

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

IN THE MATTER OF:	)	
	)	Case No. 17-42759-drd11
OSAGE WATER COMPANY.	)	
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. 20-02004
v.	)	
	)	
OSAGE WATER COMPANY,	)	
JILL D. OLSEN AS CHAPTER 11 TRUSTEE	)	
AND CENTRAL STATES WATER	)	
RESOURCES, INC.	)	
	)	
Defendants.	)	

**DEFENDANT CENTRAL STATES WATER RESOURCES, INC'S**  
**SUGGESTIONS IN OPPOSITION TO PLAINTIFFS'**  
**REQUEST FOR TEMPORARY RESTRAINING ORDER**

COMES NOW Defendant Central States Water Resources, Inc. (“Central States”), by and through its undersigned counsel of record, and submits the following Suggestions in Opposition to Plaintiffs 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.’s (collectively, “Plaintiffs”) Complaint Seeking Declaratory and Injunctive Relief as to the Estate and Central States Water Resources, Inc. for Transfer of Assets (the “Complaint”), and the Plaintiffs’ Request for Temporary Restraining Order.

## INTRODUCTION

In their Complaint, Plaintiffs admit that both this Court and the Public Service Commission (the “Commission”) have approved the transfer of assets and certificates of convenience and necessity (the “CCN”) from Osage Water Company (“Debtor”) to Central States. Plaintiffs allege no causes of action nor acts of wrongful conduct against Central States and Debtor. Nevertheless, Plaintiffs seek an injunction enjoining the parties from being able to exercise their contractual rights under the Agreement for Sale of Utility System (the “Sale Agreement”).

## BACKGROUND

Central States is the successful bidder against Plaintiffs in a 2018 auction held by the Chapter 11 trustee to liquidate Debtor’s assets. On November 14, 2018, this Court issued an Order (the “Bankruptcy Order”) authorizing the sale of Debtor’s assets to Central States pursuant to the terms under the Sale Agreement. The Bankruptcy Order and Sale Agreement provide that consummation of the sale is conditioned upon the approval of the Commission. The Commission authorized the transfer of Debtor’s assets and CCNs to Central States in its April 8, 2020 Report and Order.

Despite acknowledging that the Commission issued a Report and Order approving the sale, Plaintiffs allege that the condition in the Bankruptcy Order and Sale Agreement has not been met. Plaintiffs seek emergency injunctive relief against Debtor and Central States from exercising their rights under the Sale Agreement based on the Commission’s alleged error in granting authorization.

## ARGUMENT

### **I. LEGAL STANDARD**

A temporary restraining order “is an ‘extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.’” *North Dakota*

*v. U.S. Army Corps of Eng'rs*, 264 F. Supp. 2d 871, 878 (N.D. 2003) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). In determining whether to grant such a harsh remedy, the Court considers “(1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury in granting the injunction will inflict on the other party; (3) the probability of the movant succeeding on the merits; and (4) the public interest.” *Phelps-Roger v. Nixon*, 509 F.3d 480, 484 (8th Cir. 2007).

**II. PLAINTIFFS CANNOT ESTABLISH FACTS TO MEET THEIR BURDEN, THEREFORE THEIR REQUEST FOR A TEMPORARY RESTRAINING ORDER SHOULD BE DENIED.**

Against the formidable legal standard and for the reasons set forth herein, Plaintiffs fail to carry their burden of demonstrating that they are entitled to a temporary restraining order. The relief they seek should therefore be denied.

**A. There Is No Likelihood That Plaintiffs Will Prevail on the Merits.**

Plaintiffs are not entitled to injunctive relief because they cannot prevail on the merits of their claims. As a preliminary matter, Plaintiffs have no standing to maintain that the Sale Agreement has been breached because Plaintiffs are not parties to the contract.

Plaintiffs’ allegation that the Bankruptcy Order and Sale Agreement’s condition of obtaining the Commission’s approval has not been satisfied is clearly erroneous. As Plaintiffs concede in their Complaint, the Commission issued its Report and Order authorizing the transfer of assets and CCNs from Debtor to Central States on April 8, 2020. Thus, the Commission has not only approved the sale, it has also ruled that Plaintiffs did not prevail on the merits of their claims in the proceeding. The Commission’s decision “is reasonable where the order is supported by substantial, competent evidence on the whole record . . . .” *Mo. Pub. Serv. Comm’n v. Union Elec. Co.*, 552 S.W.3d 532, 539 (Mo. banc 2018).

**B. Plaintiffs Cannot Demonstrate Irreparable Harm.**

Plaintiffs cannot demonstrate that they will suffer any injury. Plaintiffs argue that they cannot acquire Debtor's assets if the sale is consummated. This is not an irreparable harm. To entertain such an argument would create a slippery slope where parties may seek drastic injunctive relief against innocent purchasers based on their loss in a legitimate auction.

Furthermore, Plaintiffs have and have pursued additional remedies; their Application for Rehearing is pending in front of the Commission.

