IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LYCOMING COUNTY WATER AND SEWER AUTHORITY, Plaintiff,	:	DOCKET NO. 14-02724
vs.	:	
VALLEY TRUCK VENTURES, LLC., Defendants	:	MUNICIPAL CLAIM No. 14-90260 SCIRE FAICAS AGENCY APPEAL

OPINION AND ORDER

Before the Court are two motions by Plaintiff, the Lycoming County Water and Sewer Authority (LCWSA). The first is a motion for judgment for want of sufficient affidavit of defense under Section 19 of the Pennsylvania Municipal Claims and Tax Liens Act (Municipal Claims and Liens Act) Act of May 16, 1923, P.L. 207, as amended, 53 P.S. § 7271 and §7187. The second is in the alternative, a motion for judgment on the whole record pursuant to 53 P.S. § 7272. For the reasons that follow, the Court grants the motions in part and denies the motions in part.

Procedural Background

LCWSA commenced this matter by filing a praecipe for writ of scire faicas[1] on October 20, 2014 with respect to its municipal claim for $4,920.19 filed on August 5, 2014 for unpaid sewer fees against a property located in Muncy Township, identified as Lycoming county Tax Parcel No. 40-003-1040.02, and having an address of 1825 John Brady Dr. ("Property"). The praecipe warned that failure to file an affidavit of defense within fifteen days may result in a judgment for the entire amount of the municipal claim and may result in the property being sold to recover the amount. On November 3, 2014, Defendant, Valley Truck Ventures, LLC.

[1] "A writ of scire facias is a writ authorized to be issued as a means of enforcing payment of a municipal claim out of the real estate upon which such claim is a lien." LCN Real Estate, Inc. v. Wyoming, 117 Pa. Commw. 260, 544 A.2d 1053 (Pa. Cmwlth. 1988), *citing*, Black's Law Dictionary 1208 (5th ed. 1979). "The object of the writ of scire facias is ordinarily to ascertain the sum due on a lien of record and to give the defendant an opportunity to show cause why the plaintiff should not have execution. Id." Id.

("Valley Truck") filed an affidavit of defense. On January 29, 2015, LCWSA filed a motion for judgment for want of sufficient affidavit of defense pursuant to 53 P.S. § 7271 and §7187 and filed a reply to the affidavit of defense. On February 26, 2015, LCWSA filed a motion for judgment on the whole record pursuant to 53 P.S. § 7271. Argument was held on March 12, 2015. On March 13, 2015, the Court ordered an evidentiary hearing on facts raised at argument that did not appear of record.[2] A continuance having been granted, the hearing was held on April 9, 2015.

Factual Background and Findings

The facts based upon the pleadings and adduced at the hearing are as follows.

Valley Truck is co-owned by Russell Twigg and his wife. Valley Truck acquired the Property on April 21, 2011 from Robert and Marlee Roles. At the time Valley Truck acquired the Property, it was already connected to LCWSA and had an EDU (Equivalent Dwelling Units) assessment. Since then, there has been no change in use at the Property; it has always been mixed with commercial and residential. The first floor contained garages and an office and the second floor contained an apartment. Property had garage bays on the first floor along with an office. The second floor was always a residential tenancy unit. A tenant was upstairs the entire time since Valley Truck acquired the property. It is apparent by looking at the building that there is an apartment on the second floor. The second floor has windows. The front door says "apartment." It has been that way since the 60s.

In 2004, the former Property owner, Robert Roles, completed an application for permit to connect to the sanitary sewer system of the Lycoming County Water and Sewer Authority dated

[2] At argument, it was clear that LCWSA assessed a tapping fee for a change in use and not for improvements as Valley Truck originally believed. Valley Truck argued that there had not been a change in use as the property had always been a combination of commercial with a residential tenant on the second floor. This fact was not established in the paper record, though the defense that the tapping fee was incorrectly assessed was raised.

October 28, 2004. Roles applied for 1 and a half EDU's and listed 9 employees. The type of connection requested was listed as commercial. There was no suggestion on the form that more than one use could or should be selected. There was no option for mixed use. On November 8, 2004, A LCWSA Sewer Lateral Inspector completed a checklist stating that the information on the application to connect matches the existing situation, that it was described as commercial, and that the number of EDU's paid for match the actual EDU's and that there were garages and/or apartments connected to the later sub with the appropriate number of EDU's paid for.

