

1996

William Turner, and John Does 1-120 a class
composed of landowners located in the Hi
Country Estates Subdivision v. Salt Lake County
Water Conservancy District, a utah corporation
and special service district : Brief of Appellant

Utah Court of Appeals

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Priority # 15

**APPEAL FROM JUDGMENT ON THE PLEADINGS DISMISSING
PLAINTIFF/APPELLANTS COMPLAINT WITH PREJUDICE BY
THE THIRD DISTRICT COURT, JUDGE LESLIE A. LEWIS**

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COURT OF APPEALS

**WILLIAM TURNER, and John Does 1-120
a class composed of landowners located in
The Hi Country Estates Subdivision**

-VS-

**SALT LAKE COUNTY WATER
CONSERVANCY DISTRICT,
a Utah Corporation and Special Service District,**

COURT OF APPEALS

Case Number: 960566

Priority # 15

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PARTIES

The Plaintiff / Appellant are William Turner who is a landowner of two parcels of real property and other landowners similarly situated who were annexed into the Salt Lake County Water Conservancy District under a 1973 Order of the Third District Court, the Honorable Judge G. Hal Taylor. The Court in that Order decreed that the landowners would be benefited by their inclusion in the Water Conservancy District. Since 1973, the Landowners, Plaintiff / Appellant, have developed and furnished its own water system for the included land.

The Defendant / Appellee is the Salt Lake County Water Conservancy District which pursuant to petition and Court Order included the Plaintiff / Appellant into the Water Conservancy District and since the time of inclusion has failed to furnish water services to the Plaintiff / Appellant even though it assessed their property and received those assessments through the process of the County levying taxes from them during that period of time.

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HISTORY

Prior to April 3, 1973 the various landowners who make up Hi Country Estates Subdivision applied to the Third District Court for Salt Lake County for the property contained in the Subdivision to be annexed into the Salt Lake County Water Conservancy District. As a part of that Court Order which annexed the land of the Plaintiffs / Appellants into the Water Conservancy District, the Court ORDERED "that all of said lands will be benefited from inclusion in the District". See Record page 000008.

From 1973 until the present, each landowner has been individually been assessed, and those assessments collected through the taxation process, through the authority of the Defendant/Appellee Water Conservancy District, but the District has failed to provide any benefits (services) for the landowners (Plaintiff/Appellant). All water and delivery systems within the subdivision, have been provided through the efforts and funds of the Plaintiff/Appellant exclusive of any help from the Defendant/Appellee Conservancy District, and the maintenance efforts by the Defendant/Appellee Conservancy District, which has only been of recent origin , have been billed to the Subdivision as an additional Cost.

Therefore the landowners in the Subdivision have not benefited from their inclusion into the Water Conservancy District contrary to the Order of the Third District Court on April 3, 1973 under the Honorable Judge G. Hal Taylor.

Plaintiffs/Appellant over the years have on numerous occasions requested that the District (Defendant/Appellee) bring water to the subdivision lands (Plaintiffs / Appellant), but the District has failed to furnish water to the lands in the subdivision.

The Plaintiffs/Appellant under its Complaint contends that the Third District Court, under its decree and pursuant to Section 17A-2-1401 et al, had continuing jurisdiction over this matter.

The Plaintiffs / Appellant ask that the Defendant / Appellee be held in Contempt for failure to fulfill the Court Order that the Conservancy District should benefit the "lands" by their inclusion thereof into the Water Conservancy District..

Furthermore the Plaintiffs / Appellant requested Equitable Restitution for those funds collected by the District which in no manner were spent to "benefit" the Plaintiffs / Appellant, plus punitive damages for the Defendant's / Appellee's contemptuous failure to "benefit" the landowners as ordered by the District Court.

Upon motion by the Defendant / Appellee for Judgment on the Pleadings, the Third District Court dismissed Plaintiff / Appellant's Complaint finding that the Defendant / Appellee Water Conservancy District had fulfilled the order found under annexation since the order only provides for administrative responsibilities or duties which were discharged. The Court further found that the benefit mentioned in the 1973 Court Order is to the County in general which has been provided and that is all that is necessary.

The Court also base its decision upon a finding that the Statute of Limitations precluded bringing the action.

The Court found that the Defendant/Appellee Water Conservancy District was clearly a governmental entity under the governmental immunity statute and therefore not subject to punitive damages.

The Third District Court issued its Order on May 29, 1996 and Plaintiff/Appellant

filed its Appeal on June 26, 1996..

STATEMENT OF FACTS

1. The Plaintiffs / Appellants consist of William Turner and a class consisting of property owners located in the Hi Country Estates Subdivision, the class is so numerous that joinder of all members is impracticable, the questions of law or fact are common to the whole class, that the claims of the representative party are typical of the claims of the class, and that the representative party will fairly and adequately protect the interests of the class. (See Record page 000001 paragraph 1)

2. The Defendant / Appellee is a quasi governmental body formed pursuant to 73-9-29 Utah Code Annotated which has now been changed to 17A-1401 et al whose responsibility is to furnish water to and benefit the land which is annexed. See Record page 000002 paragraph 2.

