

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

TALKING ROCK LAND, LLC, an Arizona limited liability company, Plaintiff, vs. INSCRIPTION CANYON RANCH SANITARY DISTRICT, an Arizona sanitary district; DAVID BARREIRA, District Board Member; BILL DICKRELL, District Board Member; AL POSKANZER, District Board Member, Defendants.	Case No. P1300CV201800380 UNDER ADVISEMENT RULING AND ORDER	FILED DATE: 11/09/2018 8:47 O’Clock <u>A</u> . M. DONNA MCQUALITY, CLERK BY: <u>K. DARGIE</u> Deputy
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HONORABLE JOHN NAPPER DIVISION 2	BY: Felicia L. Slaton, Judicial Assistant DATE: November 6, 2018
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The Court has received and reviewed Plaintiff’s Application for Attorneys’ Fees and Costs, the Response and the Reply. The Court also heard oral argument on the pleadings. Based on this record, the Court finds Plaintiff is entitled to reasonable attorney’s fees incurred for its preparation for and conducting the evidentiary hearing in this case.

Procedural History and Facts

How the Dispute Started

Plaintiff owns a master planned community within the service area of the Defendants. Defendants are the only providers of sewer service within its district. The Plaintiff plans to phase in a new area of development (hereinafter “Sterling Ranch”). This included a sales campaign intended to generate sales of the lots prior to building. In order to achieve this goal, it submitted requests to the Defendants seeking evidence of their intent to provide sanitary service to Sterling Ranch.

Plaintiff submitted what it believed were the necessary documents to the Defendants for their review and approval. These documents included the Capacity Assurance Approval forms (hereinafter “CAA”). These forms include a certification that the additional flow resulting from the development will not exceed the input flow limits and a certification that the treatment facility could accept and treat the increased flows. The signing of these forms was required for Sterling Ranch to go forward and directly impacted the market value of its lots.

The Board put the Sterling Ranch CAAs on its agenda for consideration. At the meeting, the Board went into executive session to discuss the CAAs. At the conclusion of the executive session, the Board went back into public session and declared the documents “would not be signed at this time.” No public debate occurred, and no reasons were provided for why the CAAs “would not be signed at this time.”

Plaintiff then filed the Complaint currently before the Court. The Complaint alleged Defendants unlawfully enacted a moratorium in violation of A.R.S. §48-2033 and that the District was required to lift the moratorium. Plaintiff also filed an Application for Order to Show Cause seeking expedited declaratory relief.

The Positions of the Parties

The Court set a hearing and ordered the Defendants to file a response to the Application for Order to Show Cause. In its response, the Defendants argued it refused to sign the CAAs because they contained material errors. Specifically, the Defendants accused the Plaintiff of mispresenting “the serious problem it knows the district has concerning accommodating additional sewage flows into the existing treatment plant.” (*Resp.* pp. 4) The Defendants further argued, “The Plaintiff’s Complaint totally ignores the known fact that the existing treatment plant’s current capacity is in danger of being exceed.” *Id.* at 5. The Defendants also alleged they were not in receipt of all the necessary forms to allow them to fully vet the CAAs. (*Id.* at 4 ln. 13-16).

The Court held the first hearing on the Order to Show Cause. The Court outlined the issue before the Court as: whether or not the Defendants were appropriately refusing to sign the forms due to inaccuracies in the forms. (*Rep. Trans.* 5/9/2018 pp. 6). The Defendants agreed this was the issue before the Court. The Court specifically identified the need for an evidentiary hearing on whether Defendants properly refused to sign the CAAs due to a lack of capacity. *Id.*

The Plaintiff argued to the Court that an evidentiary hearing was unnecessary. It argued the Defendants were simply using the wrong definition for a term in one of the ACCs. In response, the Defendants assured the Court, “there is a question, which I think militates toward an evidentiary hearing of whether or not we can sign those forms at all because of the current capacity of the plant.” *Id.* at 19. The Court specifically asked if the capacity issue was the only issue “not remediable” without a hearing. The Defendant responded, “Yes, your Honor. That is the issue. The issue related to how this situation is operating now, and what the dangers are of over topping the plant.” *Id.* at 20.

During the hearing, the Defendants also continued to urge they had not received the appropriate documents to evaluate the CAAs regardless of the capacity issue. During the hearing, the Court asked the Defendants what forms were needed for the Board to complete its review of the CAAs. *Id.* at 19. The Defendants provided information about what documents were needed. Plaintiff agreed to provide any information needed immediately.

Ultimately, the Court set the matter for an evidentiary hearing. *Id.* at 54. The Court warned the parties that if the hearing ultimately proved to be unnecessary, an award of attorney’s fees was a possibility. The Court specifically stated that an unneeded evidentiary hearing may “subject your clients to pay an award of damages that they would not be subject to now.” *Id.*

Prior to the evidentiary hearing, the Defendants filed a motion to vacate the evidentiary hearing. The motion alleged five reasons to vacate the hearing. Nowhere in the pleading were the Defendants abandoning their claim that the plant lacked the capacity to service Sterling Ranch. Accordingly, the Court denied the motion.

