

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WEST BRANCH REGIONAL AUTHORITY,	:	NO. 16-90092
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
GEORGE A. FORCE and ALMA M. BLANK,	:	
Defendants	:	Preliminary Objections

OPINION AND ORDER

Before the court are preliminary objections filed by the West Branch Regional Authority (“the Authority”) to the Amended Affidavit of Defense and Counterclaim filed by Defendants (“owners”). Argument on the objections was heard January 31, 2017.

On April 4, 2016, the Authority filed a municipal lien claim in the amount of \$4,768.20 for overdue sewer rental payments against the property known as 256 Stryker Avenue in Montgomery, Pennsylvania. Pursuant to the praecipe filed by the Authority on June 1, 2016, the Prothonotary issued a Writ of Scire Facias that date. The writ was served on the owners of the property on June 10, 2016. Owners filed an Affidavit of Defense on August 26, 2016, in which they denied having received any of the services provided, denied having received any invoices for those services and denied owing any debt to the Authority.¹ Owners alleged in their Affirmative Defenses that they had no knowledge that sewer charges were owed when they purchased the property in 2014 as there was no lien against it at that time. Owners asserted that it would violate due process protections to require them to pay the debt.

¹ Owners purchased the property at a tax sale in 2014. The overdue sewer rental payments were incurred prior to that time.

By Order dated November 22, 2016 owners were permitted to file an Amended Affidavit of Defense. That document, attached to the motion filed November 1, 2016 as Exhibit 1 but never separately filed, adds to the original defense a claim under the equal protection clause and a claim for attorneys' fees, set forth as a counterclaim, under 42 U.S.C. Section 1983.

In their preliminary objections, the Authority demurs to both defenses as well as the counterclaim, arguing that the owners have failed to state defenses or a claim upon which relief may be granted. The court agrees.

The due process argument presented by owners was recently rejected by the Commonwealth Court in City of Philadelphia v. Perfetti, 119 A.3d 396 (Pa. Commw. 2015). There, the City imposed liens on the property based on unpaid gas bills incurred by Perfetti's tenants, some of which bills went back more than a decade. Perfetti did not discover the liens until about three years after they were filed. He argued that the City violated his constitutional right to due process by imposing liens on the property without prior notice or hearing, contending that the lack of notice within a reasonable time precluded him from pursuing breach of contract claims against his tenants. The Court rejected that argument, finding that the post-lien hearing pursuant to the scire facias process provides an owner with a sufficient opportunity to be heard at a reasonable time in a reasonable manner, and further, that the lack of a pre-lien notice also did not violate due process concerns, in part, because (as noted by the trial court) "Perfetti could have avoided this predicament through any number of simple and straightforward methods." *Id.* at 404 (quoting trial court and stating further "Such methods include incorporating the cost of utility services into rental rates, mandating that

tenants sign a privacy waiver, or requiring tenants to prove utility payments are made.”).

Here, like Perfetti, owners argue that lack of notice precluded them from seeking reimbursement from the previous owner of the property. Perfetti’s argument (that he was precluded from suing his former tenants for breach of contract) was rejected on the basis that he could have prevented the situation by addressing the issue with the tenants to begin with. Likewise, the court must reject owners’ argument because they could have inquired with the utility providers and learned of unpaid charges before they bought the property at tax sale. Like the Perfetti solution, doing so is “simple and straightforward”, and, the court notes, a common practice of real estate attorneys. It should also be noted that even had owners received notice prior to the imposition of the lien, or even prior to their purchase, they would not have been able to require the prior owner to pay the debt as there was no contractual relationship between the parties.

Owners equal protection argument claims that the Authority has created two classes of persons: owners who build up sewer charge delinquencies and then sell their properties before any municipal claim is filed against their property and purchasers of these properties who are given no notice that they will be held responsible for the prior owners’ delinquencies. Equal protection concepts do not apply here, however.

Equal protection jurisprudence has typically been concerned with governmental classifications that affect some groups of citizens differently than others. Equal protection emphasizes disparity in treatment by a state between classes of individuals whose situations are arguably indistinguishable. The basic concern of the Equal Protection Clause is with state legislation whose purpose or effect is to create discrete and objectively identifiable classes.

Engquist v. Oregon Department of Agriculture, 553 U.S. 591, 601 (2008).

First, the two classes of individuals identified by owners are not in “situations [which] are arguably indistinguishable.” One group has lost their property to the taxing authorities for unpaid taxes,² and the other has purchased a property (for probably less than full value) about which they could have inquired as to outstanding municipal debts.

Second, it is not the action of the municipality which creates the classes, but happenstance. A lien could be placed on a property before or after it is sold; there is nothing to suggest that the Authority obtains lists of properties for sale and waits for their sale and then files their claims.

Finally, the claim under Section 1883 for attorneys’ fees must necessarily fail inasmuch as owners have not been subjected to violations of their constitutional rights.

ORDER

AND NOW, this 6th day of February 2017, for the foregoing reasons, the Authority’s preliminary objections to Owners’ Amended Affidavit of Defense and Counterclaim are sustained and those pleadings are hereby DISMISSED.

BY THE COURT,

cc: Benjamin Landon, Esq.
David Shipman, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge

² Owners categorize the group as persons who sell their properties before a claim is filed, but in the instant case, the former owner did not sell the property, but lost it for non-payment of taxes.