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IN THE SUPREME COURT FOR THE

STATE OF UTAH

ANDREA MARTINEZ, et al,	)	
Plaintiffs - Respondents,	)	
vs.	)	Case No.
BONA VISTA WATER IMPROVEMENT DISTRICT,	)	16015
Defendant - Appellant.	)	

BRIEF OF RESPONDENTS

Appeal from the Decision of the Second Judicial
District Court for Weber County, Utah
The Honorable Calvin Gould, Judge

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FILED

JAN 8 1979

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT FOR THE

STATE OF UTAH

---oooOooo---

ANDREA MARTINEZ, et al, Plaintiff-Respondent,	)	
vs.	)	Case No. 16015
BONA VISTA WATER IMPROVEMENT DISTRICT, Defendant-Appellant.	)	

---oooOooo---

NATURE AND TYPE OF CASE

The case in question deals with the vast majority of property owners in Weber County taxing units 15 and 22 to have their property in said taxing units withdrawn from Bona Vista Water District pursuant to 17-6-28 Utah Code Annotated 1953.

DISPOSITION IN LOWER COURT

AND BY SPECIAL COMMISSION

The District Court of Weber County, the Honorable Judge Calvin Gould presiding, ordered pursuant to the recommendations of a special commission established by the court under the law, that taxing units 15 and 21 in Weber County be withdrawn from the Bona Vista Water

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Improvement District and further decreed that the property owners have no claim on any of the assets of the improvement district and further decreed that said owners in taxing districts 15 and 22 be relieved from payment of all taxes and charges, including taxes and charges for payment of revenue bonds and maintenance and operation costs to the Bona Vista Water District, except that if said District has any revenue bonds or general obligation bonds outstanding and unpaid on the date of the filing of the petition, the withdrawn area shall continue to be taxable under the provisions of Section 17-6-3.8(B), Utah Code Annotated 1953, but only to the extent and only in those years where it becomes necessary to levy such a tax on the withdrawn area to forestall or prevent a default in the payment of principal and interest, or either, on any revenue bonds or general obligation bonds of the improvement district.

RESPONDENT'S PRAYER

That His Honor, Judge Calvin Gould's order be upheld and the Respondent be awarded costs herein.

STATEMENT OF FACTS

In 1958, certain land developers requested from Bona Vista Improvement District that it furnish culinary water to land being developed and in anticipation of this, Bona Vista Water Improvement District installed a main

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water line at a cost of about $51,000.00.

Thereafter in 1960 the land in question was annexed into Ogden City and Ogden City then installed all main and secondary lines necessary to service said area with culinary water and has continued to serve said area continually since that time with the exception of one home.

The only line ever established by Bona Vista Water Improvement District was the aforementioned line. And they have never furnished at any time culinary water to any home in the area with the exception of one home.

Since 1960, Bona Vista has received by way of taxes from homeowners in said area a sum of $200,696.00 without furnishing one drop of water to them.

Bona Vista further concedes that the present worth of their pipe line installed at a cost of $51,356.96 to be at least $120,000. And that said original line does now furnish water to others outside of the withdrawn area and will continue furnishing water as the general area in question grows.

They further concede that the yearly loss of taxes would be 15.5% or only $9,135.00 per year and this could be made up by anticipated expansion in other areas and a slight rise in the mill levy on remaining users. (Note the loss of 15.5% of tax revenue is limited to tax revenue only and not Bona Vista's total over-all budget, which includes taxes, fees, charges and interest, etc.)

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ARGUMENT

POINT 1

THE APPELLATE RECORD IS INCOMPLETE AND VAGUE AND THE APPELLATE COURT IS BOUND TO PRESUME THE DISTRICT COURT ACTED PROPERLY IN THE ABSENCE OF A TRANSCRIPT.

The appellant has failed to maintain its responsibility by showing in the record that the trial court erred in that no transcript has been filed even though one is available.

This Court has as recently as November 21, 1978, stated in the case of "In the Matter of the Guardianship of Linda Knowlton, Utah State Supreme Court Green Sheets, No. 15466, November 21, 1978, the following:

> "It is the responsibility of the appellant to show the Supreme Court, in the record from the trial court, where his alleged error may be."

The Court further stated citing In Re La Ville's estate, 122 Utah 253, 248 P. 2d 372(1952) and State vs. Hansen, Utah 540, P. 2d 935 (1975):

> "that since the appellant had neither filed a brief nor presented a transcript (emphasis added) there was no showing of reversible error. Under the circumstances, the Court has no way of reviewing the evidence presented to the trial court, and is not informed by appellant of any basis for reversing the Order made by the trial court."

This Honorable Court has also as recently as December 19, 1978, in the case of Rocky Mountain Giant Tire Service Inc. vs. Brad Ragan Inc., Utah State Supreme Court Green Sheets, No. 15553, December 19, 1978 said the following, quoting from the case of Olson vs. Park Daughter

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Investment Co., 29 Utah 2d 421, 511 P. 2d 145, 146 (1973).

