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IN THE
SUPREME COURT
OF THE
STATE OF COLORADO

ANTHONY P. ARANCI,)	Error to the
Plaintiff in Error,)	District Court
vs.)	in and for the
)	County of Larimer
)	State of Colorado
NORTH WELD COUNTY)	
WATER DISTRICT, a)	
Statutory Water District,)	
Defendant in Error,)	
and)	
)	
NORTHERN COLORADO WATER)	HONORABLE
CONSERVANCY DISTRICT,)	J. ROBERT MILLER
Intervenor.)	Judge

BRIEF OF DEFENDANT IN ERROR

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September, 1968.

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NORTHERN COLORADO WATER)	
CONSERVANCY DISTRICT,)	HONORABLE
Intervenor.)	J. ROBERT MILLER
)	Judge

BRIEF OF DEFENDANT IN ERROR

STATEMENT OF THE CASE

On July 26, 1962, Dorothy K. Cimiotti was the owner of a farm in Weld County, Colorado, which had an allotment for 350 units of the Northern Colorado Water Conservatory District water. On July 26, 1962, Mrs. Cimiotti signed an agreement to sell her interest in this allotment to the proposed North Weld County Water District. The agreement

is Exhibit B of the transcript of record and is reproduced as follows.

MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT, made and entered into this 26th day of July, 1962, by and between the Steering Committee of the proposed NORTH WELD COUNTY WATER DISTRICT, hereinafter designated as parties of the first part, and DOROTHY K. CIMIYOTTI, hereinafter designated as party of the second part, WITNESSETH:

WHEREAS, first parties are attempting to organize a water district to be known as the North Weld County Water District, and,

WHEREAS, second party is the owner of an allotment of 350 acre feet of water of The Northern Colorado Water Conservancy District and is desirous of selling said water to the District,

NOW, THEREFORE, in consideration of the premises and the terms of this agreement, it is mutually agreed as follows:

1. Parties of the first part shall attempt to set up said District if it appears feasible both from a financial and engineering standpoint.

2. Second party agrees to sell to first parties all of her said water allotment upon

the creation of a legally constituted water district, and first parties agree that if they are members of the Board of Directors of said water district, they will purchase said water from second party for the purchase price of \$10,500.00, payable \$350.00 upon the signing hereof and the balance upon the transfer of said water allotment by The Northern Colorado Water Conservancy District to first parties, which shall be as soon as it practically can be done and in any event on or before June 1, 1963. Second parties shall take all steps necessary to effectuate said transfer with The Northern Colorado Water Conservancy District.

3. It is further mutually agreed that this agreement shall extend to and be binding upon the heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their signatures the day and year first hereinabove written.

/s/ Dorothy K.
Cimiyotti
Second Party

STEERING COMMITTEE OF
PROPOSED NORTH WELD
COUNTY WATER DISTRICT

By /s/ Henry Felte

On November 19, 1962, Mrs. Cimiyotti listed her farm for sale with the Asa T. Jones, Jr., agency from Greeley, Colorado, through

Mr. Louis E. "Bill" Warner, a real estate salesman with the company. (ff. 235, 236, 237, 277) At the time of the listing, Mr. Warner filled out a listing form which has been marked Plaintiff's Exhibit "D". The listing form showed the owner as Dorothy K. Cimiyyotti together with the pertinent information concerning the farm. The legal description, the address, the telephone number, total acreage, etc., was included. After the printed words "water rights". Mr. Warner wrote in the word "none", - "4 shares of the Owl Creek Supply and Irrigation Company", on the front page of the form. On the back page of the form, after the printed word "remarks" he wrote in in pen "no Grand Lake with the place" (Grand Lake water being a local firm for the units of the Northern Colorado Water Conservancy District.) Mr. Warner took the hand-written listing to the office of the Asa T. Jones Agency and on the morning of November 20, 1962, an office employee prepared copies of the hand-written listing on the typewriter and one of the copies was introduced at the trial as Plaintiff's Exhibit "I". (ff. 280, 281, 282) On the afternoon of November 20, Mr. Aranci made contact with Mr. Warner (f. 283) and they looked over the Cimiyyotti farm that afternoon (f. 283). At that time Mr. Aranci saw the listing marked Exhibit "I", which had the references concerning the water showing no Grand Lake Water went with the place. (F. 285) Mr. Aranci questioned Mr. Warner about the water and Mr. Warner replied that he did not

