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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

THE BOULDERS HOMEOWNERS ASSOCIATION, a domestic nonprofit
corporation, *Petitioner*,

v.

THE HONORABLE DANIEL MARTIN, Judge of the SUPERIOR COURT
OF THE STATE OF ARIZONA, in and for the County of MARICOPA,
Respondent Judge,

TOWN OF CAREFREE, a municipal corporation and political subdivision
of the State of Arizona, *Real Party in Interest*.

No. 1 CA-SA 21-0233
FILED 2-3-2022

Petition for Special Action from the Superior Court in Maricopa County
No. CV2021-006704
The Honorable Daniel G. Martin, Judge

JURISDICTION ACCEPTED, RELIEF DENIED

COUNSEL

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Counsel for Petitioner

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MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the court, in which Judge David D. Weinzwieg and Judge Paul J. McMurdie joined.

S W A N N, Judge:

¶1 In this eminent domain action, the property owner challenges an order of immediate possession issued in favor of a municipality that acted not for its own benefit, but for the benefit of a community facilities district and a water company owned by the district. We accept jurisdiction, but we deny relief because under A.R.S. § 48-708(B) and Article 13, Section 7, of the Arizona Constitution, the district had an independent right to immediate possession under § 12-1116(H) and Article 2, Section 17.

FACTS AND PROCEDURAL HISTORY

¶2 The Town of Carefree (“Town”) created the Town of Carefree, Arizona Community Utilities Facilities District (“Facilities District”), which acquired all shares of Carefree Water Company, Inc. (“Water Company”). The Water Company (which, like the Facilities District, has as its directors the Town council members) provides potable water to customers within the Town. The Town supplies no water, and it owns none of the water infrastructure.

¶3 In April 2021, the Town brought an eminent domain action seeking immediate possession of certain property owned by the Boulders Homeowners Association (“Boulders”), for the purpose of enabling the Facilities District and the Water Company to construct a water tank to meet peak-customer and fire-suppression demand, with the completed project to belong entirely to the Water Company. Boulders moved for dismissal. Boulders did not dispute that the condemnation was necessary for a public use, but it contended that the Town was not the proper plaintiff because the Town would not be the property’s user.

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¶4 The superior court denied Boulders’s motion to dismiss and awarded the Town immediate possession of the property. Boulders seeks special-action relief from those orders.¹

JURISDICTION

¶5 We accept jurisdiction because the order of immediate possession is not directly appealable and Boulders therefore has no equally plain, speedy, and adequate remedy by appeal. *See* A.R.S. § 12-2101; Ariz. R.P. Spec. Act. 1(a).

DISCUSSION

¶6 Arizona law provides that municipalities may take immediate possession in an eminent domain action. Specifically, Article 2, Section 17, of the Arizona Constitution states that “no right of way shall be appropriated to the use of any corporation other than municipal” until a jury determines full compensation and such is paid, and A.R.S. § 12-1116(H) provides that “if the condemnor is the state or a county, city, town or political subdivision of this state,” it may take possession upon posting a bond.

¶7 The parties and the superior court assumed that under the foregoing authorities, only the Town was authorized to take immediate possession. That assumption was incorrect. The Facilities District is a community facilities district under Title 48, Chapter 4, Article 6. A community facilities district is “a tax levying public improvement district for the purposes of article XIII, section 7, Constitution of Arizona.” A.R.S. § 48-708(B). Under Article 13, Section 7, “tax levying public improvement districts . . . shall be political subdivisions of the state, *and vested with all the rights, privileges and benefits, and entitled to the immunities and exemptions granted municipalities and political subdivisions under this constitution or any law of the state or of the United States.*” (Emphasis added.) Accordingly, the Facilities District, both directly and through its wholly owned company, had the same rights as the Town under Article 2, Section 17, and § 12-1116(H).

¹ Separately, Boulders filed a notice of appeal from the superior court’s denial of its motion for a preliminary injunction barring the Town from permitting the Facilities District or the Water Company to enter or use the property. We denied Boulders’s motion to consolidate this special action with the appeal, and we do not address the appeal here.

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¶8 The Facilities District's independent right to immediate possession renders immaterial the parties' dispute as to whether the Town could exercise its right on the Facilities District's behalf. Contrary to Boulders's contention, this is not a case where a government entity used its right to immediate possession for the benefit of a private entity that would not otherwise be entitled to the same. This is instead a case in which one public entity acted on behalf of another with identical rights. Boulders is not entitled to relief.

CONCLUSION

¶9 We accept jurisdiction and deny relief for the reasons set forth above.



AMY M. WOOD • Clerk of the Court
FILED: AA