

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LYCOMING COUNTY WATER AND SEWER AUTHORITY,	:	
	:	DOCKET NO. 12-01,384
Plaintiff	:	CIVIL ACTION – LAW
	:	
vs.	:	MUNICIPAL LEIN
	:	DOCKET NO. 12-90,092
ROBERT E. HUYCK and MARILYN M. HUYCK,	:	
Defendants	:	

OPINION AND ORDER

The above-captioned matter comes before the Court on the objections of Defendant Robert E. Huyck (Huyck) to the municipal lien claim filed against his property by the Lycoming County Water and Sewer Authority (Authority), pursuant to the Municipal Claims and Tax Liens Act (MCTLA), 53 P.S. §§ 7101-7505. In particular, Huyck is contesting the finding of the Borough of South Williamsport (Borough) that his building sewer is not compliant with the Borough’s ordinances. On October 10, 2012, the Court held a hearing on Huyck’s objections. *See Shapiro v. Center Twp.*, 632 A.2d 994, 997-98 (Pa. Cmwlth. Ct. 1993).

The Court enters the following findings of fact and conclusions of law.

I. Findings of Fact

Procedural Background

1. Defendant Robert E. Huyck (Huyck) owns property located at 351 Forrest Street, South Williamsport, Lycoming County, Pennsylvania. *See* Lycoming County Record Book No. 427, 35 (Tax Parcel No. 53-004-411). Huyck’s property is within the Borough of South Williamsport (Borough).
2. In 2011, the Lycoming County Water and Sewer Authority (Authority) took over collections for the Borough. On May 4, 2012, the Authority filed a municipal claim, against Huyck’s property, for unpaid sewer fees; the claim was in the amount of two

thousand one hundred sixty-eight dollars and forty-two cents (\$2,168.42), plus accrued interest.

3. On July 10, 2012, the Authority filed the Writ of Scire Facias. The Authority directed the Lycoming County Sheriff's Office to serve the landowners listed at Lycoming County Record Book No. 427, 35. On July 12, 2012, the sheriffs served Huyck with the writ. The sheriffs were unable to serve Ms. Marilyn M. Huyck with the writ because she passed away in 1990.
4. On July 25, 2012, Huyck filed an Answer to Writ of Scire Facias. In that answer, Huyck denied liability and set forth the following defenses: previous payments of amount due, compliance with the ordinance, facially defective writ, improper accounting, waiver, and estoppel. Huyck requested the Court to strike the lien.
5. After two pre-hearing conferences, a hearing was held before this Court on October 10, 2012. At the hearing, Huyck and his current wife, Ms. Betty Huyck, testified. Additionally, a Borough street inspector, a Borough-retained engineer, and a County Authority collections officer testified.

Sewer Rehabilitation Project

6. Mr. Matthew J. Peleschak (Peleschak), P.E., of the Larson Design Group (Larson) testified at the hearing. The Larson Design Group is the retained engineer for the Borough. Peleschak is a registered professional engineer.
7. Peleschak testified about the Borough's sewer rehabilitation project. Initially, an Environmental Protection Agency (EPA) grant funded a pilot study of the Borough's sewer system. As a result of this study, the Borough signed a Consent Order and Agreement with the Department of Environmental Protection (DEP), requiring the

Borough to overhaul its entire sewer system. A rehabilitation project commenced within the Borough; Peleschak is the Borough's project manager.

8. In his capacity as the project manager, Peleschak took part in revising the Borough's sewer ordinances. Additionally, Peleschak approves all of the compliance determinations within the Borough.
9. Peleschak explained the process by which sewer lines within the Borough are inspected pursuant to the project. Individual sewers are inspected for compliance with the ordinances. The individual inspections are done by the Borough's public works department; these videos are then sent to Larson for review. After viewing the video, Peleschak sends three types of letters to the property-owners: 1. compliant letters, 2. noncompliant letters, and 3. monitoring list letters. All compliance, noncompliance, and monitoring determinations are made by Larson.
10. A clay pipe would receive either a noncompliant or a monitoring letter. If there are no visual defects with the clay pipe, a monitoring letter is sent. These pipes are then placed on a monitoring list because although the pipe is not defective, it is still a clay pipe in violation of the ordinance. If a clay pipe has a visual defect, a noncompliant letter is sent.
11. Peleschak testified that he sent Huyck a non-compliant letter. *See* Pl. Ex. 1.6. Peleschak testified that he was not sure if he viewed the video of Huyck's pipe prior to sending the letter; however, he testified that someone at Larson determined Huyck's clay pipe was noncompliant and, therefore, he generated the letter.
12. Peleschak testified that there are three ways to bring a sewer pipe into compliance: 1. excavation and replacement, 2. pipe-bursting, and 3. pipe-lining.