know what had happened to the water because she had not listed it with him (f. 285). Mr. Warner's wife Grace was present when Aranci was told it was a dryland farm. (ff. 368-372.) Mrs. Cimiotti did not talk to Mr. Aranci prior to the time that they signed a contract of purchase and sale (f.242), but Mr. Aranci talked with Mr. Warner about it on several occasions after Nov. 19th (ff. 293, 294, 295). Ultimately, Mr. Aranci offered \$42,000 for the farm on the basis of 420 acres of farmable land at \$100.00 per acre (f. 295). Plaintiff's Exhibit "E" is the contract of purchase and sale between Mr. Aranci and Mrs. Cimiotti. The only mention of water in the agreement of purchase and sale is contained in that portion of the contract which describes the land involved. That description reads as follows:

"E1/2 of Section 23 and the S1/2 of the S1/2 of Section 24, Township 7 North, Range 65 West of the 6th P.M.; excepting rights of way for ditches, public highways, maps and sworn statements for ditches or reservoir sites not conveyed by instruments of record; and excepting all easements of record or as now existing; Together with 4 shares of the Owl Creek Supply and Irrigation Company; Containing 480 acres more or less."

The contract was typed in the office of the Asa T. Jones Agency on December 20, 1962,

(f.299) signed by Mr. Aranci that night and Mrs. Cimiotti the next day (f.300).

After the contract of purchase and sale and been signed, Mr. Aranci visited the Cimiotti farm prior to the closing which was January 25, 1963. Mrs. Cimiotti's testimony concerning this visit appears at f. 248 through 253. Her son Charles Cimiotti who was present testified concerning this visit at ff. 255-364. Specific mention was made that no water went with the place and Mr. Aranci did not say anything in response to that statement and did not appear to be surprised. Mr. Warner testified at F. 302 through 304 that Mr. Aranci called on him after the contract of purchase and sale had been signed and prior to the closing and said, "The water goes with that farm." I said he didn't buy any water. But he said, "Bill, if you can help get that water, it will make me a good cheap farm." So he said, "It will make me a hell of a good cheap farm" I said, "Anton, I will see you in hell before I do it," and that's what I meant (ff. 302,303). Mr. Warner's wife was also present during this conversation and her testimony is reproduced at ff. 377-378, as follows: He (Aranci) said, "I found out that water was never transferred." And Bill (Warner) said, "You did." Aranci acted real surprised and my husband was surprised because he had told him there was no water with it, that Mrs. Cimiotti had sold it. And then

after he told him, that it hadn't been transferred, he said, "I think I could get that water." He said, "If you will just help me get that water I, I am pretty sure I can, and I will make it worth your while."

Question: What did your husband say?

Answer: He said, "No, I wouldn't do that." He said, "I wouldn't think of going and trying to get something that you hadn't bought." And he said, "Well, if you will help me," he said, --- this was exactly his words as I remember. He said, "If you will just help me get that water, that will sure make me one hell of a cheap place." Mr. Warner testified at F. 306, 307 that at the closing he said to Mr. Aranci, "Now, Anton, you know that you didn't get any of that water," because he had been arguing with me about that before. I said, "You know you didn't get it." And he says, "We'll see," and I guess we are seeing now.

In her testimony Mrs. Cimiotti verified that conversation (F.256).

