

OLD LYCOMING TOWNSHIP,
Plaintiff

vs.

JOSEPH E. STUTZMAN, JR. and
CATHY A. STUTZMAN,
Defendants

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA

:

: NO. 05-01,427

:

: CIVIL ACTION

:

:

AND

OLD LYCOMING TOWNSHIP,
Plaintiff

vs.

JOSEPH E. STUTZMAN, JR. and
CATHY A. STUTZMAN,
Defendants

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA

:

: NO. 05-00,172

:

: CIVIL ACTION

:

:

Date: February 6, 2006

MEMORANDUM OPINION AND ORDER

Before the court are two petitions filed by Defendants Joseph E. Stutzman, Jr. and Cathy A. Stutzman (hereafter “the Stutzmans”). In case number 05-01,427, the Stutzmans filed a Petition to Open Judgment on November 16, 2005. In case number 05-00,172, the Stutzmans filed a Petition for Special Relief on November 22, 2005.

The 05-01,427 action is a Writ of Scire Facias on a municipal lien filed by Plaintiff Old Lycoming Township (hereafter “the Township”) to municipal lien docket number 05-90,068 on March 2, 2005. The amount of the lien is \$5,168.83. The amount relates to the costs associated with the connection of the Stutzman residence to a recently installed sewer line in the Township.

The 05-00,172 action is a Writ of Scire Facias on a municipal lien filed by the Township to municipal lien docket number 04-90,145 on May 17, 2004. The amount of the

lien is \$2,663.75 for the construction of the main sewer line and a tap on fee.

In the 05-00,172 action, the Township issued a Writ of Execution on August 23, 2005 for its claim of \$2,663.83 plus costs. On September 29, 2005, a levy was made on personal property of the Stutzmans in the way of a levy upon two motor vehicles, specifically a 1988 Chevrolet pickup truck and a 1992 Chevrolet Lumina. The vehicles were scheduled for a Sheriff's Sale on November 22, 2005. This court issued an order on November 22, 2005 staying that sale.

In the 05-01,427 action, a Writ of Execution was issued on October 7, 2005, but no levy has been made.

On December 5, 2005, this court held a hearing. The issues presented at the hearing related to both actions. However, the primary focus of the hearing was upon the 05-00,172 action and the issue of whether the Sheriff's Sale regarding the Stutzmans' vehicles may proceed.

By way of factual background, in late 2003, early 2004, the Township installed a sewer which benefited the Stutzmans' property along with many other residences. The charges under the law assessed against the Stutzmans for installation of the sewer and tap on fee amounted to \$2,300.00. The Township has referred to these charges as an "EDU charge."

Following the installation of the sewer, it appears that there was a proceeding before a District Magistrate Judge that resulted in a judgment of approximately \$2,300.00 in favor of the Township against Stutzman. In order to satisfy this debt, the Stutzmans and the Township entered into a written agreement dated April 30, 2004 (The Township's Exhibit No. 4). Under the terms of this agreement, the Stutzmans agreed to pay \$2,300.00 plus interest at 10% per

annum as well as filing fees and attorney's fees. The Stutzmans would make monthly payments of \$52.71 for 48 consecutive months. The Township would then satisfy the lien and mark it paid in full. Paragraph 2 of the agreement provided that each payment was to be made timely on the thirtieth day of each month beginning May 30, 2004. The agreement also provided that the only additional cost by the Stutzmans would be the cost of satisfying the lien. The agreement contained recitals that it contained the entire understanding of the parties and would not be amended except for a document in writing. The Stutzmans made but two payments under this agreement.

Sometime after the agreement of April 30, 2004, the Township sought to compel the Stutzman's to connect their residence to the sewer line. The Stutzmans could not afford to make the connection. In January 2005, the Stutzmans and the Township entered into an oral agreement regarding the hookup of the Stutzman residence to the sewer line and payment by Stutzmans of the amounts due the Township. The Township agreed to hire a contractor to make the connection and the Stutzmans would reimburse the Township for the cost. The Township would secure its payment through the municipal lien now sought to be collected by the Writ of Scire Facias in the 05-01,427 action. The total costs and fees associated with the connection of the sewer line was \$5,168.83. Under this new agreement, the Stutzman's prior agreement of April 30, 2004 to pay the EDU fees at the rate of \$52.71 per month was modified to include the connection fees. Under this modified arrangement the Stutzmans were to make monthly payments of \$150.00. Each payment was due on the fifteenth of the month beginning on April 15, 2005. In essence, the modification rolled the connection fee cost into the total amount owed and reset the payment schedule at \$150.00 per month beginning April 15, 2005.

The Stutzmans made four payments under the January 2005 agreement, specifically \$150.00 on April 15, 2005, \$150.00 on May 16, 2005, \$150.00 on July 11, 2005, and \$150.00 on August 11, 2005. Including the December 2005 payment, the Stutzmans should have made nine payments of \$150.00, \$1,350.00 in total, by the time of the hearing. However, the Stutzmans were \$750.00 in arrears having only made four payments.