In the fall of 2013, LCWSA put into place procedures for reviewing EDU assessments. For properties with information more than three years old, LCWSA sent property owners an "EDU Assessment Report" form for completion "to determine and/or verify EDU assignment" for the properties. The form requested information on the property use. Unlike the application form completed by the prior owner in 2004, this form listed "combination" as a type of use. Mr. Twigg received the form and completed it on December 10, 2013. As to property use, Mr. Twigg circled "combination" use and listed it as garage and residential. As a result, on December 17, 2013 LCWSA increased the EDU assessment from 1.5 EDU's to 2.5 EDU's. The reason stated was that the property consisted of two businesses, one of which doubles as a residential unit. On that same date LCWSA sent Valley Truck an invoice for $3,500, described as a "tap fee – MRSS." The tapping fees are assessed on capacity demand. The fee to connect was borne by the original owner. Capacity demand changes if use changes.

In addition to the tapping fee, LCWSA increased the monthly usage charge from $90 to $150, effective January 2014. Mr. Twigg protested and refused to pay at first. LCWSA's customer compliance analyst, Jessica Dincher, testified that the account was delinquent at the time of the hearing. The charges are due on the twentieth of the month. Failure to pay by the

twentieth of the month results in a 10% penalty. As of the date of the hearing, $1,185 in sewer usage fees and penalties was owed. Dincher further testified that there would be a delinquency even if the previous usage charge had still been in effect. Dincher testified that prior to the increase, the property had a running balance of $288. In Plaintiff's reply to Defendant's affidavit of defense, Plaintiff provided the following breakdown of its municipal claim: $ 770.10 sewer user fees for April, May, June, July and August 2014; $ 75.00 penalties for above; $402.73 collection costs; $172.36 filing fees and service costs; $ 3,500.00 tapping fee for one additional EDU.

Discussion

Review "of a trial court decision as to whether a municipal authority's utility rate is reasonable under the Municipality Authorities Act, 53 Pa. C.S. §§ 5601-5622, is limited to determining whether factual findings are supported by substantial evidence and whether the law was properly applied to the facts." Mun. Auth. of Hazle Twp. v. Lagana, 848 A.2d 1089, 1091 n.1 (Pa. Comwlth. 2004) *citing*, Western Clinton County Municipal Authority v. Estate of Rosamilia, 826 A.2d 52 (Pa. Cmwlth. 2003).

"In Pennsylvania, municipal claim procedure in general and scire facias procedure in particular, is purely statutory. Id. Once the municipality files a claim for services, the claim becomes a lien on the property." Rosamilia, 826 A.2d at 56 (citations omitted). An affidavit of defense is one way that an owner may raise defenses to ae municipal claim. Id. (citations omitted). "A rule for judgment for insufficient affidavit of defense may be discharged where the appellate court thinks it advisable that the case go to trial so that the facts may be more fully developed and passed upon." Rosamilia, 826 A.2d at 57, *citing*, Erie v. YMCA, 151 Pa. 168, 24 A. 1094, 30 Week. Notes Cas. 569 (1892). During the hearing in Rosamilia, supra, the Estate

argued that it was improperly billed by charging rates based upon historical sewer use at the property, billed at 7 EDUs. The Estate argued that they were billed for 7 EDUs despite the building being closed, no occupancy, no use, no sewage being generated. Rosamilia, 826 A.2d at 54-55. The Superior Court noted that the issue was properly before the Court and needed to be addressed. Rosamilia, 826 A.2d at 57.

In the present case, the Court thought it advisable to conduct a hearing to more fully develop the record.

