# Condo granted injunction vs. water authority

By: [Tom Egan](https://rilawyersweekly.com/blog/author/tomegan/) August 23, 2018



The suit involved a dispute over water pipe breaks at the North Farm Condominium complex in Bristol.

A Superior Court judge has decided that a condominium association should be granted preliminary injunctive relief in a dispute with the Bristol County Water Authority over the maintenance and repair of water mains on the association’s land.

Plaintiff North Farm Home Owners Association argued that the water authority was in violation of a contractual obligation that arose in connection with a 1993 change from separate water meters to a single, central meter.

“Here, North Farm has adequately pled that an agreement was entered into between it and BCWA and that BCWA has articulated that it intends to breach that agreement,” Judge Michael A. Silverstein wrote.

The 10-page decision, North Farm Home Owners Association, Inc. v. Bristol County Water Authority, Lawyers Weekly No. 61-069-18, [can be found here](https://rilawyersweekly.com/blog/2018/08/20/public-utilites-bristol-county-water-authority-condominium/): <https://rilawyersweekly.com/blog/2018/08/20/public-utilites-bristol-county-water-authority-condominium/>

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**Balance of the equities**

The plaintiff was represented by Providence attorney Barry J. Kusinitz and Bristol lawyer John Deacon. They declined to comment.

Opposing counsel was Joseph A. Keough Jr. of Pawtucket, who did not respond to an interview request.

However, Providence attorney John M. Boehnert, who was not involved in the case, observed that the condominium association argued successfully that the water authority’s function in furnishing water to the condo was proprietary, not governmental, and that the doctrine of apparent authority applied. The judge rejected the BCWA’s assertion that only its board of directors had the power to make and enforce contracts.

Boehnert said the finding of proprietary function “was clearly correct,” explaining that providing a water supply is a service that can be done by a private party, in contrast to a governmental function such as condemnation or eminent domain.

He also pointed out that equitable relief is all about balancing the equities.

“Preliminary injunction proceedings are inherently equitable in nature, and the equities of the situation may have colored the decision,” he suggested.

“After all, the water authority approached the homeowners to restructure their water service, presumably for the benefit of the water authority,” he said, adding that the decision made clear that all the pipes were owned by the authority.

“The BCWA promised to continue all the same maintenance responsibilities, and then when maintenance was required, refused to perform,” he said. “That may have been a factor in not letting the water authority avoid the preliminary injunction.”

Coventry attorney Christopher A. Anderson pointed out that the developer of the condominium granted an easement to the water authority when the project was first constructed.

“I don’t see how the easement agreement created an obligation for the authority to maintain anything,” Anderson said. “That easement was for the benefit of the authority, not the condo association. The easement addressed ownership of the pipes, not maintenance and repair.”

Anderson said he was struck by the condo association “reading an awful lot” into the “contract” that supposedly was entered into with an authority employee.

The condo association’s case was based on a promise that allegedly was made by an employee of the BCWA that the repair and maintenance obligation of the authority would remain after the separate, individual water meters were replaced with a single, central meter.

“But I’m not sure the water authority was obligated to anything under the original easement,” Anderson said. “What he said wasn’t a contract at all.”

**Broken pipes**

Development on the North Farm Condominium in Bristol began in 1973.

As part of the first phase of development, the condominium developer granted a utility easement to BCWA in specified common areas for constructing, laying, repairing, maintaining and replacing “water pipelines and necessary and proper valves and other appliances” for use in connection with the transmission and distribution of water, and for subsequent construction, inspection and maintenance of the pipelines.

The easement further stated that all water pipelines would remain “at all time[s] and forever” the sole property of BCWA and not be considered fixtures in or on the land.

As part of the initial installation of the water pipelines, BCWA installed a number of branches extending from water mains to “pits” located near each building. Each of the pits contained separate water meters for each of the individual condominium units serviced by that pit.