3. The Plaintiff /Appellants land was annexed to the Defendant/Appellee Water Conservancy District through an Order of the Third District Court on April 3, 1973. See Record page 000002 paragraph 2 and exhibit "A" page 000007.

4. The Third District Court in its Order instructed that "all of said lands will be benefited from inclusion in the District". See Record page 000008.

5. The Plaintiff / Appellants land according to the Court Order are the lands to be benefited by inclusion in the Defendant/Appellant Water Conservancy District. See Record page 000002 paragraph 4.

6. The Plaintiff / Appellant's land has not received any benefit from inclusion in the District Water Conservancy District and has found it necessary to provide its own water

and water delivery system. See Record page 000002 paragraph 6.

7. The failure of the Defendant/Appellee Water Conservancy District to furnish services is contrary to the 1973 Court Order and to the intent of the Legislature. See Record page 000002 paragraph 6.

8. The Plaintiff/Appellant has not received any benefits for the funds assessed and collected by the Defendant/Appellee and has paid additional funds to establish a water delivery system and water source independent of the Defendant/Appellee. See Record page 000003 paragraph 7, 8, 9 and 12.

9. The Plaintiff/Appellant requested that the Defendant/Appellee be held in contempt of the 1973 Court Order, that the funds assessed be returned to the Plaintiff/Appellant, that punitive damages be assessed against the Defendant/Appellee for its failure to fulfill the 1973 Court Order and that the Conservancy District be ordered to reimburse the property owners for the amounts expended to furnish their own water system. See Record page 000004 paragraphs 14, 15, 16, and 17.

STATEMENT OF JURISDICTION

This is an appeal from the Order and Judgment of Judge Leslie A. Lewis, Third Judicial District court of Salt Lake County, State of Utah. Jurisdiction is conferred upon this Court by Rule 3, and Rule 4 of the Utah Rules of Appellate Procedure and UCA Rule 78-2-2 and is given by assignment from the Utah Supreme Court to the Utah Court of Appeals.

ISSUES PRESENTED ON APPEAL

POINT I DOES SECTION 63-30-22 BAR CLAIMS FOR PUNITIVE DAMAGES AGAINST THE DEFENDANT/APPELLEE WATER CONSERVANCY DISTRICT

POINT II WAS THE WATER CONSERVANCY DISTRICT ENTITLED TO A DISMISSAL OF PLAINTIFF/APPELLANT CONTEMPT OF COURT CLAIM?

- A. WAS THE WATER CONSERVANCY DISTRICT IN CONTEMPT OF THE ANNEXATION ORDER?**
- B. WAS PLAINTIFF/APPELLANT'S CONTEMPT OF COURT CLAIM BARRED BY UTAH CODE ANN. SECTION 17A-2-1437(3)(i)?**
- C. WAS PLAINTIFF/APPELLANT CONTEMPT OF COURT CLAIM BARRED BY COLLATERAL ESTOPPEL?**
- D. WAS PLAINTIFF/APPELLANT CLAIM THAT THE WATER CONSERVANCY DISTRICT WAS IN CONTEMPT OF THE 1973 ANNEXATION ORDER TIMELY?**

POINT III IS THE WATER CONSERVANCY DISTRICT ENTITLED TO A JUDGMENT ON THE PLEADINGS DISMISSING PLAINTIFF/APPELLANT'S CLAIM FOR AN EQUITABLE REFUND OF ASSESSMENT.

- A. DOES UTAH CODE ANN. SECTION 17A-2-1437(3)(i) AND COLLATERAL ESTOPPEL BAR PLAINTIFF/APPELLANT'S EQUITABLE CLAIM FOR A REFUND OF ASSESSMENT?**
- B. HAVE PLAINTIFF/APPELLANT FAILED TO PLEAD AN EQUITABLE CLAIM FOR A REUND OF ASSESSMENT?**
 - 1. DOES PLAINTIFF/APPELLANT HAVE TO PLEAD THAT THE PROPERTY ASSESSED BY THE WATER CONSERVANCY DISTRICT IS ILLEGAL?**
 - 2. DOES PLAINTIFF/APPLELLANT HAVE TO PLEAD THAT HE PAID THE ASSESSMENT UNDER PROTEST?**
- C. IS PLAINTIFF/APPELLANT EQUITABLE CLAIM FOR A REFUND OF ASSESSMENT BARRED BY UTAH CODE ANN. SECTION 78-12-25(3)?**

- D. IS PLAINTIFF/APPELLANT CLAIM FOR EQUITABLE ASSESSMENT REFUND BARRED BY UTAH CODE ANN. SECTION 78-12-31?**
- E. IS PLAINTIFF/APPELLANT EQUITABLE CLAIM FOR AN ASSESSMENT REFUND BARRED BY HIS FAILURE TO PURSUE AVAILABLE AND ADEQUATE LEGAL REMEDIES?**

STANDARD OF REVIEW

Judgment on the Pleadings may be granted only in those matters where it is clear from the record that there exists no genuine issues as to material facts. The trial court is to assume that the facts as stated in the complaint of the non moving party are true and must therefore conclude that the non moving party could no prevail as a matter of law.