The Stutzmans assert that they were justified in not making the \$150.00 monthly payments because the Township was in breach of the January 2005 agreement. The Stutzmans assert that as part of the agreement the Township would be responsible, through its contractor, for the actual hookup of the Stutzman residence to the sewer line. The Stutzmans also assert that as part of the agreement the Township's contractor had an obligation to properly carry out the hookup, which would entail placing the connecting line underground and having it appropriately backfilled and covered. Stutzman testified the pipe has not been covered. Stutzman's further assert their driveway was damaged as a result of the construction.

At the December 5, 2005 hearing, through the testimony of its sewer inspector, Mr. Baker, the Township acknowledged its obligations in undertaking the hookup of the Stutzman residence to the sewer line. Mr. Baker testified that he had agreed to have the Township contractor do the hookup and provide topsoil to cover the pipe, he acknowledged the pipe had not yet been covered. Mr. Baker also testified that he had discussed with Mr. Stutzman on September 30, 2005 the repair of the driveway of the Stutzman residence, because it had washed out due to the construction associated with the hookup.

The court finds the January 2005 oral agreement between the Stutzmans and the Township to be the controlling agreement. The January 2005 agreement modified the April 20,

2004 agreement, despite the requirement in the April agreement that any modification of the agreement must be in writing. The January 2005 modification was to the mutual benefit of both parties and both parties took action in reliance upon this oral modification.

As the January 2005 agreement is controlling, its terms will govern what constitutes a breach of that agreement. The court finds that the Stutzmans breached the agreement when they failed to make the required \$150.00 monthly payment. The requirement that the Stutzmans make monthly payments of a fixed amount indicates that the parties intended to have a fixed regular schedule of payments as an essential term of the contract. As such, a breach of this term constituted a material breach of the agreement.

Further, the court finds that the Township's intent in modifying the April 30, 2004 agreement through the January 2005 oral agreement was to forego any rights that it may have had based upon the Stutzmans' breach of the April 30, 2004 agreement by failing to make all the monthly payments of \$52.71 that were due under that agreement.

Despite the fact that that the Stutzmans materially breached the January 2005 agreement, they are not without a remedy concerning the work the Township has failed to complete under the January 2005 agreement. The Stutzmans may file an action at a District Magistrate Judges office or even in the Court of Common Pleas in equity seeking to compel the Township to uphold its end of the bargain. It appears to the court from the testimony received that if an equity action were instituted that the court would be compelled to direct the Township to properly complete the work that it undertook for the Stutzmans.

Nevertheless, the Township is entitled to be paid timely. Accordingly, the Township may proceed with executing on its judgment against the Stutzmans and the Sheriff's Sale may

go forward. Any further delay in the execution process would be contrary to the intent of the parties and the benefits obtained by the Township through the municipal lien process.

However, given the representation and statements of the parties at the December 5, 2005 hearing and the Township's willingness to allow the Stutzmans every possible opportunity, the order that the court will enter in this case will delay the Sheriff's Sale for an additional thirty days in order to allow the Stutzmans an opportunity to become current with the January 2005 agreement's payment schedule.

In relation to the Township's request for additional attorney's fees, the court does not believe that such additional fees are warranted at this time. The Stutzman's challenge of their obligation to make the monthly \$150.00 payment was not frivolous, dilatory, obdurate, or vexatious. This is true considering the Township's acknowledgement that it had not completed the work it had agreed to under the January 2005 agreement.

ORDER

The stay of execution and stay of the Sheriff's Sale concerning the property levied upon in action 05-00,172 shall expire thirty (30) days from the date of entry of this order. Plaintiff Old Lycoming Township may direct the Lycoming County Sheriff to readvertise and to proceed to sale on the property that was properly levied upon.

However, the Sheriff's Sale of the levied property shall be stayed indefinitely if the following conditions are satisfied:

- (1) Defendants Joseph E. Stutzman, Jr. and Cathy A. Stutzman satisfy the arrearage owed to Old Lycoming Township in the amount of \$1050 for missing the monthly payments due in June, September, October, November, December 2005, and January and February 2006; and
- (2) Defendants Joseph E. Stutzman, Jr. and Cathy A. Stutzman continue to make timely monthly payments of \$150.00 to Old Lycoming Township regarding their debt obligation to Old Lycoming Township under cases 05-01,427 and 05-00,172.

The levy that is in effect upon the personal property of the Defendants under case number 05-00,172 shall remain until the debt is satisfied in full. Upon Defendants Joseph E. Stutzman, Jr. and Cathy A. Stutzman's failure to make one payment at the time that it is due, the Sheriff's Sale may proceed as to the property levied against in accordance with law with no further stays being granted.

BY THE COURT,

William S. Kieser, Judge

cc: Anthony D. Miele, Esquire
Denise L. Dieter, Esquire
Judges
Christian Kalas, Esquire
Gary Weber, Esquire