

SEP 20 2011

SUPERIOR COURT OF CALIFORNIA

**Brunick, McElhaney, Beckett,  
Dolen & Kennedy**

COUNTY OF RIVERSIDE

CITY OF BARSTOW, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 CITY OF ADELANTO, et al., )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )  
 AND RELATED CROSS-ACTIONS. )  
 )

No. CIV208568

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Proceedings of July 19, 22, 2011, before  
the Honorable Gloria Connor Trask, Judge,  
Department 3.

APPEARANCES:

For Defendant/  
Cross-Complainant:  
Mojave Water Agency

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Corp. and Silver Lakes  
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For JP Morgan Chase  
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PROCEEDINGS OF FRIDAY, JULY 22, 2011

\* \* \*

THE COURT: And City of Barstow versus City of Adelanto.

MR. SNARR: Good morning, Your Honor.

Greg Snarr of Alvarado Smith on behalf of JP Morgan Chase Bank.

MR. EILENBERG: Good morning, Your Honor.

Ben Eilenberg on behalf of Mitsubishi Cement Corp. and Silver Lakes Association.

MR. CAUFIELD: Good morning, Your Honor.

Jeff Caufield on behalf of the real party in interest, Pete and Carol Lounsbury.

MR. TROPEA: Good morning, Your Honor.

Santino Tropea on behalf of Pete and Carol Lounsbury.

MR. McELHANEY: Good morning, Your Honor.

Leland McElhaney, Your Honor, for the Watermaster and the Mojave Water Agency.

THE COURT: All right. Give me just one second.

I hope you all are aware that the motion to adjust the free production allowance was heard on the 19th. You all are aware of that.

MR. McELHANEY: Yes, Your Honor.

MR. SNARR: Yes.

MR. EILENBERG: Yes, Your Honor.

THE COURT: Because there was some adjustment of time and issues in that regard. But Mr. Brunick and Mr. Hughes for Department of Fish and Game advised me that there was no opposition, there was no issue, and you all had been noticed

1 for that date even though the court thought it was for  
2 today -- or had set it for today.

3 So that has already -- we can take that off. And that  
4 is not -- should not be on calendar because it was decided on  
5 the 19th.

6 So the only thing we are here to discuss is to -- is a  
7 motion by Bank of America to review the Watermaster's  
8 decision. And I am hoping that somebody is going to tell me  
9 that it is now moot because the San Bernardino court has  
10 rendered a decision and that nobody -- the Lounsburys' don't  
11 intend to appeal, and that it is in fact a final judgment,  
12 and then I can say it's moot, and then Watermaster can do  
13 their job now.

14 MR. SNARR: I wish that were the case as well,  
15 Your Honor.

16 THE COURT: Oh.

17 MR. SNARR: Although I feel like that's what should  
18 happen, after --

19 THE COURT: You are speaking on behalf of....

20 MR. SNARR: On the -- on behalf of the bank, Your Honor.

21 THE COURT: Okay.

22 MR. SNARR: After we had submitted our motion for review  
23 of the Watermaster decision and received their oppositions --

24 THE COURT: The Lounsburys'.

25 MR. SNARR: The Lounsburys' opposition. And then after  
26 I replied, during that process the San Bernardino court  
27 ruled -- granted our summary judgment and said that the bank  
28 was the rightful owner of the water rights.

1           The Lounsburys then filed a motion for reconsideration.  
2 That's going to be heard on Monday. And I don't believe it  
3 will be granted, but that is pending.

4           THE COURT: Okay.

5           MR. EILENBERG: Your Honor, if we're going to talk --

6           THE COURT: You represent the --

7           MR. EILENBERG: I'm sorry. I'm with Mitsubishi and  
8 Silver Lakes. I'm not a party to the San Bernardino action.  
9 But there is a procedural issue that may need to be taken  
10 into account as well. I did engage in a brief meet and  
11 confer with Mr. Snarr last night and this morning on it.

12           We discovered yesterday that there may be -- there is an  
13 apparent conflict of interest in that Mr. Snarr is a former  
14 associate of our firm. I've known Mr. Snarr since before he  
15 was an attorney, in fact. So I know that there would never  
16 be any sort of intentional issue. We're starting the meet  
17 and confer to hopefully to resolve this without involving  
18 Your Honor; but we do need to compare the matters he worked  
19 on while at our law firm to make sure there is no actual  
20 conflict of interest. I do not know if that implicates your  
21 timing for today's hearing or not. But I did want to raise  
22 it to the court before we engage in a very detailed matter if  
23 it ends up being something where this forces the court to  
24 deal with that issue first.

25           THE COURT: Okay. Thank you.

26           MR. EILENBERG: So thank you, Your Honor.

27           THE COURT: Thank you for that.

28           I don't consider that anything of substance is going to

1 happen here.

2 MR. EILENBERG: Okay.

3 THE COURT: Once the issue of who owns those water  
4 rights is finalized in San Bernardino, the Watermaster will  
5 then do what the Watermaster should do hopefully, which is  
6 follow the decision of Riverside -- I'm sorry -- of  
7 San Bernardino Superior Court, make the determination, issue  
8 the orders; and this court, Riverside Superior Court, would  
9 not involve itself whatsoever in it.