No deference is to be accorded to the trial court's legal conclusions based on those facts.

PRESERVATION OF ISSUES

The issues before the Court were preserved for appeal in the trial court in Plaintiff/Appellants Complaint, Reply Memorandum, and in its argument before the trial court. See Record pages 000001 -000008, pages 000048 - 000063, and pages 000110 - 000136.

SUMMARY OF ARGUMENT

The Plaintiff/Appellant claim that they should receive services where they are being assessed by the Defendant/Appellee Water Conservancy District. The Defendant/Appellee Water Conservancy District states that it is not obligated to furnish any services for the assessments which it receives for those properties which are annexed to it. That if it is benefiting the whole District by what it is doing that is sufficient.

The Plaintiff/Appellant claims that the Statute of Limitations does not apply in the

assessment both because the annexation statute takes the matter outside of the statute of limitations and the statute if it does apply, does not start to run until the District had sufficient time to perform. That time to perform is now at hand.

The last issue is that the Plaintiff/Appellant did not protest the payment of the assessment. The Plaintiff/Appellant argues that it did not have to protest the assessment as the Water Conservancy District was under a mandate of the 1973 Annexation Order to Benefit the land being annexed which was not done.

ARGUMENT

Point I

SECTION 63-30-22 DOES NOT BAR CLAIMS FOR PUNITIVE DAMAGES AGAINST THE SALT LAKE WATER CONSERVANCY DISTRICT

The Defendant/Appellee, Salt Lake County Water Conservancy District, is not a Political subdivision as defined under the Governmental Immunity Act. A political subdivision (as defined under the Governmental Immunity Act) "means any county, city, town, school district, public transit district, or other governmental subdivision or public corporation". It should be noted that the definition is defined narrowly and does not include a Water Conservancy District even though it does include entities which are quite similar such as school district and public transit district.

Under Tygesen v. Magna Water Co. , 226 P.2d 127 (Utah 1950), the court defines a Water Conservancy District as an improvement district which is neither fish nor fowl - it being a quasi municipality which "lay the principle that they who receive the benefits should pay for them"

Even if the Water Conservancy was protected by the Governmental Act, since the

responsibilities are non governmental and are proprietary in nature, they would fall under the exceptions to the Governmental Immunity Act. (Section 63-30-3 "all governmental entities are immune from suit for any injury which results from the exercise of a governmental function,") That question being whether or not furnishing water is a proprietary function or a governmental function.

The Tygesen Court supports this proposition by questioning whether the County ever had a duty of furnishing water by stating that "The Improvement District Act accomplished the same thing as to the water and sewer systems by lifting from the county the necessity of furnishing water and sewer facilities, if indeed it ever had that duty, but leaving with the county its ordinary functions in the district area relating to health, policing, etc.."

In Salt Lake County, historically, water was supplied as a proprietary function by the citizens as from early days various citizens held the water rights to the various steams which came into the valley and the water was not supplied as a governmental function. Under Kirk v. State 784 P. 2d 1255 1989 (Ct. of Appeals), four factors were to be considered to determine whether an activity is proprietary or governmental: 1. whether the activity is something that is done for the general public good, 2. whether it is generally regarded as a public responsibility; 3. whether there is any special pecuniary benefit to the city; and 4. whether it is in competition with free enterprise. Water Conservancy Districts are in competition with private enterprises such as water companies which are everywhere in the Salt Lake County area.

Obviously then, the Defendant/Appellee is competing with private enterprise as to

furnishing water. It has generally been the responsibility of the private sector to furnish water to landowners, which places the actions of the Defendant/Appellee as a proprietary function which waives its governmental immunity. There are numerous Utah cases which define quasi municipalities as different from city or county governments.

In McQuilllin Mun. Corp. (3rd Ed.) Sec. 2.07a; we find the following definition:

"A quasi-municipal corporation is a public agency created or authorized by the legislature to aid the state in, or to take charge of, some public or state work, other than community government, for the general welfare. 'Quasi municipal' corporations are public in nature, but not strictly speaking, municipal corporations. They are bodies which possess a limited number of corporate powers and which are low down in the scale or grade of corporate existence, and consist of various local government areas established to aid the administration of public functions" Id., Sec 2.13

Therefore, Plaintiff is not precluded from its punitive damage action in this matter as the Defendant District is not the same type of governmental agency as contemplated for governmental immunity.

Point II

THE WATER CONSERVANCY DISTRICT IS NOT ENTITLED TO A DISMISSAL OF PLAINTIFF'S CONTEMPT OF COURT CLAIM

A. THE WATER CONSERVANCY DISTRICT IS IN CONTEMPT OF THE ANNEXATION ORDER

The Court is very clear in its Order of April 3, 1973. The Court states, not as a finding, but as an Order that:

**IT IS FURTHER ORDERED that all of said lands will be benefited
from inclusion in the District;"**

The Court in its' order does not make a specific finding that the lands will be benefited but it Orders that the lands will be benefited (a specific duty is given to the Water Conservancy District). The Amended Order of April 3, 1974, reads exactly as the Order of April 3, 1973 except for a description correction. The lands will be benefited from inclusion in the District.

