

11/19/2001

CLERK OF THE COURT
FORM V000A

HONORABLE MARK R. SANTANA

D. Glab
Deputy

CV 2001-006415

FILED: _____

SUN CITY TAXPAYERS ASSOCIATION
INC, et al.

JEFFREY C ZIMMERMAN

v.

RECREATION CENTERS OF SUN CITY
INC, et al.

CHARLES I KELHOFFER

MICHAEL M GRANT

MINUTE ENTRY

The court has considered the defendants' motions to dismiss, the response, the replies and the supplemental memorandum in support of defendant Recreation Center of Sun City Inc.'s motion to dismiss.

Standing

Before addressing the merits of the plaintiffs' claims, the initial issue of standing must be resolved.

Sun City Taxpayers Association Inc. - In order to have standing, the Sun City Taxpayers Association Inc. (Association) must allege an injury to itself or that its members' associational ties have been affected. Sun City Taxpayers' Association v. Citizens Utility Company, 847 F.Supp.281, 284 (D. Conn. 1994). The Association has not urged either position and the pleadings do not suggest such injuries.

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Moreover, an association cannot assert representative standing on behalf of its members where the association seeks damages as opposed to requesting only declaratory or injunctive relief. Id. at 285. In this case, plaintiff Association is seeking consequential damages on behalf of its individual members. These damages allegedly result from anticipated increases in utility rates if the water pipeline is constructed. Such damages, if they exist, are individual to its members and cannot be asserted by the Association. Id.

Finally, the Association does not allege that it has an "interest" in the Agreement for Exchange of CAP Water in Sun City ("the Agreement"). There is nothing in the record that would support the conclusion that it has such an interest. The plaintiff must demonstrate that a substantive right has been impacted: There must be an effect on his rights, status or legal relations. A.R.S. § 12-1832; Dail v. City of Phoenix, 128 Ariz. 199, 624 P.2d 877 (App. 1980). No such impact has been demonstrated.

The court concludes that the Association does not have standing to bring this lawsuit.

Individual Plaintiffs - The individual plaintiffs also lack standing. The possibility that the plaintiffs may sustain a utility rate increase because of the signing of the Agreement does not create standing to bring a declaratory judgment action. See Morris v. Fleming, 128 Ariz. 271, 273, 625 P.2d 334, 336 (App. 1981). At present, the plaintiffs not sustained any damages from the Agreement. They have not been affected by the Agreement as required by A.R.S. § 12-1832.

The individual plaintiffs do not have standing to bring a declaratory judgment action.

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A.R.S. § 10-3304

The court finds that the Board of Directors for the defendant Recreation Center of Sun City Inc (RCSC) did pass a resolution approving and ratifying the Agreement.

It is undisputed that the RCSC is a non-profit corporation.

In order to challenge this non-profit corporate action, the individual plaintiffs must meet the provisions of A.R.S. § 10-3304, which requires that at least ten percent of the membership or fifty members of the corporation file the claim.

At best, there are only fourteen plaintiffs in this litigation. Moreover, the plaintiffs have not established that they represent ten percent of the membership of the RCSC.

The court finds that the plaintiffs do not meet the requirements of A.R.S. § 10-3304.

Transfer of Water Rights

Plaintiffs argue that the execution of the Agreement resulted in the RCSC violating Article VIII, Section 7 of its articles of incorporation because Article VII prohibits the RCSC from "conveying "assets" in excess \$50,000 without obtaining the approval of the membership. But the Agreement clearly sets forth that the Agreement does not transfer or in any way impair the vested water rights of RCSC. See Agreement, ¶9. Indeed, the Agreement could not contain such a transfer because Arizona law specifically prohibits such a transfer. A.R.S. § 45-1052(2). Rather, the Agreement is a water exchange contract authorized by A.R.S § 45-1001. A.R.S. § 45-1006, which specifically provides that vested water rights are not affected by water exchange agreements, is implicitly incorporated into the Agreement. See Huskie v. Ames Brothers Motor and Supply Co. Inc., 167 Ariz. 383, 389, 807 P.2d 1119, 1125 (App. 1990).

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The agreement reflects a water-for-water exchange which does not convey any rights other than the ability to use water when exchanged. While the Agreement does limit the *ability* of RCSC to pump groundwater for a given period of time, the Agreement merely substitutes the CAP water for RCSE's diminishing groundwater, at a twenty per cent savings. A relinquishment, conveyance or transfer of RCSC's groundwater rights does not occur. There is no adverse impact on RCSC's ability to provide water. CAP water becomes unavailable, RCSC can resume groundwater pumping immediately. Agreement, ¶9. An agreement to exchange water for water, while limiting the ability to pump groundwater during the agreement's existence, does not constitute a conveyance of water rights.

Corporate Indebtedness

In their response, the plaintiffs do not seriously contest the defendant RCSC's argument that the Agreement does not create and indebtedness in violation of Article X of the RCSC articles of incorporation. The court finds that the transfer does not violate Article X since it is essentially the exchange of one indebtedness for another. Citrus Grower's Development Association Inc. v. Salt River Valley Water Users' Association, 34 Ariz 105, 125, 268 P. 773, 780 (1928).

IT IS ORDERED:

The motions to dismiss are granted.