

FILED
3:45 O'Clock, P M

MAR 11 1991

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI
By ERIK BOUTON, Clerk
Deputy

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GEORGE W. HANCE, et al.,)	
)	No. 4772
Plaintiffs,)	
)	Division 3
vs.)	
)	PETITION BY SHAREHOLDERS OF
WALES ARNOLD, et ux.; et al.,)	VERDE DITCH TO VACATE THE VERDE
)	DITCH COMMISSIONERS' MOTION FOR
Defendants)	REHEARING ON THE DISPUTE WITH
)	JIM DAVIS

Comes now the undersigned persons, representing themselves, who are shareholders in the Verde Ditch, and hereby petition this Court to deny the Motion for Reconsideration filed by the Commissioners of the Verde Ditch with respect to the decision of this Court in its minute entry dated November 6, 1990.

On November 6, 1990, this Court held that based on the testimony of the witnesses and the exhibits, this Court found that Jim and Colleen Davis land was not "legally burdened with any sort of easement right, either primary or secondary, in favor of Plaintiff." A copy of the minute entry is attached to this motion.

We agree with the Court's ruling and request that this Court enter a final order affirming its November 6, 1990 decision, for the following reasons:

1 1. It is not necessary for the maintenance of the
2 Verde Ditch to gain access to the entire 30 feet of the
3 Davis' land which borders the Ditch. The Ditch is
4 normally maintained from the low side of the Ditch, and
5 there are no impediments to access on the low side
6 where the Ditch borders the Davis' land.

7 2. We do not wish to be assessed legal costs incurred
8 by the Ditch Commissioners in litigation which we
9 consider unnecessary, such as this case. The costs to
10 maintain the Ditch are expensive enough with adding in
11 costs to prosecute unnecessary litigation which is not
12 necessary to the maintenance of the Ditch.

13 3. We do not want to set a precedent for future
14 litigation with non-shareholders of the Ditch, unless
15 there is a compelling reason to do so. We do not want
16 to engage in litigation which results in acts which may
17 be construed by other Courts to be a "taking" of land
18 of non-shareholders which might either give rise to a
19 suit for damages against the shareholders of the Ditch
20 or give rise to an inverse condemnation suit against
21 the Ditch which could potentially result in additional
22 expense to the Ditch.

23 4. We wish to maintain friendly relations with the
24 non-shareholder owners of land on the high side of the
25 Ditch and believe that litigation to establish easement

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rights on non-shareholder lands should only be instituted where there is no reasonable access to maintain the Ditch from the low side. This is clearly not the case with respect to maintenance of the Ditch as it borders Jim Davis' land.

For the reasons set forth above, we request that this Court deny the Motion for Reconsideration and deny any future motions of the Ditch Commissioners which urge this Court to change its decision of November 6, 1990.

Respectfully submitted this 11 day of March, 1991.

Henry H. Hoover
Petitioner's Signature

Henry H. Hoover
Petitioner's name (printed)

P.O. Box 538
Petitioner's Address

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Number of Shares Held

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rights on non-shareholder lands should only be
instituted where there is no reasonable access to
maintain the Ditch from the low side. This is clearly
not the case with respect to maintenance of the Ditch
as it borders Jim Davis' land.

For the reasons set forth above, we request that this Court
deny the Motion for Reconsideration and deny any future motions
of the Ditch Commissioners which urge this Court to change its
decision of November 6, 1990.

Respectfully submitted this 14 day of March, 1991.