At the trial, Mr. Aranci denied any notice was given him concerning the sale of the water by Mrs. Cimiotti to the Water District. At the close of the trial, Trial Court made this comment: at F. 602, 603: "The Court has heard all of the testimony presented here. There has been a conflict in the testimony. It is hard for the Court

to see how such conflict arise without perhaps perjury being involved in this case. However, the Court is convinced and finds that there was notice given to the Defendant, Aranci; in fact, that the water had been disposed of on this farm prior to the time of the agreement, which he had entered into to purchase the farm." The finding of fact, conclusions of law and decree appear at F. 152 through 162 and are reproduced in full.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECREE

"IN THE DISTRICT COURT

IN AND FOR THE COUNTY OF LARIMER

STATE OF COLORADO

Civil Action No. 14478

NORTH WELD COUNTY WATER)
DISTRICT, a Statutory)
Water District,)
Plaintiff,)

vs.)
ANTHONY P. ARANCI,)
Defendant,)

vs.)
NORTHERN COLORADO WATER)
CONSERVANCY DISTRICT,)
Intervenor.)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECREE

THIS CAUSE coming on for trial before the Court on the 5th and 6th days of June, 1967, the parties appearing in person and by their respective attorneys; and the Court, upon hearing all the evidence and oral arguments on behalf of the respective parties, does make the following findings of fact:

O. D. and DOROTHY K. CIMIYOTTI were allottees of 350 acre foot units of water of the Northern Colorado Water Conservancy District on February 24, 1955, as evidenced by Plaintiff's Exhibit A. DOROTHY K. CIMIYOTTI is the surviving joint tenant of this water right.

On July 26, 1962, DOROTHY K. CIMIYOTTI executed a contract entitled "Memorandum of Agreement" with the steering committee of the then proposed NORTH WELD COUNTY WATER DISTRICT for the sale of the Northern Colorado Water Conservancy District allotment to the NORTH WELD COUNTY WATER DISTRICT. The agreed purchase price of this water right was \$10,500.00, and DOROTHY K. CIMIYOTTI received \$350.00 upon signing the contract. These facts are evidenced by Plaintiff's Exhibit B and the testimony of DOROTHY K. CIMIYOTTI.

On December 31, 1962, DOROTHY K. CIMIYOTTI signed and delivered a quit claim deed to the Northern Colorado Water Conservancy District water right to the NORTH WELD COUNTY WATER DISTRICT and received the balance

of the purchase price of \$10,500.00. These facts are evidenced by the testimony of DOROTHY K. CIMIYOTTI and Plaintiff's Exhibit C.

On December 19, 1962, DOROTHY K. CIMIYOTTI executed a contract of sale of her farm in Weld County to sell the same to Defendant, ANTHONY P. ARANCI. The court finds the evidence to be clear and convincing that ANTHONY P. ARANCI had complete notice and knowledge of the prior sale of the Northern Colorado Water Conservancy District water allotment by Dorothy K. Cimiyyotti prior to the time the contract of sale of the farm was executed. These facts are clearly evidenced by the testimony of LOUIS E. WARNER, GRACE M. WARNER, DOROTHY K. CIMIYOTTI, CHARLES CIMIYOTTI, and TOM COLLINS, and Plaintiff's Exhibits E, I, L, M, N and O.

On January 25, 1963, DOROTHY K. CIMIYOTTI signed and delivered her warranty deed to her Weld County farm to ANTHONY P. ARANCI. The Court finds the evidence to be clear and convincing that prior to the signing and delivery of the deed, ANTHONY P. ARANCI again had notice of the sale of the Northern Colorado Water Conservancy District allotment. These facts are evidenced by the testimony of DOROTHY K. CIMIYOTTI, LOUIS E. WARNER, and Plaintiff's Exhibits F and G.

The Court finds that it is necessary for ANTHONY P. ARANCI to sign a transfer application form to complete the transfer of the Northern Colorado Water Conservancy District allotment to the NORTH WELD COUNTY WATER DISTRICT as evidenced by the rules and regulations of the Northern Colorado Water Conservancy District, Plaintiff's Exhibit K.