13. If a noncompliant letter is sent in regards to a clay pipe, Peleschak testified that the entire clay pipe needs to be either excavated and replaced or lined from the building to the main in order to be compliant with the ordinance. *See* Pl. Ex. 1.6b (clay pipe needs to be repaired or replaced approximately 69-feet).
14. Once the property owner brings his pipe into compliance, a final inspection report is performed and a compliance letter is generated by Larson. Peleschak testified that he has never generated a compliance letter for Huyck's property.
15. Peleschak testified that he viewed the video of Huyck's pipe prior to coming to the hearing. Peleschak testified that he viewed a crack in Huyck's clay pipe. *See* Pl. Ex. 1.6b (28-foot crack).

Factual Background

16. Huyck testified that before he retired, he worked as a homebuilder and a land developer. He estimated that he had worked on a total of three hundred to five hundred homes' sewer systems throughout his career; additionally, he routinely performed sewer inspections. Huyck testified that built his home on Forrest Street and that he put in its septic system.
17. The Borough sent letters to its property owners in regard to the Consent Order and Agreement with DEP. *See* Pl. Ex. 1.1 and 1.2. Huyck received these letters. The Borough granted Huyck two extensions for his property sewer lateral inspection/repair. *See* Pl. Ex. 1.3, 1.4, and 1.5. After Huyck's sewer was inspected, the Borough, though Peleschak, generated a letter regarding Huyck's non-compliance. *See* Pl. Ex. 1.6. Huyck testified that he received Pl. Ex. 1.6b.

18. Pl. Ex. 1.6b provides that the required repairs on Huyck's property are that "[t]he portion of the building sewer that is constructed of clay pipe needs to be repaired or replaced (approximately 69-feet)." Pl. Ex. 1.6b also provides that a crack was found in Huyck's pipe at 28-feet.
19. Mr. Keith Anderson (Anderson), a Borough street inspector, testified that he went to Huyck's property with a council man before any compliance repair work was initiated on Huyck's sewer. At that time, Anderson told Huyck that Huyck's sewer lateral needed to be replaced from his house to the main sewer line in order to be deemed compliant. Anderson testified that he painted a green line on the street to illustrate approximately where Huyck's lateral connected with the main sewer line.
20. On November 23, 2010, a contractor replaced part of Huyck's defective sewer pipe. Huyck oversaw and helped with the replacement. Anderson visited the property several times throughout the day to view the replacement process. *See* Pl. Ex. 2.
21. Huyck testified that he thought he only had to "fix the bad spots" in order to be in compliance with the ordinance. Therefore, Huyck replaced approximately 44 feet of his clay sewer pipe; Huyck replaced the pipe running from his house to a standpipe located on his property; this standpipe is around where the sidewalk is on his property. *See* Def. Ex. 1. Huyck testified that he did not replace the clay pipe from this point to the sewer main; therefore, Huyck did not replace the clay pipe from approximately the sidewalk of his property to the sewer main. *See* Pl. Ex. 1.7 (Huyck testified that he did not receive this letter). To date, Huyck testified that his sewer line consists of PVC piping (for approximately 44 feet) and clay piping for the remaining footage.

22. To the extent that Huyck testified that he received only part of Pl. Ex. 1.7, the Court finds his testimony not credible.
23. Huyck testified that Anderson did not tell him that his clay sewer pipe had to be replaced to the main until the hole that was dug for the project was filled in. However, Huyck testified that Anderson told him that Huyck's sewer was not compliant on November 23, 2010.
24. Anderson also testified that he told Huyck that his sewer pipe was not in compliance on November 23, 2010. Anderson did not remember if he told Huyck that his sewer line was not compliant before or after the hole was filled in. Anderson testified that it was clear on November 23, 2010, that Huyck did not think that the clay pipe needed to be replaced from the sidewalk to the roadway and that Huyck did not intend on replacing it.
25. Anderson testified that Huyck did not replace his sewer lateral to the main line. *See* Pl. Ex. 2. Based on this failure, Anderson testified that Huyck's sewer line is not compliant with the ordinances. Anderson has never told the Borough that Huyck's property is compliant.
26. The Court finds Anderson's testimony to be credible.
27. Huyck testified that since November 23, 2010, he had tried to contact city council members about his non-compliance. However, he has gotten no response. Huyck testified that he did not send any letters requesting the Borough to re-inspect his property. Huyck has not requested an exemption from the ordinance. Additionally, he testified that he has not received any letters from the Borough permitting him to have clay piping in his sewer.

