

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

IN THE MATTER OF:)	
)	
OSAGE WATER COMPANY.)	Case No. 17-42759-drd11
Debtor.)	
_____)	
)	
PUBLIC WATER SUPPLY DISTRICT)	
No. 5 OF CAMDEN COUNTY, LAKE AREA)	
WASTE WATER ASSOCIATION, INC.,)	
MISSOURI WATER ASSOCIATION, INC.,)	
AND CEDAR GLEN CONDOMINIUM)	
OWNERS ASSOCIATION, INC.)	
)	
Plaintiff,)	Adversary No.
vs.)	
)	
OSAGE WATER COMPANY,)	
JILL D. OLSEN AS CHAPTER 11 TRUSTEE)	
AND CENTRAL STATES WATER)	
RESOURCES, INC.)	
)	
Defendants.)	

COMPLAINT SEEKING DECLARATORY AND INJUNCTIVE RELIEF AS TO THE ESTATE AND CENTRAL STATES WATER RESOURCES, INC FOR TRANSFER OF ASSETS

COMES NOW, Public Water Supply District No. 5 of Camden County, Lake Area Waste Water Association, Inc., Missouri Water Association, Inc., and Cedar Glen Condominium Owners Association, Inc. (hereinafter "Plaintiffs") and for their Complaint Seeking Declaratory and Injunctive Relief as to the Estate and Central States Water Resources, Inc. For Transfer of Assets states to the Court as follows:

- Public Water Supply District No. 5 of Camden County, Missouri (PWSD#5), is a public water supply district organized under Chapter 427 RSMo.

2. Lake Area Waste Water Association, Inc. (LAWWA), is a nonprofit member managed corporation established under Chapter 393, RSMo, for the specific purpose of providing wastewater treatment systems.

3. Missouri Water Association, Inc. (MWA) is a nonprofit member managed corporation established under Chapter 393, RSMo.

4. Cedar Glen Condominium Owners Association, Inc. (Cedar Glen), is a not-for-profit condominium owners corporation.

5. Osage Water Company is the “Debtor” in this Chapter 11 proceeding.

6. Jill Olsen is the duly appointed and acting trustee in this Chapter 11 proceeding (hereinafter “Trustee”).

7. Central States Water Resources, Inc. was the purchaser of certain assets pursuant to an asset purchase agreement approved by this Court.

8. This is a core proceeding dealing with the disposition of the assets of this bankruptcy estate pursuant to 28 U.S.C. § 157(b)(2)(A); (M); (N); and (O) and Bankruptcy Rule 7065.

9. Venue is proper in this matter pursuant to 28 U.S.C. §§ 1408 and 1409.

10. Plaintiffs seek a stay preventing the Trustee and Central States from consummating the sale of certain assets of the Debtor because a condition precedent has not been met and declaratory relief from this Court indicating that until approval by the Public Service Commission is final and non-appealable that the condition precedent of the Court’s Order is not met.

11. Osage Utility ("Central States")¹ filed an Application for authorization to acquire the water and sewer assets and the certificates of convenience and necessity (CCN) in the four service areas of the Debtor.

12. Currently, Debtor provides water and sewer services to four active water and sewer service areas: Cedar Glen, Chelsea Rose, Cimarron Bay, and HWY KK.

13. PWSD#5 wants to provide water and sewer service to the Cedar Glen service area and has a system adjacent to Cedar Glen with excess water and wastewater capacity.

14. LAWWA wants to provide sewer service to the Chelsea Rose, Cimarron Bay, and Eagle Woods service areas.

15. MWA wants to provide water service to the Chelsea Rose, Cimarron Bay, and Eagle Woods service areas.

16. Cedar Glen consists of 216 of Osage Water Company's water and sewer customers. Cedar Glen opposed Central States' application preferring to have service from PWSD#5.

17. Debtor currently provides water service to approximately 402 customers, and sewer service to approximately 420 customers in Camden County, Missouri.

18. The Commission previously determined that Osage Water Company had been effectively abandoned by its owners. Later, Osage Water Company was placed into permanent receivership, and following that, the Circuit Court authorized the Osage

¹ Osage Utility Operating Company, Inc. is an affiliate of Central States Water Resources, Inc., the managing affiliate of CSWR, LLC, the parent of both. It is referred to as "Central States" to avoid confusion with any references to Osage Water Company.

Water Company receiver to file for Chapter 11 bankruptcy, and a bankruptcy trustee was appointed.

19. The Trustee held an auction on October 24, 2018, to liquidate Debtor's assets. The Trustee utilized a "stalking horse" bidding process with Central States being the stalking horse bidder. The agreement between Central States and the Trustee permitted the Trustee to solicit other bids, but Central States maintained the right to match those bids.

