robins"). The 1995 Order resolved a dispute between Centerville and Warner Robins concerning the provision of water and sewer services. The 1995 Order designated a specific tract of land as the exclusive water and sewer area of Centerville. All other areas serviced by either city would continue to be served by the respective municipality. The 1995 Order prohibited each municipality from providing water and sewer services to areas within the exclusive service area of the other municipality. Additionally, the 1995 Order estopped each municipality from annexing any area within the exclusive service area of the other municipality. In 1997, Warner Robins filed a complaint seeking an injunction against Centerville from carrying out plans to provide water and sewer service outside Centerville's exclusive service area. A second order was entered in 1998 ("1998 Order") by the superior court concluding that the original 1995 Order was a consent agreement and that all the area outside the Centerville exclusive service area comprised Warner Robin's exclusive service area. Thus, the 1998 Order enjoined Centerville's plans for providing water and sewer service. Centerville raised three issues on appeal: (1) whether the 1995 Order was properly deemed a "consent judgment;" (2) whether the superior court usurped control over the legislative