The Court Order is not designated as a finding of fact but is a direct Order of the Court bearing all the authority and majesty of the Court. To not follow that Order is Contempt of Court.

The Water Conservancy District is given great power but the power does not come directly from the vote of the citizens. That is why the Court maintains jurisdiction in order to be sure that the power given is not abused as has happened in the case at hand.

Historically the Board of Directors of the Water Conservancy Districts were appointed by the Court. The Supreme Court found that this was a mis-use of Judicial power and declared it unconstitutional. The legislature then amended the law and directed that the County appoint the Directors but still maintained that the Court had continuing jurisdiction.

The Water Conservancy District was formed by the Legislature to do what the individual could not do by himself and for which to tax the whole county for special areas would be unequitable. There is no other way that the Plaintiff/Appellant's lands can be benefited by the Water District (Defendant/Appellee) but to be furnished water. That has not been done, and is not being presently done. Therefore, the Defendant/Appellee is in Contempt of the 1973 Court Order to Benefit the land.

**B. PLAINTIFF/APPELLANT'S CONTEMPT OF COURT CLAIM IS NOT
BARRED BY UTAH CODE ANN. SECTION 17A-2-1437(3)(i)**

Section 17A-2-1437(3)(i) does not bar the Contempt or punitive damages. That section only goes to the determination of the facts by the court which allow it to Order an Annexation of land to the Water Conservancy District. That is not in question here. The Court made its findings and upon those findings Ordered that "all of said lands will be benefited". There is no fancy footwork that the Defendant/Appellee can do that lessens that Order.

**C. PLAINTIFF/APPELLANT' CONTEMPT OF COURT CLAIM IS NOT
BARRED BY COLLATERAL ESTOPPEL**

Plaintiff/Appellant's complaint does not come from the fact that the Court had to find that a benefit was possible at the time the Annexation was approved. The only problem is that the Defendant/Appellee never put forth the necessary effort to promulgate that benefit. Instead it assessed the Plaintiff/Appellant while Plaintiff/Appellant furnished their own water system and drilled their own well.

When asked to help repair the water system which the Plaintiff/Appellant installed, the Defendant/Appellee had the tenacity to charge for what ever help was expended even though it was receiving assessment dollars for which it gave no pro quid quo.

The Judge Tayor Court realizing the temptation to the Water Conservancy District in the particular situation, specifically Ordered the Defendant/Appellee Water Conservancy District to benefit the lands annexed. The Defendant/Appellee has in no way alleged any benefit which it has given to the Plaintiff/Appellant's land.

Collateral Estoppel is not at issue here. Failure to follow the Courts specific Order is

at issue. The Defendant/Appellee was to benefit the lands annexed. It has not done that since 1973. It is certainly by now in contempt of the 1973 Court Order.

**D. PLAINTIFF/APPELLANT CLAIM THAT THE WATER
CONSERVANCY DISTRICT IS IN CONTEMPT OF THE 1973
ANNEXATION ORDER IS TIMELY**

Plaintiffs twenty-two year delay in filing this action for contempt of the Court Order does not foreclose their contempt claim. The Order of the Court is a continuing Order. It is not for a specific period of time, but is for all that period of time from when the land is annexed to the District. Under Section 17A-2-1406 "The district court in and for the county in which the petition for the organization of a water conservancy district has been filed, shall thereafter for all purposes of this part, except as hereinafter otherwise provided, maintain and have original and exclusive jurisdiction, xxx....xxx, without regard to the usual limits of its jurisdiction."

Considering the complex nature of furnishing water, the great cost, and the large amount of time necessary to construct such a system, the 22 year period is not unreasonable. Plaintiffs patience is to be applauded not condemned. It becomes judgmental as to when the contempt arises. Certainly not within the first year, but certainly by the twenty second year.

As stated in *American Tierra Corp. v City of West Jordan*, 840 P.2d 757 (Utah 1992), to determine if the statute of limitation has run, you must first determine when the period began to run. "The correct view, however, is that the limitation period begins to run as of the date on which the action could have been maintained to a successful conclusion." A right of action accrues when a wrong has been incurred that gives a right to bring and

sustain a suit. In the instance before us, the period starts when this court determines that the Defendant District had adequate time to promulgate a benefit to the lands as ordered. Certainly after 22 years that period of time has started.

Therefore, Plaintiffs action should not be dismissed due to the time between the 1973 Order and the bringing of this action.

Point III

THE WATER CONSERVANCY DISTRICT IS NOT ENTITLED TO A JUDGMENT ON THE PLEADING DISMISSING PLAINTIFF/APPELLANT'S CLAIM FOR AN EQUITABLE REFUND OF ASSESSMENT

A. UTAH CODE ANN. SECTION 17A-2-1437(3)(i) AND COLLATERAL ESTOPPEL DO NOT BAR PLAINTIFFS/APPELLANT'S EQUITABLE CLAIM FOR A REFUND OF ASSESSMENT.