20. At the auction, the Trustee received bids from PWSD#5, LAWVA, and MWA ("Joint Bidders") and Missouri American Water Company, with the Joint Bidders having the highest bid. Then, per the terms of the stalking horse agreement, Central States was allowed to match that bid, which it did.

21. Central States was the successful bidder, Joint Bidders were the First Back-Up Bidders and Missouri-American Water Company was the Second Back-Up Bidder -- each signed a purchase agreement with Debtor.

22. On November 14, 2018, this Court issued an Order [Court Doc. #135] approving the sale of Debtor's assets to Central States under the terms set forth in the asset purchase agreement between Central States and the Trustee on behalf of the bankruptcy estate. This Court's order also approved the Joint Bidders as the First Back-Up Bidders.

23. The Agreement for Sale of Utility System between the Trustee and Central States (hereinafter "Sale Agreement") provided that "Subject to Bankruptcy Court Approval and any approval required by the PSC or DNR, Seller has the power and

right to sell, assign and transfer and Seller will sell and deliver to Buyer, the assets free and clear of all claims and liens, other than customer claims in the Customer Deposits.”

See Court Doc. #135.

24. In approving the transaction, the Bankruptcy Order provided, “No further consents or approvals, other than the entry of this Order and any necessary approval by the [sic] any state regulatory authorities, including the Missouri Public Service Commission . . . are required to consummate the transactions contemplated in the APAs [asset purchase agreements],” and “Subject to any approval by the [sic] any state regulatory authorities, including the Missouri Public Service Commission . . . , the Trustee is authorized to sell the assets free and clear of all liens, claims, encumbrances, and other interests[.]”

25. Section 393.190.1, RSMo, requires Debtor to receive approval from the Missouri Public Service Commission (hereinafter “Commission”) prior to transferring its assets to Central States. Section 393.170, RSMo, requires Central States to obtain a CCN granted by the Commission prior to providing water and sewer service.

26. Consummation of the transfer of assets between the Trustee and Central States is conditioned on Central States receiving necessary approvals under Sections 393.190.1 and 393.170, RSMo.

27. On April 8, 2020, the Commission issued its Report and Order in a case in which Central States filed an Application for authorization to transfer the water and sewer assets and the certificates of convenience and necessity (CCN) in the four service areas of the Debtor.

28. The effective date of the Report and Order is May 8, 2020.

29. Pursuant to the Sale Agreement "The closing of the sale shall take place at a mutually agreeable location no later than thirty (30) days after the effective date of any necessary regulatory authority approval, and satisfaction of Seller's Representations and Warranties and Conditions Precedent set forth herein, or at such other time as the Parties hereto may mutually agree."

30. One of Joint Bidders' positions is that Central States "plans to make unnecessary improvements that will raise rates needlessly."

31. The Report and Order contemplates repairs and improvements to the systems within ninety days of the effective date of the Order.

32. On May 5, 2020, Plaintiffs filed a Joint Motion under Section 386.500.3, RSMo, and Motion for Expedited Treatment, requesting the Commission stay or postpone the authority of Central States to close on the transfer of assets at issue in the case while applications for rehearing were pending and until Relators could file a Motion for Stay or Suspension on Appeal under Section 386.520, RSMo, if the Commission does not grant the motion for rehearing, thereby vacating its Report and Order.

33. On May 6, 2020, Central States filed a "Response to Motion for Stay of Effective Date" opposing Relators' motion.

34. On May 7, 2020, Cedar Glen and Joint Bidders filed a timely Joint Application for Rehearing.

35. On May 7, 2020, the Office of Public Counsel filed a timely Application

for Rehearing. See Exhibit "A" attached hereto and made a part hereof by this reference.

36. On May 11, 2020 Plaintiffs filed a Petition for Alternative Writ of Certiorari and Writ of Mandamus and Suggestions in Support with the Missouri Court of Appeals in the Western District of Missouri case WD83773.

37. As of the filing of this Adversary Proceeding, the Commission has not ruled on Plaintiff's Motion before it.

38. If the Commission had issued an order denying the applications for rehearing prior to May 8, 2020, Plaintiffs could have, and would have, filed their appeal of the final Report and Order to this Court pursuant to §386.510, RSMo, prior to May 8, 2020.

39. In filing such an appeal, Plaintiffs would have requested a stay or suspension of the final Report and Order pursuant to §386.520.1, RSMo, prior to May 8, 2020, with its appeal.