The Court further finds and holds that ANTHONY P. ARANCI has wrongfully converted the Northern Colorado Water Conservancy District Water allotment to his use and benefit; that ANTHONY P. ARANCI has no legal or equitable property right in said water allotment; that the NORTH WELD COUNTY WATER DISTRICT is the rightful owner of said water allotment; that the conversion of the use of said water allotment by ANTHONY P. ARANCI is a continuing and irreparable wrong to the NORTH WELD COUNTY WATER DISTRICT; that Plaintiff, NORTH WELD COUNTY WATER DISTRICT, has no adequate remedy at law; that the property interest of the Plaintiff, NORTH WELD COUNTY WATER DISTRICT, is of a nature that under the law of the State of Colorado, equitable relief is the appropriate and proper remedy and that equitable relief should be granted to the Plaintiff, NORTH WELD COUNTY WATER DISTRICT.

The Court further finds and holds that the notice to ANTHONY P. ARANCI of the NORTH WELD COUNTY WATER DISTRICT'S prior ownership of the Northern Colorado Water Conservancy

District water allotment and the intention of DOROTHY K. CIMIYOTTI not to transfer the same water to ANTHONY P. ARANCI in the sale of the farm are the main elements of this case; that the Plaintiff has sustained its burden of proof of such notice by clear and convincing evidence; that money damages is not an adequate remedy at law for the Plaintiff; that privity between ANTHONY P. ARANCI and the NORTH WELD COUNTY WATER DISTRICT is not necessary in order for the Court to grant equitable relief to Plaintiff; that in order for Plaintiff, NORTH WELD COUNTY WATER DISTRICT, to obtain relief in this case it is necessary for ANTHONY P. ARANCI to sign the appropriate transfer application form of the Northern Colorado Water Conservancy District in order for the Board of that District to exercise its discretion in determining whether or not water allotment shall be transferred; that it is not necessary for Plaintiff to establish its property interest in the water allotment in a prior legal action where the evidence is clear and convincing that the Plaintiff is in fact the owner of the property right in the water allotment; that actual notice is equally sufficient as constructive notice of record.

The Court further finds for Plaintiff and against the Defendant on all issues raised by the pleadings and raised during the trial of this matter, and that the

affirmative defenses of Defendant, ANTHONY P. ARANCI, of res judicata, statute of frauds, mitigation of damages, and laches are without merit in this case and have no support in the evidence.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

The Defendant, ANTHONY P. ARANCI, shall sign the appropriate transfer application form as required by the Northern Colorado Water Conservancy District for the transfer of the 350 acre-foot allotment to the North Weld County Water District within ten (10) days after the said transfer application form has been submitted by NORTH WELD COUNTY WATER DISTRICT to the Defendant, ANTHONY P. ARANCI. In the event ANTHONY P. ARANCI fails or refuses to sign the transfer within said ten (10) day period, then, in that event, the Court hereby appoints the Clerk of this Court to sign said transfer on behalf of ANTHONY P. ARANCI.

Done in open Court this 11th day of August, 1967.

BY THE COURT:

/s/ J. Robert Miller
Judge"

SUMMARY OF THE ARGUMENT

The Trial Court found that Aranci knew the water had been sold to the Water District, that Mrs. Cimiotti did not intend to sell the water to him and that he had wrongfully converted the water to his own use and benefit. It was stipulated by the parties and the evidence is clear that under the rules of the Northern Colorado Water Conservancy District the only way a water allotment can be transferred off land is for the fee owner of the land to sign the transfer form provided by the Northern Colorado Water Conservancy District. Under these circumstances the only way the water can be transferred to North Weld County Water District is to have Aranci sign the transfer form which he has refused to do. The Trial Court ordered Aranci to sign the form and in the event he refused to do so for the Clerk of the Court to sign on his behalf. This is the proper procedure to have been followed and the decree of the lower Court should be affirmed.