Contrary to Defendant/Appellee's allegations, the land of the Plaintiff/Appellant has not been benefited by its annexation to the Water Conservancy District. That is the reason for the lawsuit. Since the funds given to the Water Conservancy District have not been used to benefit the lands and their owners to date, logically they should be returned with interest. If the Defendant/Appellee District decides to do something in the future, then those future funds collected through the taxation power of the county, may be used to benefit the land in the future.

The 1973 Court did not dispose of the issue before us. While it is true that for the court to annex the land to the Water District, it had to find a benefit to the land owners, that determination has nothing to do with the specific and clear order of the Court that the Water Conservancy District which Order by the Court stated "THAT all of said lands will be benefited from inclusion in the District".

The Defendant/Appellee alleges that Plaintiff/Appellant must prove that the land has not been and will not be benefited by the annexation to the District. That certainly is a question of fact which must be ruled upon by a trier of fact which is the issue before the Court. It is hard to imagine any benefit having been received at present, since the Defendant/Appellee has not furnished any water to the Plaintiff/Appellant in over 22 years. Furthermore, there are no plans to furnish water in the near future by the Defendant/Appellee District, and finally, the system which the Plaintiff/Appellant have installed is furnishing water sufficiently abundant for the contemplated future needs.

The 1973 Court Order and Utah Code Ann. Section 17A-2-1437(3)(i) have not resolved the issue and do not by collateral estoppel bar Plaintiff/Appellant equitable claim as the law allows for the annexation to be established upon a potential benefit and the court had to find a potential benefit to the owner of the land.

The Supreme Court said in American Tierra Corp. Case that "This court long has recognized a common law exception to governmental immunity for equitable claims." and then states "Furthermore, this court already has recognized that an action to recover unlawful charges for city services is equitable in nature. See El Rancho, 565 P.2d at 779-80"

This is not in question. The 1973 Court in this instance went further in that it Ordered that the owners of the land benefit from the Annexation. To date this has not happened.

**B. PLAINTIFF/APPELLANT HAVE NOT FAILED TO PLEAD AN
EQUITABLE CLAIM FOR A REFUND OF ASSESSMENT**

1. Plaintiff does not have to plead that the assessment levied by the Water Conservancy District are illegal

Plaintiff/Appellant do not deny that the claims for the refund of funds levied by the Defendant/Appellee and collected as a tax, is an equitable claim. The Plaintiff/Appellee has requested that those funds be returned as the Defendant/Appellee District has failed to comply with a direct court order and therefore has no legal right to those funds. The collection of the funds is in contemplation of rendering a benefit to the lands annexed. That benefit has never been received. Logically then, those funds were illegally collected. Breaking of a Court Order is an illegal act. Plaintiff does not have to specifically allege an illegal act to maintain its position in this case on this matter.

Equity demands that where a party is being taken advantage of by another party who is contemptuously disobeying the law, that the party injured should be compensated for that act. The Water Conservancy District Defendant/Appellee has for the last 22 years taken funds from the Plaintiff/Appellant and has failed to fulfill that Court Order which gives it the authority to collect the funds. The Defendant/Appellee Water Conservancy District has not benefited the lands as ordered under that Court Order which authorized and gave life to the Annexation and all powers derived thereunder.

2. Plaintiff/Appellant does not have to plead that he paid his assessment under protest

Plaintiff/Appellant are not barred from this matter because they failed to pay their assessment under protest. The Water Conservancy District is not the taxing entity. The County is the taxing entity. The Water Conservancy District simply establishes the amount of assessment it desires to be levied and the County becomes the entity which collects the

assessment as a tax.

The issues before the Court is whether or not the lands have been benefited by the Defendant/Appellee District as directed by the District Court under the Honorable Judge Taylor and if they have not as alleged by the Plaintiff/Appellant what the District Defendant/Appellee should do to benefit the lands.

- 1. Should the monies assessed and collected by the taxing entity and paid to the Defendant/Appellee, be returned to the owners of the lands?**
- 2. Should the Defendant/Appellee be Ordered by the Court to immediately present a plan to the Court as to how they will benefit the land owners in the future?**
- 3. Should the Defendant/Appellee be Ordered to purchase the water system now furnishing water to the lands which are the subject of this lawsuit and to take over the operation of that system?**

The tax protest as contemplated under Section 59-2-1327 does not pertain to the matter before us at this time. That pertains to the taxing entity which actually does the collection. This problem is not between the Plaintiff/Appellant and the County who is the Tax Collector. This problem is between the Plaintiff/Appellant and the Defendant/Appellee Water Conservancy District. An entity which is quasi governmental. It only has those certain governmental powers as given to it by the Legislature.

The Water Conservancy District is basically a private business which is given some governmental authority in order to facilitate the objectives of the conservation and delivery of water to the various lands in Salt Lake County. It is kept under close supervision of the District Court by continuing jurisdiction to insure that it does not abuse its authority and

gains its rights over property by a court authorized annexation. When the Court authorized the annexation in this particular instance, it Ordered that the lands Benefit from the annexation. This has not happened. The lands have not benefited from the annexation but have had to furnish or obtain their water from sources other than the Defendant/Appellee District because the Defendant/Appellee Water Conservancy District has refused to furnish that water.

