

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PENNSYLVANIA

BENJAMIN E. STOPPER, JR.	:	
CASEY L. STOPPER, and	:	
BRADI E. LOVECCHIO,	:	
Individually and d/b/a	:	
REALTY STOPCO PARTNERSHIP,	:	
And LAND CO., LLC	:	
	:	
V.	:	
	:	NO. CV 23-00135
WILLIAMSPORT MUNICIPAL	:	
WATER AUTHORITY and	:	
WILLIAMSPORT SANITARY	:	
AUTHORITY	:	
Defendants	:	

ORDER

This matter came before the Court on August 3, 2023, for oral argument on Defendants' Amended Preliminary Objections to the Complaint. For the reasons more fully set forth below, those Preliminary Objections are granted in part, and denied in part.

Plaintiffs' Complaint:

Plaintiffs' Complaint alleges that the Plaintiffs have an ownership interest in twenty-four (24) parcels of real property listed at Paragraph 6. The Complaint further alleges that Defendants have revised their Rules and Regulations related to billing, to provide for a storm water service fee of \$10.00 for every 2,711 square feet of impervious surface at the subject property (hereinafter "Defendants' Storm Water Fee"). At Paragraph 13 of the Complaint, Plaintiffs assert that Defendants' Storm Water Fee is not a fee for service but a tax, and that Defendant municipal authorities have no legal authority to assess a tax.

Defendants' Preliminary Objections:

Defendants filed Preliminary Objections, and later filed Amended Preliminary Objections on February 24, 2023. In the view of this Court, any amended pleading requires either leave of Court or the consent of the adverse party pursuant to Pa.R.C.P. 1033. Since Plaintiffs did not raise that issue at the time of oral argument, the Court will simply address the Amended Preliminary Objections, as if filed with the consent of the Plaintiffs.

Statement of Questions Involved:

1. Whether the Complaint should be stricken for failure to add either the City of Williamsport or Loyalsock Township, or both, as parties defendant, where Defendants assert that both of them are co-permittees of the Defendants.
2. Whether the Complaint should be stricken for failure to list the real owners of the subject real property as Plaintiffs.
3. Whether the Court should enter a demurrer to the Complaint for failure to allege sufficient material facts to support Plaintiffs' cause of action pursuant to applicable Pennsylvania law.
4. Whether the Complaint should be stricken for a lack of Plaintiffs' standing, based upon Defendants' interpretation that the Complaint seeks relief for the benefit of non-parties.
5. Whether the Complaint should be stricken for a lack of Plaintiffs' standing, based upon Defendants' failure to pay the sums billed by the Defendants.

Responses to Questions Involved:

1. Although it is unclear to the Court from the face of the pleadings whether the City of Williamsport and Loyalsock Township are truly necessary parties, the Court will require the Plaintiffs to add them as parties Defendant, based upon the language contained in 42. Pa.C.S. Section 7540.
2. Although it is unclear to the Court whether the named Plaintiffs are the record owners of all twenty-four (24) parcels of real property listed at Paragraph 6 of the Complaint, the Court will require the Plaintiffs to file an Amended Complaint, which lists as parties Plaintiffs all record owners of all parcels listed in the Amended Complaint.
3. The Court will not enter a demurrer to the Complaint for failure to allege sufficient material facts, since the Court cannot conclude from the face of the Complaint, that no relief to the Plaintiffs is available, as a matter of law.
4. While the Court will not strike the Complaint, the Court will require that Plaintiffs' Amended Complaint make clear that Plaintiffs seek relief only with regard to parcels of real property which are owned by the Plaintiffs listed in the Amended Complaint.

5. While the Court will not strike the Complaint, the Court will require that Plaintiffs pay the sums billed by the Defendants under protest, as a condition precedent to the filing of an Amended Complaint.

Discussion:

1. Although it is unclear to the Court from the face of the pleadings whether the City of Williamsport and Loyalsock Township are truly necessary parties, the Court will require the Plaintiffs to add them as parties Defendant, based upon the language contained in 42. Pa.C.S. Section 7540.

Defendants contend that Plaintiffs' Complaint seeking declaratory judgment is defective for failure to include the necessary parties of the City of Williamsport and Loyalsock Township. Defendants contend that both Williamsport and Loyalsock are co-permittees on the operating permit issued by the Commonwealth of Pennsylvania Department of Environmental Resources, and thus that this matter cannot proceed without joinder of those parties. Plaintiffs dispute that Williamsport and Loyalsock are necessary parties, since the storm water fees which are the gravamen of the Complaint are assessed only by the Defendants.

The Relevant Statute:

42. Pa.C.S. Section 7540 provides that:

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and shall be entitled to be heard.