Around 1993, a representative of BCWA approached the plaintiff association to change the metering system from separate condominium meters to a single, central meter. There was no alteration to the original easement pursuant to the installation of the central meter. Nor did the installation of the central meter alter the ownership status or maintenance obligations related to the already installed water pipelines.

In February 2014, North Farm experienced a break in a water pipe covered by the initial easement. The plaintiff reported the break to BCWA and requested that it repair the broken pipe pursuant to the easement.

BCWA denied responsibility for the pipe as it was past the location of the central meter. North Farm subsequently experienced three additional breaks in the water pipeline between 2014 and 2017. As a result, the association paid $58,296.86 to repair the pipes.

**Proprietary function**

The association asserted that correspondence between it and BCWA constituted a contract that bound BCWA to the agreed-upon terms. Specifically, the plaintiff contended that BCWA indicated that following the installation of the central meter it would “continue the present maintenance repair and/or replacement of water mains” within the easement granted to BCWA when the condominium was built.

“Simply put, North Farm argues that BCWA’s and North Farm’s then representatives had the authority to bind the parties to the agreement’s terms in the same fashion as any other nongovernmental entity would be bound by its agents and servants,” Silverstein wrote.

Conversely, the defendant argued that its ability to enter into contracts was controlled by legislation that states: “The powers of the authority shall be vested in a board of directors.” Because the agreement with the plaintiff was not presented to or voted on by the board of directors, the water authority argued that the agreement was invalid.

The plaintiff argued that the agreement was not void, as the defendant suggested, because the authority’s function in furnishing water to the condominiums was proprietary and, therefore, nongovernmental. The plaintiff asserted the defendant was not engaged in a governmental function, so the doctrine of apparent authority would apply.

The defendant argued that its employee did not possess the authority to enter into an agreement that would bind future boards of directors. The plaintiff, however, contended that the rule BCWA relied on applied only to contracts involving the performance of a governmental function.

Though BCWA may have been delegated some governmental powers, e.g., condemnation power and the power to issue bonds, the issue before the court was whether the “particular facet” of BCWA’s operations in connection with North Farm was proprietary, Silverstein said.

“The particular facet of BCWA’s operations at issue here concerns the furnishing of water to the North Farm condominium complex,” the judge found.

“Accordingly, BCWA is engaged in a proprietary function and the agreement is not void simply because it has the effect of binding future Boards of Directors,” he added.

Though Silverstein recognized that “there may be a question as to whether Michael Cooney, the BCWA employee who was involved in discussions with North Farm regarding the central meter, possessed the authority to enter into the agreement,” the judge found no need not resolve that issue.

“Rather, the Court need simply establish that a prima facie case has been established by which North Farm may succeed at trial,” he said.

Silverstein also considered whether the plaintiff would suffer irreparable harm without the requested injunctive relief.

“[T]he Court finds that the necessary construction and renovation to update the original pits to regular working order in compliance with modern safety standards would constitute irreparable harm to North Farm,” he stated.

Balancing the equities, the judge found that the potential hardship to the plaintiff in adjusting to individual metering during the course of the litigation outweighed the potential hardship to the defendant.

“Finally, the Court finds that a preliminary injunction will uphold the status quo as the current central meter and billing arrangement has been in effect since the mid-1990s,” Silverstein said.

The judge concluded that the plaintiff had shown the necessary requirements for the issuance of a preliminary injunction.

[**CASE:** North Farm Home Owners Association, Inc. v. Bristol County Water Authority, Lawyers Weekly No. 61-069-18](https://rilawyersweekly.com/blog/2018/08/20/public-utilites-bristol-county-water-authority-condominium/)

**COURT:** Superior Court

**ISSUE:**Was a condominium association entitled to a preliminary injunction in a dispute with a water authority?

**DECISION:** Yes

Issue: [AUG. 27 2018 ISSUE](https://rilawyersweekly.com/blog/issues/aug-27-2018-issue/)