

Missouri Public Service Commission

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Missouri Public
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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 23rd day of January, 2018.

Derald Morgan, Rick and Cindy Graver, William)
and Gloria Phipps and David Lott,)

Complainants,)

v.)

Carl Richard Mills, Carriage Oaks Estates,)
Distinctive Designs and Caring Americans Trust)
Foundation, Inc. (f/k/a Caring Americans)
Foundation, Inc.), Carriage Oaks Not-for-Profit)
Water and Sewer Corporation,)

Respondents)

File No. WC-2017-0037

**ORDER DENYING RESPONDENTS' MOTION TO DISMISS
AND
ORDER DENYING COMPLAINANTS' MOTION FOR PARTIAL SUMMARY
DETERMINATION**

Issue Date: January 23, 2018

Effective Date: January 23, 2018

On August 4, 2016, Derald Morgan, Rick and Cindy Graver, William and Gloria Phipps, and David Lott (collectively referred to as "Complainants") filed a Complaint with the Missouri Public Service Commission requesting that the Commission turn operations of a water and sewer system over to its home owner's association or to another entity where all owners are members. This complaint is currently set for evidentiary hearing beginning February 6, 2018.

MOTION TO DISMISS

On October 24, 2017, Respondents filed Respondents' Motion to Dismiss Second Amended Complaint. Respondents assert that the complaint should be dismissed because the Commission lacks jurisdiction over Respondent and the claims, and because Complainants do not (and are precluded from) having an ownership interest in the water and sewer system.

The standard for determining whether a complaint should be dismissed has been established as:

solely a test of the adequacy of the petition. It assumes that all of the petition's averments are true and liberally grants to the petitioner the benefit of all reasonable inferences. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.^[1]

Additionally, the Missouri Supreme Court has said that "[p]leadings filed with the PSC are not to be tested by the technical rules of pleading; if a pleading fairly presents for determination some matter which falls within the jurisdiction of the Commission, it is sufficient."²

The Respondents' motion to dismiss is based upon arguments regarding Commission jurisdiction. This argument was addressed previously in the Commissions' Order Denying Motion to Dismiss, Granting Motion to Strike, and Directing Filing of Procedural Schedule issued August 3, 2018. The facts and analysis from that order are

¹ *Nazeri v. Mo. Valley College*, 860 S.W.2d 303, 306 (Mo. banc 1993). See also, *Zeller v. Scafe*, 498 S.W.3d 846, 849 (Mo.App., W.D. 2016).

² *St. ex rel. Kansas City Terminal Railway Co. v. Public Service Commission*, 308 Mo. 359, 372, 272 S.W. 957, 960 (banc 1925).

incorporated into this order. The addition of Carriage Oaks Not-for-Profit Water and Sewer Corporation as a party in no way alters the sufficiency of the complaint. Whether Respondents properly formed a not-for-profit under 393 RSMo does not change the jurisdictional analysis. Whether the Carriage Oaks Not-for-Profit Water and Sewer Corporation is outside the Commission's jurisdiction does not alter whether Respondents' other entities were under Commission jurisdiction.

MOTION FOR SUMMARY DETERMINATION

On December 13, 2017, Complainants filed Complainants' Motion for Partial Summary Judgment Against Respondents alleging that it is entitled to a Commission decision finding that there are no material facts in dispute as to whether Carriage Oaks Not-for-Profit Water and Sewer Corporation were properly formed under 393 RSMo. Additionally Complainants seek summary determination that the transfer of assets from Caring Americans Trust Foundation, Inc. to Carriage Oaks Not-for-Profit Water and Sewer Corporation be declared void. By rule, the parties are allowed 30 days to respond to a motion for summary determination. Respondents filed a timely response on January 12, 2018.

Commission Rule 4 CSR 240-2.117(1)(E) allows the Commission to grant a motion for summary determination if:

the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest.

Respondents disagree with Complainants' allegation that there are no contested material facts, and in their response dispute both factual allegations in Complainants' motion for summary determination. A motion for summary determination is appropriate only if a party can demonstrate that there is no genuine issue as to any material fact.

CONCLUSION

Both Complainants' and Respondents' major points in their respective motions are interdependent. If any of the entities which owned and/or operated the water and sewer system would have been under the jurisdiction of the Commission, that organization would have needed Commission approval before any transfer of any assets under 393.190 RSMo; without Commission approval that transfer would be void. It follows that in order to be a not-for-profit outside Commission jurisdiction the not-for-profit must first be lawfully able to receive the water and sewer assets. Conversely, if the prior owning and operating entities are outside the Commission's jurisdiction, the transfer of assets to a not-for-profit (if compliant with 393 RSMo) would also be outside the Commission's jurisdiction.

The Commission finds that there are contested material facts and that the complaint is sufficient, both the motion to dismiss and summary determination motion must be denied for those reasons. Therefore, the Commission will deny Respondents' motion to dismiss and Complainants' motion for summary determination.

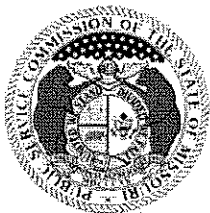
THE COMMISSION ORDERS THAT:

1. Respondents' Motion to Dismiss Second Amended Complaint is denied.

2. Complainants' Motion for Partial Summary Judgment Against Respondents is denied.

3. This order shall be effective when issued.

BY THE COMMISSION



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Kenney, Rupp, Coleman, and
Silvey, CC., concur.

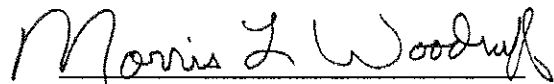
Clark, Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission,
at Jefferson City, Missouri, this 24th day of January 2018.



Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

January 23, 2018

File/Case No. WC-2017-0037

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,


Morris L. Woodruff
Secretary

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.