The date wherein the Statute of Limitations begins to run must be determined by the Court. At what point was the Defendant/Appellee placed into contempt? At the time the Court determines that fact, then the time of the Statute of Limitation which ever one is used starts to run unless that Statute of Limitation has been waived as argued earlier by the enabling legislation.

C. PLAINTIFF/APPELLANT EQUITABLE CLAIM FOR A REFUND OF ASSESSMENT IS NOT BARRED BY UTAH CODE ANN. SECTION 78-12-25(3)

The Starting of the Clock is not at the time of the first payment of the assessment. Certainly, considering the complexity of operating a water system for the Plaintiff/Appellant, the contempt did not start at the first assessment levy. Any action brought at that time would not have had a chance of succeeding. Did it start after 22 years of collecting assessments and failing to provide the benefit as Ordered by the Taylor Court?

Did it start when the owners of the land obtained their own water system?

Certainly after 22 years the intent of the Defendant/Appellee District is discernable. That intent being to not furnish any benefit to the lands but to continue to require assessments be paid by the land owners of the Plaintiff/Appellant for nothing in return.

Although Plaintiff/Appellant does not admit that the statute of limitations has run on any of the assessments paid, even if the statute of limitations has canceled out part of the assessment paid, it has not canceled those assessments paid over the last four year.

D. PLAINTIFFS' CLAIM FOR AN EQUITABLE ASSESMENT REFUND IS NOT BARRED BY UTAH CODE ANN. SECTION 78-12-31

Section 78-12-31 is not applicable here as it relates to an officer or a defacto officer who collects taxes. That is not the fact situation here. This lawsuit is not against any tax collector it is against the Defendant/Appellee Water Conservancy District.

E. PLAINTIFFS' EQUITABLE CLAIM FOR A TAX ASSUMENT IS NOT BARRED BY HIS FAILURE TO PURSUE AVAILABLE AND ADEQUATE LEGAL REMEDIES.

Plaintiff/Appellant sought numerous times for the Defendant/Appellee to provide water for their lands. The Defendant/Appellee has ignored their requests for water over the years. They have furnished water to other areas annexed after the Plaintiff/Appellant.

The individual yearly assessment is not the question. The question is that the Defendant/Appellee has had 22 years to furnish water to the Plaintiff/Appellant and has failed to fulfill its 1973 Order from the Court.

The Defendant/Appellee recently has shown its disdain for that Court Order of 1973 and 1974 by furnishing some work on the present water source for the Plaintiff/Appellant and has charged them extra for that labor. This is the point at which the Plaintiff/Appellant determined that the Defendant/Appellee was never in the foreseeable future going to comply with the Judge Tayor Court Order of 1973 that the Defendant/Appellee BENEFIT the lands annexed.

The procedures contained in 17A-2-1428 is for a party to protest a certain tax

because it is too high or inappropriate. The procedures contained in 17A-2-1438, -1450, -1452 are there for lands that wish to be excluded from the District.

Plaintiff/Appellant are seeking neither of the above. They desire that the Defendant/Appellee Water District comply with the "1973" Court order and BENEFIT Plaintiff/Appellant lands. That to further that end, the funds collected should be returned to the lands to reimburse those expenditures which were necessary to furnish the water, the Water Conservancy District was order to furnish.

CONCLUSION

Judge G. Hal Taylor signed an Order on April 3, 1973 which ORDERED "THAT all of said lands will be benefited from inclusion in the District;". Up to this time, there has been no benefit to the lands annexed to the Water Conservancy District. Under the legislation which gives authority to the Water Conservancy District, the Court has continuing jurisdiction. This is the proper venue for this action to be brought.

The 1973 Court gave the Order, the Defendant/Appellee Water Conservancy District has failed to follow that Order. Its failure is justification for punitive damages for the contemptuous actions of the Defendant/Appellee. Punitive damages are an insurance that a party will know that if it so acts with disrespect to this Court in the future, it will pay to so act.

The statute of limitations and refund of taxes does not accurately describe the facts. The Defendant/Appellee is a quasi municipality. As such it has only those powers given by the legislature for those purposes defined by the legislature. This is not the same type of

entity as a city, a county, or state nor does it have the same protection. It is a basically a proprietary entity which is given some of the powers of a government entity in order to effect its designed end result.

The Water Conservancy District does not have the power to tax by itself, but only the power to set an assessment, which is then collected by the taxing authority. This power is only over those lands which have been annexed to the Water Conservancy District under color of law through the authority of the District Court. That District Court is given continuing jurisdiction over matters which may arise in the Water Conservancy District.

The Officials (Directors) of the Water Conservancy District are not elected from the electorate as a city or county are but are appointed by the County Commission and therefore this court has jurisdiction to see that its Orders have been followed and the ability to hold the Defendant/Appellee Water Conservancy District in Contempt.

