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*Boruch, et al. v. State of Arizona, et al.*

As you may be aware, Arizona has statutes in place to prevent courts from granting injunctive relief to “prevent the enforcement of a public statute by officers of the law for the public benefit” and to prevent the “exercise of a public or private office in a lawful manner by the person in possession” of that respective office. *See* A.R.S. § 12-1802(4) & (6), respectively. A recent court of appeals decision further defines what constitutes a public officer’s “unlawful” performance of their duties under A.R.S. §§ 12-1802 and stresses the importance of applying the facts alleged in a complaint to specific statutory language.

This case was brought by homeowners and residents of three Mesa subdivisions (“plaintiffs”) against the City of Mesa and the State of Arizona, through the Arizona Department of Transportation (“defendants”). Plaintiffs’ Complaint requested the superior court enjoin defendants from diverting and channeling excess storm water onto their properties. In September of 2014, heavy rains fell in Mesa and a local retention basin (Emerald Park) began to fill. Once the rain stopped, the Emerald Park basin was still under capacity.

Defendants, who were responsible for controlling the storm water drainage system, then pumped excess water from two other areas into Emerald Park. Since there was not an effective emergency overflow relief system at the Emerald Park basin, the storm water flooded plaintiffs’ homes and properties. Defendants continued to divert water into Emerald Park even after defendant State of Arizona rejected defendant City of Mesa’s request to pump water from Emerald Park back into the channel.

Plaintiffs’ Complaint alleged defendants negligently operated the storm water drainage system and violated plaintiffs’ Arizona Constitutional rights by using their properties as “ad hoc” relief for Emerald Park without just compensation. They requested the superior court enjoin defendants from “operating the system in a manner that concentrated and diverted storm water into Emerald Park without effective overflow relief.

Defendant State moved to dismiss plaintiffs’ Complaint arguing A.R.S. § 12-1802(4) & (6) prohibited the superior court from granting the requested injunctive relief. Generally, defendant State argued the statute barred injunctive relief to “prevent a state agency from performing its statutory duties” and that plaintiffs were asking the Court issue an order instructing defendants on how to design and reconstruct the storm water drainage system. The superior court granted the State’s motion to dismiss, which defendant City joined, and plaintiffs timely appealed its decision.

The appellate court reversed the superior court’s decision holding A.R.S. § 12-1802(4) did not prohibit the requested injunctive relief because plaintiffs were not requesting the *enforcement* of a public statute within the meaning of A.R.S. § 12-1802(4). Moreover, the appellate court held A.R.S. § 12-1802(6) did not prohibit the requested relief because that subsection does not apply when public officers “exceed their authority or exercise discretionary authority in an unreasonable manner.”

With respect to A.R.S. § 12-1802(4), the Arizona Supreme Court has held the superior court is “without jurisdiction to issue a temporary restraining order or writ an injunction” when public officers attempt to enforce a valid public statute. Here, plaintiffs were not seeking to enjoin the *enforcement* of a public statute; rather, they sought to enjoin defendants from exceeding their power

by negligently managing the drainage system and violating plaintiffs' Arizona Constitutional rights. Therefore, the appellate court held A.R.S. § 12-1802(4) did not bar plaintiffs' request for injunctive relief as a matter of law.

A.R.S. § 12-1802(6) concentrates on a public officer's exercise of the power given to that office. The statute prevents the superior court from granting injunctive relief when relief is sought to prevent a public officer from exercising the duties of a public office in a "lawful manner." The appellate court agreed with plaintiffs' argument and held a public officer acts unlawfully when they exceed their authority or "exercise discretionary authority in an unreasonable or arbitrary manner." Plaintiffs accused defendants of acting unlawfully by arbitrarily and unreasonably operating the drainage system. Therefore the appellate court held the superior court could grant injunctive relief if it found defendants acted unlawfully.

In summary, the appellate court broke down A.R.S. § 12-1802(4) & (6) and found plaintiffs were not requesting injunctive relief that the statute specifically prohibits. Plaintiffs were not requesting the enforcement of a public statute under A.R.S. § 12-1802(4) and since they alleged defendants acted "unlawfully," the superior court was not barred from potentially granting injunctive relief pursuant to A.R.S. § 12-1802(6). As stated above, this case helps us understand the importance of breaking down the plain meaning of an individual statute and applying the facts of each case to that plain language.