

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

CENTRAL STATES WATER )  
 RESOURCES, INC. )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 GREAT SOUTHERN BANK )  
 14309 Highway 13 )  
 Reeds Spring, MO 65737 )  
 )  
 REFLECTIONS SUBDIVISION MASTER )  
 ASSOCIATION, INC. )  
 120 S Central Ave., Suite 1600 )  
 Saint Louis, MO 63105 )  
 )  
 and )  
 )  
 REFLECTIONS CONDOMINIUM )  
 OWNERS ASSOCIATION, INC. )  
 3524 Osage Beach Pkwy PO Box 2409 )  
 Lake Ozark, MO 65049 )  
 )  
 Defendants. )

No.

**PETITION FOR INJUNCTION & DECLARATORY RELIEF**

Comes now, Plaintiff, Central States Water Resources, Inc. (“Plaintiff”), and, for its Petition, states the following:

**Facts Common to All Counts**

1. Plaintiff is a Missouri corporation with its principal offices located at 500 Northwest Plaza Drive, Suite 500, Saint Ann, St. Louis County, Missouri 63074.
2. Defendant Great Southern Bank is a Missouri corporation. According to records filed with the Missouri Secretary of State, the address of Great Southern Bank’s registered agent is 14309 Highway 13, Reeds Spring, MO 65737. The same records

indicate that Great Southern Bank's principal offices are located at 1451 E. Battlefield, Springfield, Greene County, MO 65810.

3. Defendant Reflections Subdivision Master Association, Inc.

("Association") is a Missouri nonprofit corporation. According to records filed with the Missouri Secretary of State, the address of the Association's registered agent is 120 S Central Ave., Suite 1600, Saint Louis, MO 63105. The Association is a homeowner's association for homes located in Camden County, Missouri.

4. Defendant Reflections Condominium Owners Association, Inc. ("COA")

is a Missouri nonprofit corporation. According to records filed with the Missouri Secretary of State, the address of COA's registered agent is 3524 Osage Beach Pkwy, PO Box 240, Lake Ozark, MO 65049. The COA is a condominium owners association for condominiums located in Camden County, Missouri.

5. This court has jurisdiction to hear this action pursuant to § 478.070, RSMo, and Article V, Section 14 of the Missouri Constitution.

6. Venue is proper before this court pursuant to § 508.010.2(2), RMo, as multiple defendants reside in Camden County, Missouri.

7. Abba Development Company, L.L.C. ("the Developer") developed the Reflections subdivision located in Camden County and recorded the "Declaration of Restrictions for Reflections Subdivision" with the Camden County, Missouri Recorder of Deeds on or about March 5, 2002. The Declaration of Restrictions charged the Association with operating water and sewer facilities (the "System").

8. The Developer also constructed three condominium buildings containing a total of fifty units. The owners of those condominiums are the members of the COA.

9. The Developer then defaulted on a development loan it had with Great Southern Bank. Great Southern Bank took and continues to hold title to the real estate then held by the Developer, including the parcels where the System is located.

10. Pursuant to Section 16.1.5 of the Declaration of Restrictions, the Association is required to convey the sewer system to any public authority, municipal corporation, or private corporation certificated by the Public Service Commission of Missouri, as soon as practical, to perform functions related to the construction, maintenance, extension, operation, repair, improvement, and regulation thereof.

11. Plaintiff is a corporation certificated by the Public Service Commission to provide water and sewer services.

12. On or about October 11, 2018, Plaintiff, Great Southern Bank, and the Association entered into an agreement to transfer the System to Plaintiff for the purchase price of \$1.

13. On or about December 4, 2018, Plaintiff, Great Southern Bank, the Association, and the COA entered into an Amended and Restated Agreement for Sale of Utility System (“Agreement”) superseding the October 11, 2018 agreement (a copy of which is attached hereto as Exhibit A). In the Agreement, the three Defendants agreed to sell the System to Plaintiff at a closing to take place no later of forty-five days after the effective date of any necessary regulatory authority approval.

14. The Agreement provided that should closing not occur by December 31, 2018, the Defendants (by the vote of at least two of Great Southern Bank, the Association, and the COA) could terminate the Agreement by giving Plaintiff and any non-consenting Defendant written notice of termination.

15. Closing did not occur by December 31, 2018, and has not yet occurred, as the Missouri Public Service Commission has not yet provided necessary regulatory approval due to actions by intervenors in the regulatory case designed to delay or deny approval.

16. On January 3, 2019, James A. Beckemeier, legal counsel for Plaintiff, sent an email notice to all three Defendants and the Defendants' legal counsels. In the email, Mr. Beckemeier confirmed that closing did not occur by December 31, 2018, and requested that the Defendants inform Plaintiff within fifteen days whether they wished to terminate the Agreement.

17. In that email, Mr. Beckemeier informed the Defendants that if they did not respond within fifteen days of the notice, Plaintiff would consider the right to terminate the Agreement as being waived.

18. None of the Defendants informed Plaintiff that it wished to terminate the Agreement within fifteen days of the notice.