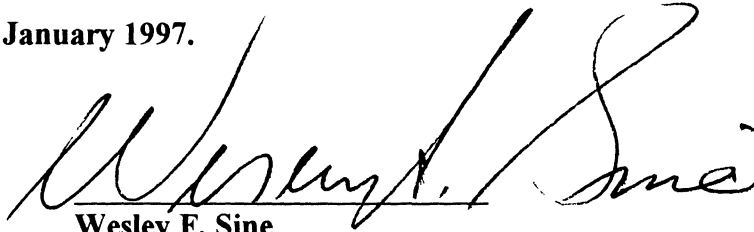
Arguments for statute of limitations are not useable in this instance.

Plaintiff/Appellant brought the action timely when considering the complex nature of furnishing water. But 22 years is long enough to wait for the benefits as ordered by the court.

The District Court was wrong in dismissing the Plaintiff/Appellant's Complaint on the Pleadings. The Defendant/Appellee Water Conservancy District is accountable for its actions or lack thereof in providing a "Benefit" to the Plaintiff/Appellant's land as ordered by the 1973 Court. They do not have the immunity of a city or county as a governmental entity. They must do what is ordered by the Court. It is inequitable for them to make assessments on land and then to furnish no services.

**This court should deny the ruling of the District Court and send this action back by
overruling the Third District Courts Dismissal of Plaintiff/Appellant's Complaint.**

Dated this 2'nd day of January 1997.

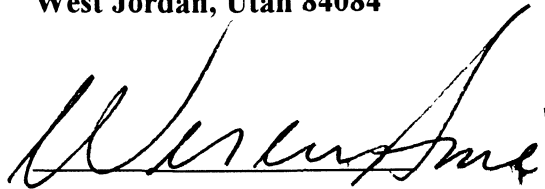
A handwritten signature in black ink, appearing to read 'Wesley F. Sine', written over a horizontal line.

**Wesley F. Sine
Attorney for Plaintiff/Appellant**

CERTIFICATION OF MAILING

**I hereby certify that a true and correct copy of the above Brief of the
Plaintiff/Appellant mailed, postage prepaid this 2'nd day of January 1997 to the
Defendant/Appellees by addressing it to:**

**REID LEWIS, ESQ.
Salt Lake County Water Conservancy District
P.O. Box 70
West Jordan, Utah 84084**

A handwritten signature in black ink, appearing to read "Reid Lewis", is written over a horizontal line.

line of Sec. 8, 2640 feet, m/l to the NW corner of said Sec. 8; thence S. along the W. line of said Sec. 8, 1320 feet, m/l; thence W. 1320 feet, m/l; thence S. 1320 feet, m/l; thence S. 1320 feet, m/l; thence N. 1320 feet, m/l; thence E. 1320 feet, m/l; thence N. 2640 feet, m/l; thence E. 1320 feet, m/l to the W. line of Sec. 5; thence N. along said W. line 2640 feet, m/l; thence E. 3960 feet, m/l; thence N. 1320 feet, m/l to the N. line of said Sec. 5; thence E. along said N. line 1320 feet, m/l, to the point of beginning.

Excepting the following:

Beg. at a point S. 505.00 feet and W. 625.00 feet from the N. quarter corner of Sec. 9, T. 4 S., R. 2 W., SLB&M, and running thence S. 720.00 feet; thence E. 1945.00 feet; thence N. 720.00 feet; thence W. 1945.00 feet to the point of beginning.

Also excepting the following:

The SW quarter of the SE quarter, and the SE quarter of the SW quarter of Sec. 9, T. 4 S., R. 2 W., SLB&M.

Also excepting the following:

Comm. N. 58° 24' E. 2274 feet from the SW corner of Sec. 16, T. 4 S. R. 2 W., SLB&M, and running thence S. 26° 30' E. 74.5 feet; thence S. 66° 53' E. 189.5 feet; thence S. 43° 02' E. 204 feet; thence S. 25° 20' E. 106 feet; thence S. 44° 17' E. 359 feet; thence N. 15° 15' W. 206.8 feet; thence N. 49° 30' W. 197.0 feet; thence N. 37° 30' W. 152.5 feet; thence N. 32° 12' W. 187.5 feet; thence N. 68° 44' W. 109.2 feet; thence N. 46° 51' W. 117 feet; thence S. 34° 13' W. 103.5 feet to the point of beginning.

Also excepting the following:

Beg. at the S. quarter corner of Sec. 5, T. 4 S., R. 2 W., SLB&M, and running thence N. 1320 feet, m/l to the N. line of the SW quarter of the SE quarter of said Sec. 5; thence E. 2640 feet, more or less to the E. line of Sec. 5; thence S. along said E. line 1320 feet, m/l to the SE corner of said Sec. 5; thence W. 2640 feet to the point of beg.

Also excepting:

Beg. at a point at the NW corner of the SW quarter of the SE Quarter of Sec. 5, T. 4 S. R. 2 W., SLB&M, and running thence S. 89° 38' 58" W. 1321.42 feet; thence N. 0° 23' 47" W. 1319.99 feet; thence N. 89° 38' 58" E. 1325.28 feet; thence S. 0° 13' 45" E. 1319.99 feet to the point of beg.