28. Ms. Jessica Dincher (Dincher), of the Lycoming County Water and Sewer Authority testified to the amount of the lien on Huyck's property. Dincher has attempted to collect the outstanding balance allocated to Huyck's property. *See* Pl. Ex. 1.8 and 1.9 (Huyck testified that he received Pl. Ex. 1.8). Huyck's outstanding balance consists of monthly \$45.00 sewer charges, monthly \$135.00 lateral surcharges for noncompliance, \$10.00 late fees for amounts paid after the twentieth of the month, filing fees, and attorney fees. *See* Pl. Ex. 3 and 4. Dincher testified that the filing fees pertained to two district magistrate actions pertaining to the delinquent accounts. Due to the constable's inability to serve Huyck with these actions, she proceeded with a lien against the property. All of the attorney fees pertain to the present action.

29. Huyck testified that he paid his monthly \$45 sewer bill. *See* Pl. Ex. 1.10. These \$45 payments are shown as credited to Huyck's account on Pl. Ex. 3 and 4. However, Dincher testified that Huyck cannot simply pay his \$45 sewer charge per month when he has an outstanding balance. Dincher explained that any amount received by the Authority is applied to the outstanding balance. Therefore, Huyck's outstanding balance consists of sewer charges as well as other fees.

II. Conclusions of Law

1. This matter is governed by the Municipal Claims and Tax Liens Act (MCTLA), 53 P.S. §§ 7101-7505. The MCTLA is the sole means by which a property owner can challenge a tax lien's form, validity, or the amount of the lien imposed. *Radhames v. Tax Review Board*, 994 A.2d 1170, 1178 (Pa. Cmwlth. Ct. 2010).
2. Under the MCTLA, a lien holder may praecipe for a writ of scire facias without any action by the property owner. *Radhames*, 994 A.2d at 1178. After the writ is issued, a

property owner can raise his defenses to the lien in an affidavit. *Id.* “Proper defenses to the writ include actual payment of taxes, a defective claim or lien, fraud, or lack of process or notice.” *Id.*

3. Municipal claims are prima facie evidence of the facts averred therein, except when specifically denied in an affidavit of defense. 53 P.S. § 7187.
4. Pursuant to 53 P.S. § 7186, the Lycoming County Sheriff’s Office properly served Huyck with the writ by personally serving him on July 12, 2012. 53 P.S. § 7186; *County of Allegheny v. McCollough*, 659 A.2d 40, 42 (Pa. Cmwlth. Ct. 1994).
5. Huyck’s Answer to Writ of Scire Facias constitutes an affidavit of defense. *See Gen. Mun. Auth. v. Yuhas*, 572 A.2d 1291, 1293 (Pa. Super. Ct. 1990), *appeal denied*, 593 A.2d 419 (Pa. 1990).
6. Huyck’s defenses raised in his affidavit, specifically previous payments of amount due, defective claim, improper notice, compliance with the ordinance, improper accounting, waiver, and estoppel, are insufficient, improper and invalid. *See Radhames*, 994 A.2d at 1178; *Yuhas*, 572 A.2d at 1294.
7. The only claims properly raised in Huyck’s affidavit are that the claim is deficient and that service was improper. *See Radhames*, 994 A.2d at 1178. However, these claims have no merit because Huyck was personally served with the writ on July 12, 2012. 53 P.S. § 7186; *McCollough*, 659 A.2d at 42.
8. Huyck has not specifically alleged or demonstrated how that the claim is facially defective. *See Penn Twp. v. Hanover Foods Corp.*, 847 A.2d 219, 222 (Pa. Cmwlth. Ct. 2004). Therefore, this defense lacks merit.