Naturally, the facts alleged in the Complaint are insufficient to permit the Court to enter a finding as to whether Williamsport or Loyalsock has a sufficient "claim or interest" in Defendants' Storm Water Fee as to make their participation necessary. The Court is mindful, however, that the absence of a party in interest deprives the Court of subject matter jurisdiction. Since questions on this issue would otherwise persist throughout the course of this litigation, the Court will require Plaintiffs to file an Amended Complaint naming both the City of Williamsport and Loyalsock Township, either of which might choose to disclaim any interest in the litigation, after they are joined and served.

2. Although it is unclear to the Court whether the named Plaintiffs are the record owners of all twenty-four (24) parcels of real property listed at Paragraph 6 of the Complaint, the Court will require the Plaintiffs to file an Amended Complaint, which lists as parties Plaintiffs all record owners of all parcels listed in the Amended Complaint.

The Complaint clearly alleges that the Plaintiffs have an ownership interest in the twenty-four (24) parcels of real property listed at Paragraph 6. The Defendants allege the contrary, and this challenge Plaintiffs' standing to proceed. At the time of oral argument on the Preliminary Objections, counsel for Plaintiffs appeared to concede that the Plaintiffs are not the sole current owners of the (24) parcels of real property listed at Paragraph 6, or that some of those parcels should not be the subject of this litigation, or both. In order to avoid needless debate at trial regarding this issue, the Court will require Plaintiffs to file an Amended Complaint naming as Plaintiffs all record owners of the parcels of real property which are the subject of the Amended Complaint. Co-owners, if any, which choose not to participate may be named as a defendant or an involuntary plaintiff pursuant to Rule 2227 of the Pennsylvania Rules of Civil Procedure.

3. The Court will not enter a demurrer to the Complaint for failure to allege sufficient material facts, since the Court cannot conclude from the face of the Complaint, that no relief to the Plaintiffs is available, as a matter of law.

The Test for Consideration of Preliminary Objections in the Nature of a Demurrer

A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. *Firing v. Kephart*, 466 Pa. 560, 353 A.2d 833 (1976). For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, *Savitz v. Weinstein*, 395 Pa. 173, 149 A.2d 110 (1959); *March v. Banus*, 395 Pa. 629, 151 A.2d 612 (1959), and every inference fairly deducible from those facts, *Hoffman v. Misericordia Hospital of Philadelphia*, 439 Pa. 501, 267 A.2d 867 (1970); *Troop v. Franklin Savings Trust*, 291 Pa. 18, 139 A. 492 (1927). The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer. *Savitz v. Weinstein, supra*.

Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. *Schott v. Westinghouse Electric Corp.*, 436 Pa. 279, 259 A.2d 443 (1969); *Botwinick v. Credit Exchange, Inc.*, 419 Pa. 65, 213 A.2d 349

(1965); *Savitz v. Weinstein*, *supra*; *London v. Kingsley*, 368 Pa. 109, 81 A.2d 870 (1951); *Waldman v. Shoemaker*, 367 Pa. 587, 80 A.2d 776 (1951). If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. *Packler v. State Employment Retirement Board*, 470 Pa. 368, 371, 368 A.2d 673, 675 (1977); *see also*, *Schott v. Westinghouse Electric Corp.*, *supra*, 436 Pa. at 291, 259 A.2d at 449.

Mudd v. Hoffman Homes for Youth, Inc., 374 Pa.Super. 522, 524–25, 543 A.2d 1092, 1093–94 (1988) (quoting *County of Allegheny v. Commonwealth*, 507 Pa. 360, 372, 490 A.2d 402, 408 (1985)).

In their Second Preliminary Objection, Defendants maintain that Plaintiffs have not pleaded sufficient facts to state a cause of action challenging Defendants' Storm Water Fee. Defendants further maintain that the unreported opinion in *Borough of West Chester v. Pennsylvania State System of Higher Education*, No. 260 M.D. 2018, 2023 WL 27942 (Pa.Cmwlt. January 4, 2023) was decided under far different facts, and thus is not controlling in this matter. While the multiple issues raised by the Defendants are significant, they are plainly in the nature of defenses on the merits. Although the Court anticipates future motions pursuant to Pa.R.C.P. 1035.2, the Court cannot state with certainty that Plaintiffs will not prevail under any theory of law. *See*, *Packler v. State Employment Retirement Board*, 470 Pa. 368, 371, 368 A.2d 673, 675 (1977). Since it is not clear from the face of the Complaint that Plaintiffs cannot prevail under any theory, Defendants' demurrer will be denied.

4. While the Court will not strike the Complaint, the Court will require that Plaintiffs' Amended Complaint make clear that Plaintiffs seek relief only with regard to parcels of real property which are owned by the Plaintiffs listed in the Amended Complaint.