ARGUMENT

Because of the rules of the Northern Colorado Water Conservancy District, Mr. Aranci as the fee owner of the land must sign the transfer form before the water involved can be transferred to the North Weld County Water District. Mr. Aranci refuses to do this though he knew at the

time he purchased the land that the water had been sold by Mrs. Cimiyotti to the North Weld County Water District. The North Weld County Water District requested equitable relief in the nature of a mandatory injunction directing Mr. Aranci to sign the transfer agreement, or in the alternative that the Court appoint a commissioner to sign for Mr. Aranci in the event of his refusal to do so. The Court acceded in this request and this was the proper relief under the circumstances.

The protection of property rights is the function of equity courts.

"The various equitable remedies are designed for the preservation and enforcement of rights of property, and a Court of Equity will go very far to protect property rights against a wrongdoer. If the remedy is not available by action at law, equity will not hesitate, as a general rule, to take cognizance of a suit that seeks protection of property rights. Moreover, no distinction is drawn with respect to the character of the property as being real estate or personalty. Although the dispute concerns chattels or personal property, the adequacy of the remedy of the law is largely determinative of the question as to jurisdiction."

27 AJ 2d, pp. 580, 581. Equity, §59, 27 AJ 2d, p. 582 says, "The proper remedy against one who bars another from possessing and exercising his incorporeal right in property is in equity."

"A Court of Equity will generally grant relief under proper circumstances to one whose property has been wrongfully taken or detained. If for any reason, the complainer has not an adequate remedy by way of an action of law, a Court of Equity will protect him against a wrongful taking of his property, a detention thereof, or an injury thereto. While a remedy for the detention of chattels or personal property is accorded by the law courts in the actions of replevin and conversion, or their statutory equivalents, and no doubt where redress may thus be had by an agreed person, suit may not be brought in Equity Court, yet if an action of law cannot be regarded as adequate, equity will remedy the injury by decreeing a return of the thing itself or equity will follow the property through whatever changes and transmutations it may undergo in the wrongdoers hands, and indeed it will follow it under proper circumstances into the hands of others and grant equitable relief it will follow the property

into the hands of a transferee other than a bona fide purchaser for value, or will enforce restitution." 27 AJ 2d, pp. 582, 583, Equity, § 61.

In the present case, where the Plaintiff was seeking an order requiring Mr. Aranci to transfer the water, the equitable relief requested was the only adequate remedy. There was no other way in which the North Weld County Water District could get its water, which it had bought and paid for. Aranci has no claim to the water, had notice that he was not purchasing the water at the time of the closing and before and therefore should take whatever steps are necessary to transfer the water to the District. This he has refused to do.

A purchaser with notice of another person's claim is not an innocent purchaser and has no valid claim of his own. See Sterling National Bank v. Fischer, 75 Colo. 371, 226 Pac. 144; Delter v. Schumacher, 18 Colo. 433, 22 Pac. 175; Northrup v. Nicholas, 115 Colo. 207, 171 Pac. 2d 417. See also 17 ALR 2d, 331 for an annotation dealing with one who has actual notice of another person's interest in property. See also 55 AJ 1066, Sections 685, 686, 687, 688, 689, 691, 693, and 695.

The case of Kane v. Porter, 77 Colo. 257, 235 Pac. 561, is controlling. In that

case the plaintiff sought to obtain an injunction to restrain the defendant from interfering with the ditch across the defendant's land. The defendant claimed that the plaintiff had no right in equity because his injury was not irreparable and that the injury was not irreparable because he could build a ditch on his own land. The Supreme Court ruled, however, that to deprive a person of his property is to damage him irreparably. "To take or destroy one's real property is always regarded as an irreparable injury". See also Koch v. Storey, 47 Colo. 335, 107 Pac. 1093; Reno v. Reno and Juchen Ditch Company, 50 Colo. 588, 119 Pac. 473; U. S. Freehold Land and Immigration Co., v. Gallegos, 89 Fed. 769. Similarly, in this case, to detain the water causes irreparable damage to the plaintiff which can only be cured by the relief requested.