Petitioner's Signature

FRANK N Blake

Petitioner's name (printed)

Po Box 428 Camp Verde Az

Petitioner's Address

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Number of Shares Held

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Kennith H walpa
Petitioner's Signature

Box 1526
Petitioner's Address

KENNITH H WALKER
Petitioner's name (printed)

1
Number of Shares Held

Travis Bohannon
Petitioner's Signature

PO Box 1905
Petitioner's Address

TRAVIS BOHANNON
Petitioner's name (printed)

1
Number of Shares Held

Ruby J. Boyer
Petitioner's Signature

PO Box 2794
Petitioner's Address

RUBY J. BOYER
Petitioner's name (printed)

1
Number of Shares Held

Ed Steyer
Petitioner's Signature

HC 62 BOX 554
Petitioner's Address

E. L. STEYER
Petitioner's name (printed)

ONE
Number of Shares Held

Edward E. Hudson
Petitioner's Signature

HC-62 Box 540
Petitioner's Address

EDWARD E. HUDSON
Petitioner's name (printed)

1
Number of Shares Held

James c Luke
Petitioner's Signature

P.O. Box 1222
Petitioner's Address

JAMES c LUKE
Petitioner's name (printed)

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Number of Shares Held

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Vera A Lewis
Petitioner's Signature

HC 62 Box 525
Petitioner's Address

VERA A LEWIS
Petitioner's name (printed)

HC 62 Box 525 (1)
Number of Shares Held

Mark Fulton
Petitioner's Signature

HC 62 Box 587
Petitioner's Address

Mark Fulton
Petitioner's name (printed)

1
Number of Shares Held

Mary Bucher
Petitioner's Signature

P.O. Box 2405
Petitioner's Address

Mary Bucher
Petitioner's name (printed)

1
Number of Shares Held

Helena N. Huffman
Petitioner's Signature

HC 62, Box 560
Petitioner's Address

HELENA N. HUFFMAN
Petitioner's name (printed)

1
Number of Shares Held

Frances Starr
Petitioner's Signature

HC 62 - Box 557 Camp Verde
Petitioner's Address

FRANCES STARR
Petitioner's name (printed)

1
Number of Shares Held

Hazel L McNeese
Petitioner's Signature

HC 62 Box 515 Camp Verde
Petitioner's Address

HAZEL L McNeese
Petitioner's name (printed)

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Kathleen B. Nelson
Petitioner's Signature

KATHLEEN B. NELSON
Petitioner's name (printed)

HC 62 Bx 542
Petitioner's Address

1
Number of Shares Held

Arma L. Walters
Petitioner's Signature

ARMA L. WALTERS
Petitioner's name (printed)

A.C. 62, Box 537
Petitioner's Address

II 2
Number of Shares Held

Kathie Glerum
Petitioner's Signature

Kathie Glerum
Petitioner's name (printed)

HC 62 Box 537
Petitioner's Address

1
Number of Shares Held

Harry L. Snyder
Petitioner's Signature

HARRY L. SNYDER
Petitioner's name (printed)

HC-62 Box 535
Petitioner's Address

1 share
Number of Shares Held

Roy Davidson
Petitioner's Signature

ROY DAVIDSON
Petitioner's name (printed)

HC-62 Box
Petitioner's Address

1
Number of Shares Held

Richard Elliott
RICHARD
Petitioner's Signature

RICHARD ELLIOTT
Petitioner's name (printed)

P.O. Box 1876
Petitioner's Address

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Number of Shares Held

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Petitioner's Signature

Dale H. Harper
Petitioner's name (printed)

Hc 62 Box 202 Camp Verde
Petitioner's Address 86312

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Number of Shares Held

Paul M. Webb
Petitioner's Signature
Soda Springs Ranch
Pimothack, Ariz. 86335
Petitioner's Address

PAUL M. WEBB
Petitioner's name (printed)
(1)
Number of Shares Held

Richard W. Sturges
Petitioner's Signature
507 Mill Road
Petitioner's Address

Richard W. Sturges
Petitioner's name (printed)
Number of Shares Held


Petitioner's Signature
Box 3540
Petitioner's Address

Rio Verde Ranches Limited
Petitioner's name (printed)
88
Number of Shares Held

Petitioner's Signature

Petitioner's name (printed)

Petitioner's Address

Number of Shares Held

Petitioner's Signature

Petitioner's name (printed)

Petitioner's Address

Number of Shares Held

Shatt Family Trust

Ludie Hiatt
Petitioner's Signature

Lyle Hiatt
Petitioner's name (printed)

