

CASE NO. 91-CI-184

SIMPSON CIRCUIT COURT

CITY OF FRANKLIN

PLAINTIFF

VS.

SIMPSON COUNTY WATER DISTRICT

DEFENDANT

Serve: James Snider  
Simpson County Water District  
WRECC Bldg.  
Franklin, KY 42134

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SIMPSON COUNTY  
CIRCUIT COURT  
FRANKLIN, KY

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COMPLAINT

Comes the Plaintiff, City of Franklin, Kentucky, and for its complaint herein, states to the Court as follows:

I

The Plaintiff, City of Franklin, has established, maintained, and operated a water works, pursuant to KRS 96.350 et. seq., for the purpose of supplying water to its residents, nonresidents not supplied by the Simpson County Water District, and the Simpson County Water District.

II

The Defendant, Simpson County Water District, is a public water district created, operated and regulated pursuant to the provisions of KRS 74.010 et. seq. The Simpson County Water District is an organization with 1990 gross sales in excess of \$468,000.00 and net income in excess of \$68,500.00.

III

On or about the 5th day of April, 1967, the Plaintiff, City of Franklin, and the Defendant, Simpson County Water District,

executed an agreement for the sale of water by the City of Franklin, Kentucky to the Simpson County Water District. A copy of the agreement is attached hereto and marked Exhibit A and made a part hereof as if set forth in full herein.

#### IV

Subsequent to the original agreement, a supplemental agreement was executed on the 26th day of August, 1982, by and between the Franklin Municipal Water System and the Simpson County Water District for the continued sale of water to the Simpson County Water District which modified the terms of the original agreement. A copy of said supplemental agreement is attached hereto and marked as Exhibit B.

#### V

On or about the 3rd day of April, 1986, a Second Supplemental Agreement was executed by the City of Franklin, Kentucky and the Simpson County Water District increasing the quantity allowance to the Simpson County Water District and increasing the per unit price provided that the City undertake construction of a new water treatment plant to provide for the greater consumption requested by the District. A copy of the Second Supplemental Agreement is attached hereto as Exhibit C.

#### VI

The Second Supplemental Agreement dated April 3, 1986, provides in relevant part as follows:

- (a) the rate of 84.78 cents per one thousand gallons shall remain in force and effect and not be subject to change for a period of five

(5) years from the date it becomes effective with the exception that should it be necessary for the City to increase it's rates to each of it's customers solely because of debt service obligations on long term financing for construction of raw water supply improvements to the City's water treatment plant, then the Rate shall be increased in the same manner as is set forth in subparagraph (b) below.

(b) If after the expiration of the five (5) year period in which the Rate shall not be subject to change the City increases it's rates to each of it's customers, the Rate which applies to this contract shall be automatically increased the same percentage as that percentage increase charged such customer of the City, whose rate is increased the smallest percentage.

VII

Subsequent to signing the Second Supplemental Agreement, the City incurred new debt service obligations in order to update and increase it's efficiency in supplying water to City residents and the Simpson County Water District. This required the City of Franklin to increase water rates to its customers including the Simpson County Water District.

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VIII

Subsequent to the second supplemental agreement of April 3, 1986, the City incurred a debt in the amount of \$805,130.00, including issuance cost and debt service reserve, for the purpose of capping the Drakes Creek dam in order to facilitate services to the City's residents and the Simpson County Water District. Further, on or about October 10, 1989, the City incurred debt in the amount of \$1,113,603.55 for improvements on the water system and the construction of a water tank. The repayment of the debt

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began on December 1, 1990, and November 15, 1989, respectively.

IX

The City of Franklin billed the Simpson County Water District at a rate of 84.78 cents per one-thousand (1,000) gallons per month until July 1, 1990, when the City was forced to increase it's rates to all of it's customers because of debt service obligations on long term financing for improvements made to the City's water distribution system.

X

On or about July 1, 1990, the City of Franklin, increased water rates to all customers, including the Simpson County Water District, by Ordinance, a copy of which is attached hereto as Exhibit D.

XI

Since the rate increase of July 1, 1990, the Water District has failed and refused to pay the rate of \$1.3478 per one thousand gallons as established in the foregoing Ordinance. After July 1, 1990, the Water District continued to make payment at rate of 84.78 cents per one-thousand (1,000) gallons.

XII

By Ordinance of May 13, 1991, with an effective date of May 19, 1991, the City of Franklin increased it's water rates to the Simpson County Water District from \$1.3478 per one thousand gallons to \$1.68 per one thousand gallons. The Simpson County Water District has failed and refused to pay the rate of \$1.68 per one thousand gallons and has continued to pay at the rate of 84.78

cents per one thousand gallons. A copy of Ordinance dated May 13, 1991, is attached hereto as Exhibit E.

XIII

From July 1, 1990, through July 11, 1991, arrearages and penalties have accrued, pursuant to the foregoing Ordinances, in the amount of \$144,502.66, plus interest accruing at the rate of .18 cents per annum pursuant to Ordinance No. 610.5C0-6-90.

XIV

The cost of the City to produce water for the Simpson County Water District from July 1, 1990, through July 11, 1991, is an amount not less than \$1.68 per 1000 gallons.

XV

Pleading in the alternative, the cost of the City to produce water for the Simpson County Water District from July 1, 1990, through July 11, 1991, is in an amount not less than \$1.3478 per 1,000 gallons.

XVI

Pleading in the alternative the cost to the City of producing and selling water to the Simpson County Water District is from July 1, 1990, through July 11, 1991, in an amount in excess of 84.78 cents per 1,000 gallons.