IT IS FURTHER ORDERED that all of said lands will be benefited from inclusion in the District; that the owners of the land have petitioned for annexation, and that they should be represented by the present directors as a part of the division in which each tract of land is located.

Dated this 3rd day of April, 1973.

ATTEST
W. STEELING EVANS
CLERK
BY Roy Robinson
Deputy Clerk

BY THE COURT:

Ed Had Taylor
Judge

STATE OF UTAH
COUNTY OF SALT LAKE
I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK. WITNESS MY HAND AND SEAL, IN SALT LAKE COUNTY, UTAH, ON 3rd DAY OF April, 1973.
W. STEELING EVANS, CLERK
BY Flora E. Evans DEPUTY

Recorded APR 5 1973 9:14
Request of Clyde Mackson & Pratt
Fee Paid ERADEAN MARTIN
Recorder, Salt Lake County, Utah
NOFEM By MB Deputy
Ref 351 to State & 4111

Book 3295-
Page

FILED IN CLERK'S OFFICE
Salt Lake County Utah

2530104 IN THE DISTRICT COURT OF SALT LAKE COUNTY APR 3 1973

STATE OF UTAH

W. Sterling Evans, Clerk and Just. Court
by Rory Robinson
County Clerk

IN THE MATTER OF THE ORGANIZA- :
TION OF THE SALT LAKE COUNTY :
WATER CONSERVANCY DISTRICT, : No. 92340
PURSUANT TO CHAPTER 9, TITLE 73, :
UTAH CODE ANNOTATED, 1953, AS : ORDER
AMENDED.

Upon motion of the Salt Lake County Water Conservancy District, by and through its attorney of record, Edward W. Clyde, IT IS HEREBY ORDERED that the following described lands should be, and they are hereby annexed to the Salt Lake County Water Conservancy District, to-wit:

Commencing at the NE corner of Lot 54, Shadow Mountain Subdivision, located in the NE Quarter of the NW Quarter of Sec. 11, T. 2 S. R. 1 E., SLB&M, and running thence N. 86° 02' E. 48.39 feet; thence N. 63° 19' E. 100 feet; thence N. 132 feet to the center of Dry Creek; thence southerly along said creek to a point due North from the beginning; thence S. 133.32 feet to the beginning. 0.42 acre.

Commencing N. 87° 41' E. 35.83 feet from the NE corner of Lot 55, Shadow Mountain Subdivision, located in the NE Quarter of the NW Quarter of Sec. 11, T. 2 S. R. 1 E., SLB&M, and running thence N. 63° 01' E. 78 feet; thence N. 86° 02' E. 51.51 feet; thence N. 133.32 feet to the center of Dry Creek ditch; thence S. 71° 10' W. 15.35 feet; thence S. 66° 34' 50" W. along said center 115.92 feet; thence S. 121.14 feet to the beginning. Less Nanihoa Drive. (0.29 acre)

Beg. at the SW corner of Sec. 33, T. 3 S. R. 2 W., SLB&M, and running thence N. 0° 43' 35" W. along the section line 1323.78 feet to the N. line of the SW Quarter of the SW quarter of said section; thence S. 89° 53' 17" E. 2459.11 feet to the S. line of State Highway U-111; thence along said S. line as follows: S. 69° 30' E. 463.92 feet; thence S. 73° 35' E. 338.70 feet; thence S. 78° 10' E. 555.45 feet; thence S. 60° 05' E. 262.20 feet; thence S. 66° 45' E. 344.39 feet; thence S. 80° 03' E. 180.30 feet; thence leaving said S. line S. 81° 00' W. 499.05 feet; thence N. 89° 51' 27" W. 1160.10 feet; thence S. 0° 15' 52" E. 578.95 feet; thence N. 89° 51' 05" W. 165.72 feet to the S. Quarter corner of said Sec. 33, said point also being the N. quarter corner of Sec. 4 T. 4 S. R. 2 W., SLB&M, and running thence S. 3960 feet, more or less; thence W. 1320 feet, m/l; thence S. 1320 feet, m/l; to the North line of Sec. 9, T. 4 S. R. 2 W., SLB&M; thence E. along said N. line 2640 feet, m/l; thence S. 1320 feet m/l; thence E. 1320 feet, m/l, to the E. line of said Sec. 9, thence S. along the E. line of Sec. 9, Sec. 16 and Sec. 21, 11610 feet, m/l, to the E. Quarter corner of said Sec. 21; thence W. 1320 feet, m/l, thence S. 1320 feet, m/l; thence W. 3450 feet, m/l to the W. line of said Sec. 21; thence Northwesterly along said section line, 1320 feet, m/l to the W. quarter corner of said Sec. 21; thence S. 1320 feet, m/l, thence W. 1320 feet, m/l, thence N. 1320 feet, m/l, thence E. 5280 feet, m/l; thence N. 1320 feet, m/l; thence W. 3960 feet, m/l, to the W. line of said Sec. 21; thence N. 3960 feet m/l to the W. quarter corner of Sec. 16; thence W. 2640 feet, m/l; thence N. 7920 feet, m/l, to the N. quarter corner of Sec. 8, thence W. along said N.

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