River Bend
Petitioner's Address

125
Number of Shares Held

Loft Hollamon
Petitioner's Signature

LOFT HOLLAMON
Petitioner's name (printed)

Box 23 Camp Verde
Petitioner's Address

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Number of Shares Held

Raymond A. Smith
Petitioner's Signature

RAYMOND A SMITH
Petitioner's name (printed)

P.O. Box 627 Camp Verde
Petitioner's Address

15
Number of Shares Held

Vernon Hilbers
Petitioner's Signature

Vernon Hilbers
Petitioner's name (printed)

H.C. 2 Box 114 Camp Verde
Petitioner's Address

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Number of Shares Held

Bobbie White
Petitioner's Signature

Bobbie White
Petitioner's name (printed)

H.C. 75 Box 3205 Camp Verde
Petitioner's Address

1
Number of Shares Held

Evelyn R. Wager
Petitioner's Signature

Evelyn R. Wager
Petitioner's name (printed)

P.O. Box 366
Petitioner's Address
Camp Verde, Az.
863022

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D.J. Zellner
Petitioner's Signature

Box 101 Camp Verde
Petitioner's Address

Iris Duncan
Petitioner's Signature

P.O.B 1345- Camp Verde Az.
Petitioner's Address

Shirley J. Hopkins
Petitioner's Signature

P.O. Box 133 Camp Verde Ariz.
Petitioner's Address

K.M. Quinn
Petitioner's Signature

P.O. Box 1497 Camp Verde Az.
Petitioner's Address

Vera Francis
Petitioner's Signature

HC 75 Box 3215
Petitioner's Address

James T. Benedict
Petitioner's Signature

PO 1909 Sedona, Az. 86336
Petitioner's Address

D.J. ZELLNER
Petitioner's name (printed)

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Number of Shares Held

M. IRIS DUNCAN
Petitioner's name (printed)

1
Number of Shares Held

Shirley J. Hopkins
Petitioner's name (printed)

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Number of Shares Held

K.M. Quinn
Petitioner's name (printed)

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Number of Shares Held

VERA FRANCIS
Petitioner's name (printed)

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Number of Shares Held

James T. Benedict
Petitioner's name (printed)

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Number of Shares Held

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Virgil Wayne Reed
Petitioner's Signature

P.O. BOX 24, CAMP VERDE
Petitioner's Address

Ernest R. Heckman
Petitioner's Signature

P.O. BOX 1834 Camp Verde
Petitioner's Address

Thomas C. Shaw
Petitioner's Signature

P.O. B 1951 Camp Verde
Petitioner's Address

Robert W. Beatty
Petitioner's Signature

83 Ft. River Caves
Petitioner's Address

John M. Soderberg
Petitioner's Signature

AK62 BOX 800 SALT MINE RD
Petitioner's Address

Petitioner's Signature

Petitioner's Address

VIRGIL WAYNE REED
Petitioner's name (printed)

1
Number of Shares Held

ERNEST R. HECKMAN
Petitioner's name (printed)

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Number of Shares Held

THOMAS C. SHAW
Petitioner's name (printed)

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Number of Shares Held

Robert W. Beatty
Petitioner's name (printed)

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Number of Shares Held

JOHN M. SODERBERG
Petitioner's name (printed)

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Number of Shares Held

Petitioner's name (printed)

Number of Shares Held

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James T. Bruce
Petitioner's Signature

JAMES T. Bruce
Petitioner's name (printed)

HC 62 Box 526 Camp Verde Ariz.
Petitioner's Address

One
Number of Shares Held

Henry H. Hoover
Petitioner's Signature

Henry H. Hoover
Petitioner's name (printed)

P.O. Box 538 - Camp Verde
Petitioner's Address

1
Number of Shares Held

Jaime Scazalez
Petitioner's Signature

JÁIME SCAZALEZ
Petitioner's name (printed)

P.O. HC. 62 Box 113 Camp Verde
Petitioner's Address

1
Number of Shares Held

Adolfo Pardo
Petitioner's Signature

Adolfo Pardo
Petitioner's name (printed)