Initially, the Court denies certain defenses that were not borne out at the hearing or on the record and/or which may have been abandoned.[3] Specifically, the Court denies the defenses related to the claim being time-barred in any way. The change in EDUs was determined in December, 2013. The invoice for the tapping fee was sent the same date, along with the increase in monthly usage charges. The municipal claim was filed in August, 2014, after a continuing delinquency persisted. As such, there is no time bar. In addition, the Court denies the defenses as they related to improvements to the property, as Plaintiff has clarified that the tapping fee relates to the change in usage, not any improvements to the property. The Court denies the defenses as they relate to the delinquency of sewer fees. The evidence adduced at the hearing established that, as of the date of the hearing, $1,185 in sewer usage fees and penalties was

[3] In the affidavit of defense, Valley Truck raised defenses related to the failure to provide a breakdown of costs, the fact that defendant was current on its sewer user fees, the fact that the property was connected and all work had been completed prior to acquisition of the property, that the property was subject to the claim at the time of acquisition, that the tapping fee is based upon improvements completed prior to acquisition and thus payable by the former owner, that the claim for tappage fees was untimely because it occurred more than tix months after the property was connected to the system. Plaintiff's reply to Defendant's Affidavit of Defense contended that the tappage fee was unrelated to any improvements but instead based upon a change in use. Plaintiff provided a breakdown of costs but denied that the failure to do was required or render the claim in any way defective. Plaintiff denied that the Defendant was current on its monthly sewer charges. Defendant denied that the claim was time barred in any way. Claims related to user fees is three years under 53 P.S 7143. Six months limitation applies only to priority status and only to work being done or improvements having been made by the municipality. Plaintiff cites Sanft v. Westgrove, 63 Pa. Commw. 366 (Pa. Comwlth. 1981)

owed. However, the affidavit of defense raised sufficient issues as to the reasonableness of the tapping fee under the specific facts of this case.

The Court concluded that the portion of the claim related to the tapping fee has been sufficiently denied so that the portion of the municipal claim related to the tapping fee should be denied/ discharged. LCWSA's Rules and Regulations allow the authority to choose not to assess a connection fee to owners. 6.1.4(a). As to tapping charges, 6.1.4 (e) provides a tapping charge "for each application for sewer service." In the present case, there was no application for sewer service nor was there an application to add a new use. Instead, LCWSA received information that the Property had a combination of mixed commercial and residential uses which contradicted the information in LCWSA's records from which the EDU's were established. Those records were based upon a prior owner's application to connect to service, which a LCWSA inspector confirmed as matching the EDU's assessed. The application form did not provide the option for "combination" as did the current forms. Moreover, LCWSA's records suggest that the change of use was based upon the owner starting to rent upstairs. However, this Court found that no change in use occurred. The upstairs to the Property was a tenancy at all relevant times. To the extent the tapping fee related to the owner starting to rent the upstairs apartment, the fee was wrong because the upstairs had been rented all along. To the extent the tapping fee was based simply on the use as it now stands the Court notes that there was no application or request to change use. The burden was on LCWSA to establish the correct usage at the time of connection in 2004 (when its inspector completed the form attached to the application) or at the very least before the Property changed hands. Had it done so, the tapping fee would have been assessed at the time of connection or in any event, prior to the acquisition by the current owner. Equity suggests that the burden fall upon LCWSA who had an opportunity

to correct the mistake as opposed to the current property owner who simply reported the existing usage correctly.

Accordingly, the Court enters the following Order.

O R D E R

AND NOW, this **28th** day of **July, 2015**, it is ORDERED and DIRECTED that the motions are granted in part and denied in part; judgment shall be entered in favor of the Plaintiff, Lycoming County Water and Sewer Authority, plus penalties, interest, costs and reasonable attorney's fees incurred in collection of the municipal claim pursuant to the Pennsylvania Municipal Claims and Tax Liens Act, 53 P.S. §§ 7101 *et. seq*. Plaintiff's motion is DENIED as to the tapping fee ($3,500); and that claim is DISMISSED.

Judgment for Plaintiff, Lycoming County Water and Sewer Authority, is entered in the amount of $ **2,160.08.** The breakdown of the judgment follows: $1,185 in sewer usage fees and penalties; $402.73 for collection costs; $172.35 for filing fees; and $ 400.00 for reasonable attorney fees.

BY THE COURT,

July 28, 2015
Date

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Richard A. Gray, J.

cc: Austin White, Esq. for Plaintiff
Norman M. Lubin, Esq. for Defendant