9. During a scire facias hearing, if there are omissions in Defendant's affidavit of defense, the Court cannot consider these omissions; the Court cannot consider evidence that is outside of the record because those issues are not before the Court. *Yuhas*, 572 A.2d at 1294 n.1.
10. In this matter, to the extent that Defendant attempted to offer evidence of discrimination by the Borough, the Court will not consider this issue because it was not properly raised within Defendant's pleadings. *See Yuhas*, 572 A.2d at 1294.
11. During a scire facias hearing, the Court determines the amount of the lien, including interest and costs. *Radhames*, 994 A.2d at 1178; *Yuhas*, 572 A.2d at 1294.
12. Pursuant to the MCTLA, if the Authority recovers a verdict in its favor, the Authority is entitled to reasonable attorney fees incurred in collection. *See* 53 P.S. §§ 7106 and 7187; *see Borough of Walnutport v. Dennis*, 13 A.3d 541, 547 (Pa. Cmwlth. Ct. 2010). The Court must find that the award of attorney fees is reasonable. *Id.*
13. In this instance, the Court finds that the attorney fees requested in this matter, \$4,947.83, are reasonable.
14. When a husband and wife own land as tenants by the entirety and one spouse passes, the surviving spouse owns the property as his own. *See United States v. Jacobs*, 306 U.S. 363, 367-68 (1939) (citing *Tyler v. United States*, 281 U.S. 497, 503-04 (1930)). *See also St. Clair Sav. & Trust Co. v. Groeschel*, 8 A.2d 466, 468 (Pa. Super. Ct. 1939).
15. The Court may amend the record to portray the actual property owners. *See* 53 P.S. § 7431; *Philadelphia v. Kehoe*, 22 Pa. Super. 320, 322 (Pa. Super. Ct. 1903). *See generally Norristown Mun. Waste Auth. v. 200 E. Airy, LLC*, No. 1977 C.D. 2010, 2011 Pa. Cmwlth. Ct. LEXIS 951, at *14-18 (Pa. Cmwlth. Ct. Nov. 30, 2011).

16. Based upon Marilyn M. Huyck's 1990 death, the record is amended to reflect Robert E. Huyck as the sole property owner.

III. Discussion

This case arises out of the objections that a South Side landowner has the Borough's new sewer ordinances. The new ordinance requires that if a building's clay sewer pipe is cracked, the entire sewer pipe must either be replaced with polyvinyl chloride (PVC) or high-density polyethylene (HDPE) pipe or be lined. *See* Ordinance § 18-315. Mr. Huyck, a career home builder, believes that his sewer system, as it stands, is efficient and should be approved under the ordinance. Huyck believes that his clay pipe is efficient and will cause no problems with the Borough. Despite Huyck's opinion, his sewer is not in compliance with the ordinance. The Borough's ordinance requires that cracked clay sewer pipes be removed and replaced or lined. Huyck testified that he replaced the clay pipe up to the cracked portion and that he does not believe that any more work needs to be performed on his sewer. Essentially, Huyck is requesting that the Borough put his sewer on a monitoring list. However, the Borough ordinance has not been written or interpreted to permit this request. The Borough project managing engineer testified that Huyck's property is not eligible to be placed on the monitoring list because the initial violation consisted of a cracked clay pipe. Throughout the Borough, if a cracked clay pipe is found, the clay pipe must either be completely replaced or lined. In this instance, Huyck confirmed that clay pipe exists from his lateral to the main that has not been replaced or lined. Therefore, Huyck is currently in violation of the Borough's ordinance.

The Court realizes that Huyck is frustrated with the Borough's implementation of the new sewer ordinance. However, as a property owner within the Borough, Huyck must comply with the Borough's ordinances, including the ordinance at issue. Huyck's frustration with this

ordinance cannot be properly tried before this Court. At issue during the hearing were the defenses raised by Huyck in his affidavit. The Court deems these defenses meritless.

Therefore, the Court enters the following order.

ORDER

AND NOW, this 16th day of October, 2012, after a hearing held on October 10, 2012, and pursuant to 53 P.S. §§ 7106 and 7187, it is hereby ORDERED and DIRECTED that judgment is ENTERED in favor of Plaintiff Lycoming County Water and Sewer Authority against Defendant Robert E. Huyck. Judgment is entered in the amount of \$8,971.17. This judgment is comprised of:

\$2,832.42 in sewer fees, penalties, lateral surcharges, filing fees and collection costs;

\$4,947.83 in reasonable attorney fees; and

\$1,190.92 in costs associated with the involvement of Larson Design Group.

Any claim against the deceased Marilyn M. Huyck should be STRICKEN.

BY THE COURT,

Date

Richard A. Gray, J.

cc: Austin White, Esquire
Charles Greevy, III, Esquire
Gary Weber, Esquire