19. On or about August 2, 2019 – nearly seven months after receiving the initial notice from Mr. Beckemeier - Sue Schultz, counsel for Great Southern Bank and the Association, sent Josiah Cox, President of Plaintiff, a notice informing Mr. Cox that the Defendants had unanimously voted to terminate the Agreement because closing had not occurred by December 31, 2018.

#### **Count I - Injunctive Relief**

20. Plaintiff incorporates by reference its allegations in paragraphs 1 to 19 as if fully set forth herein.

21. The Defendants failed to act promptly or in a reasonable time by failing to provide notice of their desire to terminate the Agreement until approximately seven months after Mr. Beckemeier requested they inform Plaintiff of their decision on whether to terminate the Agreement.

22. Unless Defendants are enjoined from terminating the Agreement, Plaintiff will suffer immediate and irreparable harm in that Plaintiff will lose its right to receive the System it contracted to purchase. Upon information and belief, the Defendants intend to soon sell the System to a different utility company.

23. Plaintiff has no adequate remedy at law in that an award of damages could not adequately compensate Plaintiff for the injury caused by losing its right to receive the System it contracted to purchase.

24. In order to preserve status quo and to allow Plaintiff to close on the purchase of the System in accordance with the terms of the Agreement, Plaintiff seeks temporary, preliminary and permanent injunctive relief prohibiting Defendants from terminating the Agreement and prohibiting Defendants from selling the System to any party other than Plaintiff or Plaintiff's assigns in violation of the terms of the Agreement.

25. Defendants will not be harmed by the granting of the injunctive relief being sought.

26. The public will not be harmed by the granting of the injunctive relief being sought, and the issuance of such injunctive relief is in the public interest.

27. Accordingly, Plaintiff requests that the Court enter a temporary, preliminary and permanent injunction enjoining Defendants from terminating the

Agreement and prohibiting Defendants from selling the System to any party other than Plaintiff or Plaintiff's assigns in violation of the terms of the Agreement.

WHEREFORE, Plaintiff respectfully requests a temporary, preliminary and permanent injunction against Defendants prohibiting Defendants from terminating the Amended and Restated Agreement for Sale of Utility System dated December 14, 2018 and prohibiting Defendants from selling the System to any party other than Plaintiff or Plaintiff's assigns in violation of the terms of the Agreement. Plaintiff further requests any additional relief the Court deems proper under the circumstances.

### **Count II – Declaratory Relief**

28. Plaintiff incorporates by reference its allegations in paragraphs 1 to 27 as if fully set forth herein.

29. The Agreement provided a right for the Defendants to terminate the Agreement if the purchase did not close on or before December 31, 2018.

30. When the purchase did not close on or before December 31, 2018, the Defendants failed to act in good faith or within a reasonable time to terminate the Agreement by failing to provide notice of their desire to terminate the Agreement until approximately seven months after Mr. Beckemeier requested they inform Plaintiff of their decision on whether to terminate the Agreement.

31. Plaintiff has acted diligently to perform all conditions and obligations of the Plaintiff under the Agreement, has incurred significant costs related to due diligence, entitlement review and seeking regulatory approval for the purchase of the System and upon the approval of the regulatory bodies of the State of Missouri, stands ready, willing and able to close on the purchase of the System.

32. Plaintiff seeks a declaration from this Court that Defendants were dilatory in exercising their option to terminate the Agreement in that they waited over seven months from the time that such right vested and from when Plaintiff, by and through counsel, notified Defendants that they must exercise such right in a reasonable time, and as a result of Defendants' failure to terminate the Agreement in a reasonable time, such right to terminate was thereby waived.

33. Plaintiff seeks a further declaration from this Court that Defendants' attempt to terminate the Agreement was a breach of the Agreement, and in accordance with Section 25 of the Agreement, awards Plaintiff its attorneys' fees and costs to bring this action.

34. Plaintiff has no adequate remedy at law in that an award of damages could not adequately compensate Plaintiff for the injury caused by losing its right to receive the System it contracted to purchase.

WHEREFORE, Plaintiff respectfully requests that this Court find that Defendants have waived their right to terminate the Agreement due to their failure to exercise such right within a reasonable time of December 31, 2018; that Defendants' attempt to terminate the Agreement was a breach of the Agreement; that the notice of termination sent by Defendants is null and void and that Plaintiff is entitled to an award of its attorneys' fees and costs to bring this action. Plaintiff further requests any additional relief the Court deems proper under the circumstances.

**BRYDON, SWEARENGEN & ENGLAND, P.C.**

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ATTORNEYS FOR PLAINTIFF

**VERIFICATION**

STATE OF MISSOURI )  
) ss.  
COUNTY OF ST. LOUIS )

I, Josiah Cox, the President for Central States Water Resources, Inc., being duly authorized and sworn on my oath, state that the matters set forth in the above Petition are true and correct according to the best of my knowledge, information and belief.



Subscribed and sworn to before me this 15<sup>th</sup> day of August, 2019.



F. SHABNAM NOURAI  
My Commission Expires  
Jan. 16, 2021  
St. Louis County  
Commission # 12421180

  
Notary Public