HC 62 Box 113 Camp Verde
Petitioner's Address

4
Number of Shares Held

Jack G. Coleman
Petitioner's Signature

Jack G. Coleman
Petitioner's name (printed)

2410 S. 19th ST PHOENIX
Petitioner's Address

10
Number of Shares Held

Howard Sample
Petitioner's Signature

Howard Sample
Petitioner's name (printed)

HC 62 Box 200 Camp Verde
Petitioner's Address

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Number of Shares Held

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Fritz Kelly
Petitioner's Signature

Nellie C. Johnson
Petitioner's Address

Petitioner's Signature

Petitioner's Address

Fritz Kelly ^{1 ACRE}
Petitioner's name (printed) ^{PO BOX 636}
^{CAMP WELLS}

Nellie C. Johnson ^{1 ACRE}
Number of Shares Held ^{Box 1513 CC.}

Petitioner's name (printed)

Number of Shares Held

Petitioner's name (printed)

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Petitioner's Signature

Petitioner's name (printed)

Petitioner's Address

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Petitioner's name (printed)

Petitioner's Address

Number of Shares Held

1 State of ARIZONA)
2 County of Yavapai) ss.

CERTIFICATION OF MAILING

3 JOHN M. SODERBERG
4 JOHN M. SODERBERG, being first duly sworn upon his
5 oath deposes and states:

6 That he is a shareholder in the above captioned matter.

7 That a copy of the foregoing Petition By Shareholders Of
8 Verde Ditch To Vacate The Verde Ditch Commissioners' Motion For
9 Rehearing On The Dispute With Jim Davis was mailed on the 3/11/91
10 day of March, 1991 to the following.

11 L. Richard Maybery
12 101 E. Gurley St., Suite 203
13 Prescott, AZ 86301
14 Attorney for Plaintiffs

15 Douglas G. Wymore
16 1136 E. Campbell
17 Phoenix, AZ 85014
18 Attorney for Defendant Jim Davis

John M. Soderberg

19 SUBSCRIBED AND SWORN to before me this 11th day of March,
20 1991, by John Soderberg.

Phillip Royman
Notary Public

23 My Commission Expires:

24 My Commission Expires Apr. 21, 1991

25

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

DIVISION 3

ETHEL BOUTON, Clerk

HON. JAMES B. SULT

By: Mary Slaughter, Deputy Clerk

CASE NUMBER: 4772

DATE: November 6, 1990

TITLE:

COUNSEL:

GEORGE W. HANCE, et al.

L. Richard Mabery

(Plaintiff)

(For Plaintiff)

vs.

and

WALES ARNOLD, et ux., et al.

Douglas G. Wymore ✓
1136 E. Campbell
Phoenix, AZ 85014

(Defendant)

(For Defendant)

HEARING ON:

COURT REPORTER:

CLOSING ARGUMENTS ON OSC

This being the time set for telephonic closing arguments on Plaintiff's Order to Show Cause, Plaintiffs appearing through their counsel, L. Richard Mabery; Defendants, Davis, appearing through their counsel, Douglas Wymore.

Come now counsel and make their closing arguments to the Court.

The matter is submitted, and IT IS ORDERED taking the matter under advisement.

This matter having been taken under advisement, the Court finds as follows:

The Court is considering only the pleadings relating to this Motion since the Court has not been asked to judicially notice any other portion of the file. Based on the pleadings, testimony of witnesses and exhibits, the Court does not find that Plaintiff presented any evidence that Defendants Davis' land is legally burdened with any sort of

easement right, either primary or secondary, in favor of Plaintiff. The 1963 Rules and Regulations, Exhibit No. 1 in evidence, may possibly be interpreted to burden the lands of shareholders in the Ditch Company, but there is no sufficient evidence to conclude that the Davises are shareholders.

Given that Plaintiff has not proven the predicate element of the ownership of any right of Davis' land, the Court does not address the question of whether the right sought by Plaintiff over Defendants' land is reasonable. Papa v. Flake, 18 Ariz. App. 496 (1972).

Based on the foregoing, IT IS ORDERED Plaintiff's Motion is denied.