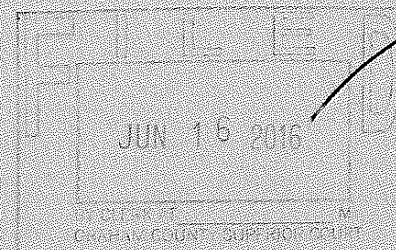


IN THE SUPERIOR COURT  
OF  
GRAHAM COUNTY, STATE OF ARIZONA



Date: June 10, 2016

JUDGE D. COREY SANDERS

**GILA VALLEY IRRIGATION DISTRICT,**

**Plaintiff,**

vs.

**CLAIRIDGE 327, LLC; a Nevada Limited Liability Company, SOUTHWEST INVESTMENT TRUST PENSION PLAN; MELVIN R. BRYCE and NORMA BRYCE, husband and wife; RONALD K. BRYCE; MELVIN R. BRYCE FARMS; and GRAHAM COUNTY, ARIZONA,**

**Defendants.**

**APN: 108-04-001, 108-04-003 and 108-13-003**

Case No. CV 2013-00097

**RULING ON PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT RE:  
PUBLIC USE AND NECESSITY**

The Court has reviewed the plaintiff's motion for partial summary judgment re: public use and necessity filed on July 17, 2015, the opposition filed thereto on September 10, 2015 and the plaintiff's reply filed on April 29, 2016. The Court heard oral argument on June 9, 2016.

The Court finds the following facts to be undisputed:

Plaintiff, Gila Valley Irrigation District ("GVID") is under a federal district court injunction to ensure that the San Carlos Apache Tribe receives water of a sufficient quality to grow moderately salt-sensitive crops.

GVID has a contractual interest in a well located near the San Carlos Apache reservation, in which the water is of sufficient quality to comply with various terms of the federal injunction. The well and required pipeline to the Gila River is located on land in which the defendants have claimed interests.

On April 4, 2013, GVID tendered an offer pursuant to A.R.S. 12-1116 to defendant Clairidge 327, LLC.

On May 9, 2013, GVID filed its complaint in condemnation

On June 12, 2013, an Order to Show Cause Hearing (OSC) was held before Hon. R. Douglas Holt of the Graham County Superior Court. Melvin Bryce, although not formally named as a defendant at the time of the OSC, was present and participated at the hearing as well as the attorney who represented Clairidge 327 LLC at the time of the OSC.

On July 15, 2013 an Amended Order for Immediate Possession (OIP) was entered by Judge Holt.

GVID commenced construction of a pipeline on the subject property after obtaining the OIP. No defendant asked for special action or other relief and all defendants were aware that construction of the pipeline was proceeding during the previous two to three years. The pipeline is now complete.

The defendants object to GVID's motion for partial summary judgment, alleging procedural irregularities at the time of the issuance of the OIP. GVID alleges that the OIP was properly obtained, and that even if errors occurred, laches bars relief for the defendants.

The Court finds that there are no disputed facts from which a reasonable fact finder could conclude that the property sought to be condemned is not for a public use, specifically to comply with the federal injunction, and further, that the taking of the contractual rights to the water well and the construction of the pipeline to deliver the water to the Gila River is a necessity. Even if procedural irregularities occurred at the time of the issuance of the OIP, the relief sought by the defendants is now barred by laches. *Felix v. Superior Court*, 92 Ariz. 247 (1962). GVID acted under the apparent valid authority of the OIP, completed the construction of a pipeline and should not now be required to undo the improvements after inaction of the defendants of over two years.

Accordingly, the plaintiff's motion for partial summary judgment is **GRANTED** as to the issues of public use and necessity.

It is the Court's opinion that the only remaining issue in this matter is just compensation to the landowners.



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D. COREY SANDERS  
Judge pro tem

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