> "this court on appeal would not upset [the court's] findings and judgment, and order findings and judgment to the contrary, unless the evidence were such that all reasonable minds must necessarily so find; and in making that determination, we review the evidence and all reasonable inferences fairly to be drawn therefrom in the light favorable to [the court's] findings and judgment.

POINT II

THE SITUATION OF THE PROPERTY OWNERS IN TAXING DISTRICT 15 AND 21 OF OGDEN CITY, WEBER COUNTY, IS UNCONSCIONABLE AND THE RELIEF GIVEN BY THE DISTRICT COURT SHOULD BE SUSTAINED.

If the Court is to accept the Statement of Facts given in both the Appellant and Respondant's Briefs in the absence of a transcript of the trial court's proceedings, then the Respondent respectfully argues that the property owners in the taxing districts in question are entitled to relief as a matter of equity. The facts are as follows:

1. 1958: Bona Vista Water Improvement District installs a main water line at a cost of $51,356.96 in anticipation of serving the taxing districts in question.
2. 1960: Ogden City annexes said taxing districts prior to water being delivered by Bona Vista Water Improvement District.
3. Ogden City from 1960 to the present time has furnished all water to taxing districts at no further expense to Bona Vista Water Improvement District.
4. Since 1960, property owners in said taxing

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districts have paid and have been taxed by Ogden City for their water.

5. Since 1960, property owners in said taxing districts have paid a total of $200,696.00 in taxes to Bona Vista Water Improvement District far exceeding the initial costs of the expenses incurred by said district.

6. Bona Vista is presently using the line for other customers and the use will increase as the area grows and develops.

7. The value of said line today is $120,000.00.

It is unconscionable to continue a double taxation on said property owners and allow the appellants herein to continue to enjoy their windfall at no expense to them.

POINT III

17-6-31 UTAH CODE ANNOTATED 1953 SPECIFICALLY PERMITS THE COURT TO RELIEVE THE TAXING DISTRICT OF THE PAYMENT OF BONDS EXCEPT AS NEEDED FROM TIME TO TIME.

17-6-31 Utah Code Annotated 1953 reads as follows:

> "Withdrawal from improvement district--Payment of indebtedness.--The court shall have the power to order such taxes levied from time to time (emphasis added) upon the property included within the withdrawn territory as above required under the provisions of section 17-6-3.8 (b) Utah Code Annotated 1953 and as may be requisite for the purpose of paying its just proportion of the general obligation bonds of the improvement district outstanding at the time of the filing of the petition. The board of county commissioners shall levy such taxes under the direction of the court and the same shall be collected by the county treasurer as other taxes."

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The use of the term "from time to time" strongly suggests "as needed" and when read in conjunction with that portion of 17-6-30 Utah Code Annotated 1953, which reads:

> "The withdrawn area shall be relieved of all other taxes and charges, including taxes and charges for payment of revenue bonds and maintenance and operation costs of the district, except that if any district has any revenue bonds outstanding and unpaid on the date of the filing of the petition the withdrawn area shall continue to be taxable under the provisions of section 17-6-3.8 (b) Utah Code Annotated 1953, but only to the extent and only in those years where it becomes necessary to levy such tax on the withdrawn area in order to forestall or prevent a default in the payment of principal and interest, or either, on any revenue bonds of the district outstanding on the date of the filing of the petition.

it seems that the intent of the legislature is to keep the withdrawn area subject to taxes for the payment of bonds, but only when and if needed to forestall or prevent default.

Further, the power vests in the court to issue such an order to tax for the payment and in the present instance the Improvement District need only petition and demonstrate to the court its need in order to secure such an order for continued taxing purposes.

The appellant argues that the court's ruling impairs its contractual rights under Article XIV Section 7 of the State Constitution, but a careful reading of said section limits said section to counties, cities, towns and school districts, with no mention of improvement districts and it is further argued by the respondent that even if this section of the constitution were applicable to improvement districts,

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that the withdrawn areas may be subject to a tax if the need is present.

CONCLUSIONS

1. The appellate record is vague and the District Court is presumed to have applied the law accurately in the absence of a clear record and transcript.
2. The appellate court should not continue to compel the property owner in said taxing districts to continue payment of taxes to the defendant - appellant as a matter of equity and conscience.
3. The law permits total withdrawal from an improvement district subject to certain limitations consistent with the trial court's order.

RESPECTFULLY SUBMITTED this _____ day of January, 1979.

DARRELL G. RENSTROM
Attorney for Plaintiffs - Respondents

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CERTIFICATE OF MAILING

Two copies of the foregoing Brief of Respondent were posted in the U.S. Mail, postage prepaid and addressed to the Attorney for the Appellant, Carl T. Smith, 2910 Washington Boulevard, Ogden, Utah 84401, this ____ day of January, 1979.

DARRELL G. RENSTROM

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