40. If the Commission denies the applications for rehearing subsequent to May 8, 2020, and the Report and Order becomes final for purposes of judicial review, Plaintiffs will immediately file their appeal of that decision pursuant to §386.510, RSMo. and immediately file for a stay pursuant to §386.520.

41. In taking their appeal immediately from the final Report and Order, Plaintiffs are requesting a stay or suspension of the Report and Order while the appeal continues and a request that the Trustee not consummate the sale agreement until the appeal is completed. Likewise, in this case Plaintiffs are seeking a stay but of the

Trustee and Central States Sale Agreement during the state court appeal and this Court's declaration as to the conditions precedent to closing of the Sale Agreement.

42. Good and adequate grounds exist for a stay or suspension of the closing and transfer of estate assets under the Sale Agreement during the pendency of judicial review in the State Court.

43. On information and belief, the Trustee and Central States have not closed on the transfer of the water and sewer assets and the certificates of convenience and necessity in the four service areas of Osage Water Company, as of the filing of this action.

44. A request was made of counsel for the bankruptcy trustee, by counsel for Plaintiffs to delay closing on the transfer of the assets or certificates of convenience and necessity until the appeals process had concluded. A copy of the letter is attached hereto as Exhibit "B" and made a part hereof by this reference.

45. Plaintiff's Motion for Stay pursuant to Section 386.520 in the Court of Appeals is attached as Exhibit "C".

46. Plaintiffs seek a stay pursuant to Bankruptcy Rule 7065, Federal Rule of Civil Procedure 65 and Bankruptcy Rule 9025 preventing consummation of the Sale Agreement between the Trustee and Central States until judicial review of the Public Service Commission Report and Order is completed.

47. Plaintiffs have asserted in their Application for Rehearing (attached hereto as Exhibit "A") the Public Service Commission committed numerous errors of law and fact in its April 8, 2020 Report and Order resulting in that Order being unlawful, procedurally defective and

unreasonable which makes it invalid, void and otherwise a legal nullity. On information and belief, Central States, during the process of judicial review, has decided upon a course of action intended to circumvent and nullify the Plaintiffs' rights to obtain effective judicial review by taking steps to implement the transfer of assets and improvements to the water and sewer systems and to cut off and render moot Plaintiffs' right to judicial review. Central States intends to hinder Plaintiffs' rights by completing the transaction so that judicial review cannot take place.

48. Plaintiffs are entitled to declaratory relief by this Court determining that the condition precedent of the Commission approval has not been received and during the appeal remains an open issue so that the transfer of assets should not take place pursuant to the Sale Agreement.

49. Plaintiffs can show this Court that great and irreparable damage will result to Plaintiffs if no stay is granted.

50. Here, Plaintiffs will suffer great and irreparable damage if no stay is granted, in at least the following ways:

a. Absent an order staying or suspending the transfer of assets or certificates of convenience under the Sale Agreement, Plaintiffs could effectively lose their right to appeal and judicial review of the Report and Order if Central States and the Trustee close on the transfer of (and make improvements to) the water and sewer assets and the certificates of convenience and necessity in the four service areas of Debtor prior to a final decision of this Court on the appeal to be filed by Plaintiffs in the event of an adverse decision by the Commission.

b. Joint Bidders have a contract as the “First Back-Up Bidders” for the same assets that the Commission has unlawfully authorized Central States to acquire. Property transfers are a zero-sum game. If Central States is allowed to acquire the assets, the Joint Bidders cannot acquire the same assets simultaneously. If Joint Bidders prevail on appeal, “unwinding” the transaction will unnecessarily waste judicial and administrative resources and could negatively affect ratepayers and the ratepayers’ services.

c. Further, absent an order staying or suspending the consummation of the transfer by Central States and the Trustee, this Court’s jurisdiction may be foreclosed by the actions of parties with an interest in the action that allows them to circumvent a meaningful appeal from what Plaintiffs contend is an unlawful entitlement to the benefit of the terms of the Commission’s Report and Order.

d. A condition precedent of both the Court Order and the Sale Agreement, of permission from the Commission, has not been met because the Commission’s Report and Order are not final and subject to judicial review; and the Trustee should not consummate the transfer assets.

51. The factors considered by the Court under 11 U.S.C. §105 and Bankruptcy Rule 7065 are: (1) whether the plaintiff has shown a strong or substantial likelihood or probability of success on the merits; (2) whether the plaintiff has shown irreparable injury; (3) whether the issuance of a preliminary injunction would cause substantial harm to others; and (4) whether the public interest would be served in issuing a preliminary injunction. A party cannot prevail under this standard in the absence of a clear showing of a threat of irreparable harm. See *In re Service*

Merchandise Co., 256 B.R. 755 (Bankr.M.D. Tenn. 2000). Accord *In re Jotan, Inc.* 229 B.R. 218 (Bankr.M.D.Fla. 1998).