Blanchard v. Holland, 106 Colo. 147, 103 Pac. 2d 18, is clearly in point and controlling. The issue of whether or not injunctive relief could be granted was reviewed by the Supreme Court. The trial court "viewed the case as one in which injunctive relief could not be granted because of the involved necessity of an adjudication of property rights in water and an easement to convey whatever might be so adjudicated to plaintiffs". The trial court held that injunctive relief should not be granted

and the Supreme Court reversed saying that when the plaintiff's evidence clearly established the existence of easements that equity had jurisdiction to protect them. "Though the ordinary allegations found in a bill to quiet title are in this complaint, there are also allegations that the defendant has interfered with and obstructed the plaintiff in its enjoyment of the right to the use of water for purposes of irrigation. That a court of equity, independent of the statute, has jurisdiction to restrain interference with a water right, seems well settled. Hence, under this doctrine, the Court, having acquired jurisdiction to restrain interference with plaintiff's use of water, might properly retain jurisdiction and determine all the rights of the parties, even though plaintiff is not in actual possession; we think it would extend the rule too far to hold that only admitted or judicially established rights may be protected from interference by injunction. When a right of easement is clear and certain, even though testimony may be required to show its extent or location, as of a right of way, we think it is proper to determine these things as an incident to the granting of injunctive relief". In the case at bar where the equitable ownership has clearly been shown to be in the North Weld County Water District, the court obviously has the equitable power necessary to require Aranci to sign the transfer application. In Libert v. Wright, 71 Colo. 462, 208 Pac. 453, the court quoted a previous

Colorado case by saying "where a party can only assert an equitable title to real property, though his interest may be full and complete, as where there is some trust to be declared, or legal title to be extinguished, some instrument not void on its face to be cancelled or corrected, or other obstacle to be removed before his rights can be made manifest, he may, though out of possession, under a system of procedure like ours, have his equitable remedy, and may unite with it any appropriate cause of action through which he may secure the full and adequate relief to which he may be entitled". 28 AJ 2d, Injunctions, Sections 17, 21, 24, 27, 147, all deal with the equitable powers of a court to right a wrongful situation.

12 ALR 2d, 1208, contains an annotation concerning equitable jurisdiction to enjoin a continuing trespass on a theory that it is irreparable damage and only equity can right that wrong. 68 ALR 2d, 374 contains a summary of water cases where courts have exercised equitable powers to prevent one person from interfering with another's ownership interest.

Finally, 22 ALR 2d, 74, concerns equitable powers being available to require transfer of stock from one person to another. In Colorado we have two cases which provide that an equity court may order transfer of stock

to effectuate a decree. See Farmer's Pawnee Canal Co. v. Henderson, 46 Colo. 37, 102 Pac. 1063; Wymore and Company v. Downs, 77 Colo. 377, 237 Pac. 155.

It is manifestly clear that once the determination is made that the North Weld County Water District had purchased the water and that Aranci knew that the North Weld County Water District had made the purchase and that Mrs. Cimiotti did not intend to sell the water to him, that he has no right to it and should be required to conform to the rules and regulations of the Northern Colorado Water Conservancy District to effectuate the transfer to the bona fide purchaser. An equity court has the necessary authority to require him to conform to the transfer regulations as prayed for in plaintiff's complaint.

CONCLUSION

The essence of Aranci's case before the Supreme Court is that because the water district did not have the water transferred on the books of the Northern Colorado Water Conservancy District prior to the closing that Aranci is entitled to the water. But to allow Aranci to keep the water which the district paid for, which he did not purchase, which he did not intend to purchase and which Mrs. Cimiotti did not intend to sell him would result in a travesty. The whole

issue of the case is whether or not Aranci had notice of the prior sale of the use of the water by Mrs. Cimiotti to the water district. Mrs. Cimiotti and her son testified that they notified Mr. Aranci prior to the sale that the water had been sold. Mr. and Mrs. Warner both testified to the same effect. After hearing the testimony of all the parties, the Trial Court found that Mr. Aranci had notice and was using the water of the District wrongfully. No theory of law justifies a finding that Aranci is entitled to keep the water. Very few cases present such a clear-cut issue of right and wrong and simple justice requires that the decree of the Trial Court be affirmed.

Respectfully submitted,

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