**C. The Harm to the Corporation Greatly Outweighs Any "Harm" to Plaintiffs.**

Plaintiffs have not alleged that Central States has committed any wrongdoing. To deprive Central States of its contractual rights under the Sale Agreement significantly harms the innocent purchaser more than the Plaintiffs who suffer no injury if the sale is consummated.

**D. The Public Interest Supports Denial of Plaintiffs' Request for Temporary Restraining Order.**

Public interest "is a matter of policy to be determined by the Commission." *In the Matter of the Application of the Empire Dist. Elec. Co. for Authorization to Sell & Transfer Part of Its Works or Sys. To the City of Monett, Mo.*, No. EO-2009-0159, 2009 WL 362184, at \*4 (Mo. P.S.C. Feb. 11, 2009). As Plaintiffs conceded, the Commission historically has authorized sales when a transfer of assets is not detrimental to the public interest. Similarly, the Commission has already determined that the transfer of assets and CCNs from Debtor to Central States would not be detrimental to the public interest.

Plaintiffs' attempt to prevent Debtor and Central States from consummating the sale is nothing more than forum shopping following their dissatisfaction with the Commission's legitimate ruling. Allowing a disappointed bidder to obtain drastic equitable relief against an

innocent purchaser would encourage bidders to seek similar emergency orders to improperly hinder parties from exercising their contractual rights.

## **II. PLAINTIFFS' REQUEST SEEKS TO UNDERMINE THIS COURT'S AUTHORITY AND THE PRINCIPLES OF THE BANKRUPTCY CODE.**

As this Court is well aware, a bankruptcy court has “considerable discretion in approving asset sales and is granted ample latitude to strike a balance between fairness, finality, integrity, and maximization of assets.” *In re Farmland Industries, Inc.*, 289 B.R. 122, 126 (B.A.P. 8th Cir. 2003). Further, the finality rule of Section 363(m) incorporates the judicial doctrine of mootness of appeals where an appellate court cannot grant effective relief. This rule serves the essential role of encouraging finality in bankruptcy sales and protecting the rights of good faith purchasers. *See In re Burgess*, 246 B.R. 352, 355 (B.A.P. 8th Cir. 2000); *U.S. v. Fitzgerald*, 109 F.3d 1339, 1342-43 (8th Cir. 1997).

Plaintiffs have not and cannot demonstrate that Central States engaged in misconduct surrounding the sale, engaged in collusion, attempted to take unfair advantage of other bidders, or that Central States did not pay fair value. As such, Plaintiffs have not and cannot show that Central States was not a good faith purchaser under Section 363(m) of the Bankruptcy Code. Consequently, the relief sought by Plaintiffs seeks should be denied both for failing to make the requisite showing for a temporary restraining order and as moot for failing to obtain relief prior to the substantive consummation of the proposed sale.

### **CONCLUSION**

For all the foregoing reasons, Plaintiffs' request for a temporary restraining order should be denied because it falls short of satisfying the high burden permitting the issuance of such extraordinary relief.

Respectfully submitted,

CARMODY MACDONALD P.C.

By: /s/ Robert E. Eggmann

ROBERT E. EGGMANN #37374MO

THOMAS H. RISKE #61838MO

120 S. Central Avenue, Suite 1800

St. Louis, Missouri 63105

(314) 854-8600

(314) 854-8660 – FAX

[ree@carmodymacdonald.com](mailto:ree@carmodymacdonald.com)

[thr@carmodymacdonald.com](mailto:thr@carmodymacdonald.com)

ATTORNEY FOR DEFENDANTS

CENTRAL STATES WATER RESOURCES, INC.

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies on the 8<sup>th</sup> day of June, 2020, that a true and correct copy of the above and foregoing pleading was served by electronic filing in the CM/ECF system of the United States Bankruptcy Court for the Western District of Missouri which will send notification of such filing to the following registered parties in interest:

Lee J. Viorel, Lowther Johnson LLC, on behalf of Public Water Supply District No. 5 of Camden County, Lake Area Waste Water Association, Inc. and Cedar Glen Condominium Owners Association, Inc.; [lviorel@lowtherjohnson.com](mailto:lviorel@lowtherjohnson.com);

Eric L. Johnson, Esq., Spencer Fane LLP, on behalf of Jill D. Olsen, Chapter 11 Trustee for Osage Water Company; [ejohnson@spencerfane.com](mailto:ejohnson@spencerfane.com);

Andrea M. Chase, Esq., Spencer Fane LLP, on behalf of Jill D. Olsen, Chapter 11 Trustee for Osage Water Company; [achase@spencerfane.com](mailto:achase@spencerfane.com);

Zach R.G. Fairlie, Esq., Spencer Fane LLP, on behalf of Jill D. Olsen, Chapter 11 Trustee for Osage Water Company; [zfairlie@spencerfane.com](mailto:zfairlie@spencerfane.com);

/s/ Robert E. Eggmann