

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-016478

10/15/2008

HONORABLE A. CRAIG BLAKEY II

CLERK OF THE COURT
L. Gilbert
Deputy

MARK WINKLEMAN, et al.

WILLIAM A RICHARDS

v.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY, et al. JULIE M LEMMON

TIMOTHY M HOGAN

MINUTE ENTRY

This matter has been under advisement on Defendant School Districts' Motion for Stay, their Motion for Joinder of Parties, Petitioners and Plaintiffs' ("the State") Motion for Summary Judgment, and Defendant School Districts' Motion for Summary Judgment. Having considered the parties' memoranda and the oral arguments of counsel, the Court issues the following rulings.

The State and Respondent Flood Control District of Maricopa County ("Flood Control District") seek this Court's approval of a Settlement Agreement they reached regarding their disagreement over an easement that was granted by the Arizona State Land Department ("ASLD") to the Flood Control District in 1964. This easement granted 19,000 acres to the Flood Control District, who over the last 40 years has constructed and maintained three flood control structures on state land trust properties. In light of the United State Supreme Court's decision in Lassen v. Arizona ex rel. Arizona Highway Dept., 385 U.S. 458 (1967) ("Lassen II"), the ASLD sought to void the 1964 easement it granted the Flood Control District. The latter entity responded by suing the ASLD in the United States District Court and although that action was ultimately dismissed, the dispute has lingered for several years. Now, these two parties request that the Court approve their resolution of the dispute, which will return approximately 13,000 of the 19,000 acre easement to the ASLD. The Flood Control District will continue to

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maintain and operate the flood control structures on the remaining 6,000 acre portion of the easement. These parties also wish the Court to declare that Defendants Mayer Unified School District and Gadsden Elementary School District ("School Districts") have no standing to challenge the Settlement Agreement.

The School Districts, as Plaintiffs in another suit, seek to have the easement set aside for violating the Arizona-New Mexico Enabling Act ("Enabling Act"). *See* cause number CV2004-020078 currently pending review as CV-08-0225-PR before the Arizona Supreme Court ("Mayer litigation").

School Districts' Motion for Stay

The School Districts desire an order that this matter be stayed pending the outcome of the Mayer litigation. This requires the Court to first address the issue of whether these Defendants have standing to make their request(s).

The Court finds that the School Districts have standing to challenge the Settlement Agreement on the grounds that the agreement is in violation of the Enabling Act and, thus, State Land Trust has been deprived of the actual value of the property granted as an easement. This follows the ruling by Division 2 of the Arizona Court of Appeals in the Mayer litigation. Accordingly, the State's request that the Court declare that the School Districts have no standing to challenge the Settlement Agreement is denied.

With respect to the Motion for Stay, the School Districts argue that the Arizona State Land Commissioner does not have the authority to compromise a trust issue that could later be found in violation of the Enabling Act. The Arizona Court of Appeals in the Mayer litigation has ruled that Lassen II is not to be applied retroactively and, therefore, the Plaintiffs in that litigation, the School Districts in the case at bar, have failed to state a claim upon which relief can be granted.

The Court finds that the approval of the Settlement Agreement would not necessarily be invalidated should the School Districts ultimately prevail in the Mayer litigation. Furthermore, because the State Land Department would be receiving two thirds of the property it initially granted the Flood Control District, the Settlement does not diminish the compensation the Department could have received at the time of the initial easement some forty years ago. Although not necessarily pertinent to the agreement itself, the Settlement inures to the School Districts' benefit because, if the Court of Appeals decision in the Mayer litigation is reversed, then only the value of 6,000 of the 19,000 acres are in play and there is no unnecessary delay regarding the other acreage. If it is ultimately found that the 1964 easement is subject to the analysis set forth in Lassen II; that is, that any "enhanced value" is not enough to satisfy the

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requirements of the Enabling Act, then the School Districts have the ability to force the ASLD to reimburse the State Land Trust for any difference in value (i.e., the “true value” of the 6,000 acres still remaining in the easement). Accordingly, finding that the agreement will not produce conflicting results,

IT IS ORDERED denying the School Districts’ motion.

School Districts’ Motion for Joinder of Parties

The School Districts request the joinder of all the beneficiaries to the State Land Trust because this case and the Mayer litigation concern the interpretation and application of the Enabling Act and that the State’s request for relief seeks to void any complaint by the School Districts “or any person similarly situated.”

The State and Flood Control District respond that all beneficiaries of the Trust are not necessary parties and have not been identified by the School Districts. Specifically, they argue that because the beneficiaries are already owed a fiduciary duty by the trustee, the interests of all the beneficiaries are protected.

Although the School Districts claim that both cases involve the interpretation and application of the Enabling Act, the Court respectfully disagrees. At issue in the present case is whether or not the Settlement Agreement may be entered by the State Land Commissioner in his role as Trustee of the State Land Trust. As the Commissioner has a duty to all the beneficiaries of the trust, whether identified or not, their inclusion in this case is unnecessary considering that they have, at best, only a generalized interest in this matter. Therefore,

IT IS ORDERED denying the Motion for Joinder.

The State’s Motion for Summary Judgment

The State seeks summary judgment approving its Settlement with the Flood Control District as a valid exercise of the Commissioner’s trustee powers, that the modified easement pursuant to the Settlement Agreement is a legally enforceable right of way and that the School Districts lack standing to challenge the Agreement.

The School Districts respond that the Agreement is a violation of the Enabling Act because the initial easement is null and void. In the alternative, the School Districts assert that the settlement should not be approved because the Commissioner did not conduct an appraisal of the remaining 6,000 acres; that no determination has been made regarding the cost of litigation should the Agreement fall through; and there’s been no accounting of the costs the State would

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incur should it have to take over the operation of the dams currently maintained by the Flood Control District.

There is no dispute that the settlement was is a good faith effort to resolve legitimate differences between the State and the Flood Control District. Instead, the School Districts argue that the Commissioner did not perform the due diligence required by the Enabling Act. The State replies that a formal appraisal process is not required because the Commissioner is the chief land appraiser for the State and that for every acre left with the Flood Control District, the State has received two in return, thereby representing a significant benefit to the beneficiaries of the trust.

As noted above, the Arizona Court of Appeals in the Mayer litigation has ruled that the School Districts have standing to assert a claim for breach of trust. Therefore,

IT IS ORDERED denying the State's Motion for Summary Judgment declaring that the School Districts lack standing.

The Court finds that the ASLD and the Commissioner have the authority to modify the easement pursuant to the Settlement Agreement with the Flood Control District. The Court further finds that the agreement does not prejudice any beneficiaries of the School Trust. Accordingly, there being no genuine issue of material fact that would preclude settlement between the initial parties to the original easement,

IT IS ORDERED approving the Settlement Agreement as a valid exercise of the Commissioner's trustee powers.

IT IS FURTHER ORDERED approving the Settlement Agreement itself.

IT IS FURTHER ORDERED that the original easement, as modified, is binding between the parties to the agreement. However, nothing in these orders shall be interpreted to preclude the School Districts or any other beneficiary of the State Land Trust from seeking compensation from the State should the 1964 easement, and any amendment thereto, be later ruled null and void.

School Districts' Motion for Summary Judgment

Having found that this matter should not be stayed pending resolution of the Mayer litigation and that the parties to the Settlement Agreement have the right to modify the 1964 easement and to release each other from various claims pertaining thereto, the School Districts' Motion is denied. Therefore, in accordance with the above,

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IT IS ORDERED that the State shall lodge a proposed form of judgment with this division.