

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LYCOMING COUNTY WATER AND	:	NO. 15 – 01,514
SEWER AUTHORITY,	:	
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
DIANA K. DONLY,	:	
Defendant	:	Writ of Scire Facias

OPINION AND ORDER

Before the court are objections raised in an Answer and Affidavit of Defense filed by Defendant on July 6, 2015, to the Writ of Scire Facias issued on June 19, 2015, on a municipal lien claim filed by Plaintiff on September 3, 2013.¹ Argument was heard September 11, 2015.

The basis for Defendant's objection lies in a lawsuit brought by the same plaintiff against the same defendant on May 29, 2013, when Plaintiff filed against Defendant for unpaid water and sewer charges before a magisterial district judge. After a hearing on July 16, 2013, the district judge entered a judgment in favor of Plaintiff and against Defendant. Defendant filed an appeal² and a rule was issued on Plaintiff to file a Complaint. Because no Complaint was filed, and upon Defendant's praecipe, on January 23, 2014, a judgment of *non pros* was entered by the Prothonotary. Defendant argues that that judgment of *non pros* is res judicata and prevents Plaintiff from now seeking a judgment based on the same unpaid charges which were the subject of the district court judgment, citing Seubert & Associates v. Tiani, 45 Pa. D&C 4th 268 (Allegheny County 2000).

In Seubert, the court noted that "[w]hen an appeal is stricken, the district justice judgment becomes a final judgment based on the merits of the parties' claims and defenses" and "the doctrines of res judicata and collateral estoppel bar any further litigation involving the subject matter of the lawsuit." Id. Importantly, however, the court distinguished the striking of an appeal, which is the result of a plaintiff's failure to file a complaint after the *plaintiff* filed an

¹ The municipal claim was filed to Lycoming County number 13-90,316.

² The appeal was docketed to Lycoming County number 13-01,974.

appeal,³ from the entry of a judgment of *non pros*, which is the result of a plaintiff's failure to file a complaint after a *defendant* filed an appeal.⁴ As noted by the court, the latter "is not a judgment on the merits. Consequently, the case law permits the plaintiff to institute a second lawsuit raising the same claims." *Id.*

In the instant case, defendant filed the appeal. Thus, the appeal was not stricken, but, rather, a judgment of *non pros* was entered.

In Municipality of Monroeville v. Liberatore, 736 A.2d 31 (Pa. Commw. 1999), the Court did not apply the doctrine of res judicata to a municipal claim even though a prior assumpsit action had been dismissed for failure to prosecute pursuant to Penn Piping.⁵ The court held that "a dismissal, even with prejudice, for failure to prosecute a claim is not intended to be res judicata of the merits to the controversy." *Id.* at 34. The same principle applies here. The judgment of *non pros* entered on January 23, 2014, does not preclude the instant municipal claim.

Accordingly, as the objections raised in Defendant's Answer are without merit,⁶ the following will be entered:

ORDER

AND NOW, this 11th day of September 2015, for the foregoing reasons, judgment is hereby entered in favor of Plaintiff and against Defendant in the amount of \$309.41.

BY THE COURT,

cc: Christopher Kenyon, Esq.
Timothy Reitz, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge

³ Such is provided for by Pa.R.C.P.D.J. 1006.

⁴ Such is provided for by Pa.R.C.P. 1037(a). See Pa.R.C.P.D.J. 1004 (note).

⁵ Penn Piping, Inc. v. Insurance Company of North America, 603 A.2d 1006 (Pa. 1992).

⁶ Defendant also alleged that she could "demonstrate she paid the invoices and Plaintiff's alleged unpaid invoices are actually accounts receivable errors", but at the hearing counsel stipulated that the amount of the judgment being sought was correct. No evidence was entered to show the alleged accounts receivable errors.