XVII

The language in the Second Supplemental Agreement, which is referenced in numerical paragraph VI herein is ambiguous in that it is impossible to determine the "same percentage as that percentage increased charged such customer of the City, whose rate

is increased the smallest percentage." The agreements herein alleged were drafted by the Defendant, or Defendant's attorney. These portions of the foregoing agreements are patently ambiguous and therefore void and unenforceable since the contracts should be construed against the party drafting them.

Pleading in the alternative, Plaintiff states that the agreements referenced herein were entered into without express authority of law, and all such unauthorized agreements or contracts are null and void under Section 162 of the Constitution of the Commonwealth of Kentucky.

XVIII

Pleading in the alternative, Plaintiff states that agreements herein alleged are voidable by the Plaintiff and the Plaintiff expressly elects to void such agreements in their entirety.

XIX

Pleading in the alternative, Plaintiff states that the agreements herein alleged bind the City for a period in excess of four (4) year period and are prohibited under KRS 79.110 et. seq.

XX

Pleading in the alternative, Plaintiff states that the agreements herein alleged bind the City for a period in excess of twenty (20) years and are prohibited under Section 164 of the Constitution of the Commonwealth of Kentucky.

XXI

Pleading in the alternative, Plaintiff states that the

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SIMPSON COUNTY  
CHIEF CLERK  
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agreements are void or voidable on public policy grounds since the Franklin City Council cannot legally bind its citizenry by forcing subsequent City Councils to sell water at a loss to the Simpson County Water District, resulting in great financial injury to the municipality and it's citizens.

XXII

Pleading in the alternative, Plaintiff states that KRS 96.430 et. seq., KRS 96.535 et. seq., and Bond Ordinances of 1962, 1968, 1970, 1971, 1975, and 1989, require that all water customers be charged a sufficient rate to provide for payment of interest upon all bonds and to create a sinking fund to pay the principal thereof when due, and to provide for the operation and maintenance of the Water Works and an adequate depreciation account. The "agreements" between the City of Franklin and Simpson County Water District would have the effect of requiring that the City of Franklin violate the foregoing statutes and Bond Ordinances and are therefore void and unenforceable.

XXIII

Pleading in the alternative, Plaintiff states that establishment and revision of water rates is a legislative function to be exercised by the City legislative body. Any agreement that would limit the power of the City Council to establish and revise water rates should be declared null and void as against public policy.

XXIV

Pleading in the alternative, Plaintiff states the agreements

herein alleged are void and against public policy on the grounds that the agreements, if enforced, would require the inhabitants of the City of Franklin to subsidize customers of the Simpson County Water District by requiring City customers to pay excessive rates, while permitting customers of the Water District to pay grossly inadequate rates.

XXV

Plaintiff states that the defendant has breached the agreements herein referenced, specifically Section 11 of the original agreement, dated April 5, 1967, which provides that "the District agrees not to contract with nor furnish water to any user for resale." Since the signing of the foregoing agreement, Simpson County Water District has supplied water to a surrounding county or counties for resale.

XXVI

Pleading in the alternative, Plaintiff states that the rates established pursuant to the "agreements" herein alleged are arbitrary, unreasonable, and discriminatory in favor of the Simpson County Water District, and against the inhabitants of the City of Franklin.

XXVII

Pleading in the alternative, Plaintiff states that the agreements referred to herein are void for lack of mutuality of obligations, in that pursuant to the agreements, the Water District must purchase "only so much water as it may require" from the City of Franklin. The Water District can elect instead not to purchase

any water from the City of Franklin and could in fact purchase all of it's water elsewhere without liability to the City.

XXVIII

Pleading in the alternative, Plaintiff states that the agreements herein alleged amount to a lending of credit by the Plaintiff to the Defendant, and therefore, are void or voidable under Section 179 of the Constitution of the Commonwealth of Kentucky.

XXIX

Pleading in the alternative, Plaintiff states that the agreements herein alleged violate the provisions of Sections 157 and 158 of the Constitution of the Commonwealth of Kentucky.

XXX

Pleading in the alternative, Plaintiff states that the agreements herein alleged violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States of America in that they require one group of citizens, taxpayers and consumers in the City of Franklin, Kentucky, to subsidize another group of citizens, taxpayers, consumers not within the City of Franklin, Kentucky.

XXXI

On or about August 26, 1982, and April 3, 1986, the rates charged to the Defendant by the Plaintiff for water were increased in an amount not specifically authorized by the agreements herein alleged. These increases were accepted and acquiesced in by the Defendant with full knowledge of the facts. Such conduct on the

part of the Defendant amounted to a waiver of the conditions set out in Paragraph VI of the original agreement, dated April 5, 1967, and Paragraph III of the Second Supplemental Agreement dated April 3, 1986. The Defendant is now estopped from relying on the provisions of the agreements.

XXXII

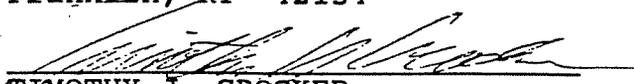
Based on the foregoing, the Plaintiff has suffered damages in excess of the jurisdictional minimum of the Simpson Circuit Court.

WHEREFORE, Plaintiff demands the following relief:

1. For judgment against Defendant for all penalties and arrearages in the amount of \$144,502.66 as of July 11, 1991, plus interest at 18% per annum as required by City Ordinance No. 610.5D-5-91, and any arrearages accruing after July 11, 1991, together with appropriate interest;
2. That the Court enter a judgment declaring that the agreements herein alleged are null and void;
3. For a trial by jury on all allowable issues;
4. For court costs herein expended, including a reasonable attorney's fee.
5. For all other just and proper relief.

This the 26th day of August, 1991.

CROCKER & WILKEY, ATTORNEYS  
126 West Kentucky Avenue  
Franklin, KY 42134

  
TIMOTHY J. CROCKER