52. Plaintiffs are likely to prevail on the merits. As described more fully in Plaintiffs' Application for Rehearing (see Exhibit "A"), the Commission acted outside its statutory authority, committed numerous errors of law and fact in its April 8, 2020 Report and Order resulting in that Order being unlawful and unreasonable and therefore invalid, void and otherwise a legal nullity. For all of the reasons stated in Plaintiffs' Application for Rehearing, Plaintiffs' are likely to prevail on the merits.

53. Plaintiffs will suffer irreparable harm. As described in paragraph 50 the Plaintiffs will suffer irreparable harm if a stay is not granted by this Court preventing the Trustee and Central States from finalizing transfer of assets prior to judicial review of the Public Service Commission Report and Order.

54. Neither the Trustee or Central States will suffer any harm by way of a stay. There is no harm to the Trustee or Central States if this Court stays the transfer of assets from the estate to Central States until there is a determination of finality and judicial review of the Commission Report and Order. The water and sewer system have been in receivership and/or bankruptcy for more than ten years. There is no exigency that would justify extinguishing Plaintiff's constitutional and statutory rights to judicial review and Plaintiffs' rights as back up bidders. The case has been ongoing since December 19, 2018, and no party has sought expedited treatment of the case. In contrast, the damage to all parties if the Commission must unwind the transaction would be great.

55. The Public interest weighs in favor of granting the stay. The water and sewer system being transferred services approximately 400 water customers and 400 sewer customers.

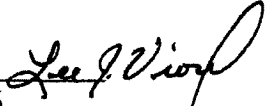
Of those customers, 216 are at Cedar Glen, a condominium complex. The President of the condominium association testified in opposition at the hearing, and more than 100 ratepayers submitted public comments in opposition to the transfer and ownership by Central States. As discussed more fully in the Plaintiffs' Application for Rehearing, a transfer to Central States is not in the public interest, and for all of the same reasons it is in the public interest to grant the stay until judicial review is complete.

56. Bond. Plaintiffs assert that any bond would be nominal for the reasons stated in paragraph 54 and ask the Court to impose no more than a bond of \$500 and if this Court deems the amount insufficient, Plaintiffs seek leave to post an appropriate amount as determined by this Court.

57. Plaintiffs are entitled to temporary, preliminary and permanent injunctive relief to stay the transfer of assets because condition precedents I this Court's Order and the underlying asset sales have not been met and Plaintiffs are entitled to declaratory relief with the Court determining that the conditions have not been met.

WHEREFORE, Plaintiffs request that based upon the above an foregoing verified facts the Court declare that one or more conditions precedent of the Court's Order [Court Doc. #135] have not been met and based upon such grant a Temporary Restraining Order for 14 days staying the Trustee and Central States from completing the sale of assets set out in the Court's Order, set a hearing for a preliminary hearing on the matter for the purpose of granting preliminary and permanent injunctive relief until the Plaintiffs have an opportunity to exhaust all judicial review remedies as to the Commission's Report and Order and for such other and further relief as the Court deems just in the premises.

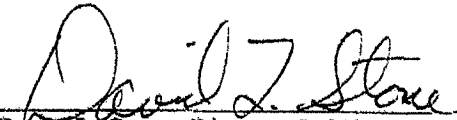
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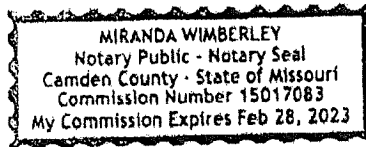
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Association, Inc.*

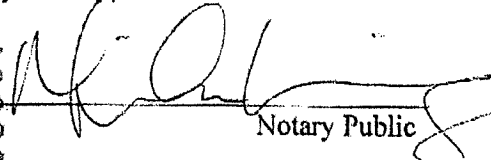
STATE OF MISSOURI)
) ss.
COUNTY OF CAMDEN)

David L. Stone, being of lawful age, and being first duly sworn upon his oath states that he is a Director of Public Water Supply District No. 5 of Camden County, Missouri the Plaintiff herein, and that the facts and matters as stated above are true according to his best information, knowledge and belief.


David L. Stone, Director, Public Water
Supply District No. 5 of Camden County,
Missouri

Subscribed and sworn to before me this 28th day of May, 2020.




Notary Public

My Commission Expires: 2/28/23