10 So I wouldn't expect to see you all, certainly if the  
11 issue of conflict arises. I'm happy to hear anything.

12 Let me advise you that this case is specially assigned  
13 to me. There are two law and motion departments that are --  
14 that commissioners hear all the law and motion in Riverside  
15 County. If there is a non-stip. to a commissioner, it goes  
16 to the next judge in rotation, not the judge it's assigned  
17 to. But I think that certain cases, like this case, all  
18 matters should come here for me because no judge would know  
19 how to handle this because of the history. So you want to  
20 make sure --

21 And Charniece, why don't you make a note to the  
22 file/case that all motions would be heard in this department.

23 I can continue this motion. I don't think it's  
24 necessary; but if Bank of America wants me to continue it,  
25 I'd be happy to do that.

26 MR. SNARR: I think that would be appropriate,  
27 Your Honor.

28 THE COURT: Fair enough.

1 MR. CAUFIELD: Your Honor --

2 THE COURT: We can all visit next time.

3 MR. CAUFIELD: Yeah.

4 Your Honor, I think what actually would happen is they  
5 would simply -- because the --

6 THE COURT: Stop. Slowly. MWA....

7 MR. CAUFIELD: -- MWA decided to essentially tabled the  
8 decision until the San Bernardino litigation is finalized.  
9 You know, there's a final judgment, appeals are done, and  
10 whatever else. At that time Bank of America is -- they said  
11 Bank of America is free to come back, renew their motion --  
12 because it's still a pending motion; it's just been tabled --

13 THE COURT: Right.

14 MR. CAUFIELD: -- that they would then simply renew  
15 their motion. So I don't think we need to continue this or  
16 keep this on calendar with you because the procedure, as I  
17 would understand it, is that once the judgment, appeals,  
18 whatever are done, there's a decision.

19 THE COURT: It's final.

20 MR. CAUFIELD: If Bank of America prevails, then they  
21 would go back to the MWA. It would become untabled, and of  
22 course at that period of time we would -- representing the  
23 Lounsburys, we wouldn't object because the decision would be  
24 final.

25 THE COURT: I suppose that B of A just doesn't want to  
26 pay for another motion, which is why you want to continue it?

27 MR. SNARR: Yeah.

28 I mean, there's no guaran- -- that's the likely

1 scenario. Given all the oppositions that we've had up to  
2 now, though, I can't -- I don't know what's going to happen  
3 in the future.

4 THE COURT: I'll just set it out --

5 MR. McELHANEY: Your Honor --

6 MR. SNARR: It may become moot. If the decision is  
7 made, and then we don't have to come back here. If the  
8 decision is made, contra- -- I just can't conjecture what's  
9 going to happen.

10 THE COURT: Yes.

11 MR. McELHANEY: Yes, Your Honor, for the Watermaster.

12 Based on discussion with counsel, what I contemplate  
13 happening here, we have of course a motion for  
14 reconsideration that's going to be heard. I suspect  
15 whichever party is unhappy with that ruling, there's going to  
16 be an appeal. So if we were to continue here, we're going to  
17 have multiple continuances of this matter.

18 And the reality is this. Once there's a final  
19 determination, a final judgment in that Superior Court action  
20 sitting in Victorville, if it's in favor of the bank, the  
21 bank can submit its request for transfer of water rights, and  
22 it be approved. If the final judgment is against the bank  
23 and in favor of the Lounsburys, then that application will  
24 not be approved. I don't see any -- That's the reality. I  
25 think we all understand that's the case. This matter  
26 shouldn't be before this court at this point.

27 THE COURT: Agree.

28 MR. McELHANEY: I think that the motion should be denied

1 because the issue is pending in that Superior Court. It's  
2 going to be determined in that Superior Court. There is no  
3 reason to believe that this thing will not be finally taken  
4 care of.

5 THE COURT: Sooner or later.

6 MR. McELHANEY: That's right. Without having to resort  
7 to this court again.

8 THE COURT: I agree.

9 The motion is denied without prejudice to renew it or  
10 whatever else happens.

11 Thank you.

12 If you'll give notice. Bank of America, give notice,  
13 please.

14 MR. SNARR: Thank you, Your Honor.

15 MR. McELHANEY: Thank you, Your Honor.

16 MR. CAUFIELD: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. CAUFIELD: By the way, thank you for continuing this  
19 from the 21st. I -- I was flying back from Hawaii that  
20 morning on the -- because we moved it up to be before my  
21 vacation, and then we -- it got moved -- today I was flying  
22 back, and we couldn't call -- apparently we couldn't call in,  
23 and so I wanted to make sure I was here, you know, obviously.  
24 So thank you very much for granting me a couple days extra so  
25 I could --

26 THE COURT: My pleasure.

27 MR. CAUFIELD: -- actually show up.

28 Off the record.



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(Whereupon, a discussion is held off the record.)

(Proceedings are adjourned.)

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