In Subsection A of their Third Preliminary Objection, Defendants contend that Plaintiffs are asserting their claims on behalf of other property owners, and that they lack standing to do so. Defendants deny that the Complaint seeks relief beyond the four (24) parcels of real property listed at Paragraph 6. The Court notes that Plaintiffs are not proceeding pursuant to Pa.R.C.P. 1701, et. seq. While relief in favor the Plaintiffs in declaratory judgment may have some collateral effect, the Plaintiffs made it clear during oral argument on the Preliminary Objections that they seek no such relief. The Court will require Plaintiffs to file an Amended Complaint making it clear that this matter is not intended to control the relationship of the

Defendants with any third party, nor to effect properties beyond the those parcels of real property which are owned by the Plaintiffs, listed in the Amended Complaint.

5. While the Court will not strike the Complaint, the Court will require that Plaintiffs pay the sums billed by the Defendants under protest, as a condition precedent to the filing of an Amended Complaint.

In Subsection B of their Third Preliminary Objection, Defendants contend that Plaintiffs lack standing to seek relief from Defendants' Storm Water Fee, until they pay it. Plaintiffs deny that conclusion, and counter that payment of Defendants' Storm Water Fee, even if under protest, would constitute a waiver of the claims asserted in the Complaint.

Defendants rely upon the unreported decision in *Beaver Falls Municipal Authority v. Torrence*, 260 A.3d 1087 (Pa.Cmwlth. 2021). In that matter, the Court considered a challenge to payment of fire-suppression stand-by-fee charged by the Authority, in the course of defense of a municipal lien proceeding. The Court pointed to 52 Pa.C.S. Section 5607(d)(9), and held Torrence had failed to properly seek relief in the court of common pleas:

Section 5607(d)(9) of the MAA, 53 Pa.C.S. § 5607(d)(9), governs this appeal.

Pursuant thereto, an authority has the following powers:

(d) Powers.--Every authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section, including, but without limiting the generality of the foregoing, the following rights and powers:....

(9) To fix, alter, charge and collect rates and other charges in the area served by its facilities at reasonable and uniform rates to be determined exclusively by it for the purpose of providing for the payment of the expenses of the authority, the construction, improvement, repair, maintenance and operation of its facilities and properties53 Pa.C.S. § 5607(d)(9). Moreover, especially relevant here, Section 5607(d)(9) also addresses how ratepayers may challenge an authority's rates:

Any person questioning the reasonableness or uniformity of a rate fixed by an authority or the adequacy, safety and reasonableness of the authority's services, including extensions thereof, *may bring suit against the authority in the court of common pleas* of the county where the project is located or, if the project is located in more than one county, in the court of common pleas of the county where the principal office of the project is located. The exclusive remedy for challenging the reasonableness of an authority's rates is with the trial court.⁷ *Northampton, Bucks Cnty., Mun. Auth. v. Bucks Cnty. Water & Sewer Auth.*, 508 A.2d 605, 608 (Pa. Cmwlth. 1986). In addition, ratepayers choosing to file suit challenging the reasonableness of a rate must continue to pay during the duration of the suit, albeit under protest. *See Life Servs., Inc.*, 528 A.2d at 1040 (personal care boarding home facility paid contribution fee based on an assumed consumption of 100 gallons per day per person under protest and then initiated action for refund of that payment in common pleas court pursuant to the MAA). In the present case, even though the trial

court initially afforded Torrence an opportunity to challenge the reasonableness of the rate and to assert alleged unreasonableness as a defense to non-payment of the stand-by fee, her arguments constituted an improper collateral attack on the rate in the municipal lien proceeding brought to collect payment for the services rendered under the established rate schedule. The only salient issue in the instant proceeding was whether the Authority properly charged Torrence for the services rendered under the established rate schedule. To challenge the reasonableness of the rate, Torrence was required to initiate a civil suit in accordance with Section 5607(d)(9) of the MAA, which she did not do, let alone continue to pay her bills during the litigation.

Beaver Falls Municipal Authority v. Torrence, 260 A.3d 1087 (Pa.Cmwlth. 2021).

The Court is not persuaded that the holding in *Beaver Falls* requires dismissal of the Complaint. Rather, that decision appears to support the conclusion that Plaintiffs are required to challenge the Defendants' Storm Water Fee by filing suit in the court of common pleas, rather than by a collateral attack in defense of a lien proceeding. Since Plaintiffs have done exactly that, the Court cannot find support for Defendants' demurrer.

Defendants also cite the holding in *Beaver Falls* in support of their contention that Plaintiffs lack standing to challenge Defendants' Storm Water Fee, until they pay it under protest, and then seek reimbursement. The Court in *Beaver Falls* supports its holding by reference to *Life Services, Inc. v. Chalfont-New Britain Joint Sewage Authority*, 107 Cmwlth. 484, 528 A.2d 1038 (1987). In *Life Services*, appellant paid the "one time contribution fee of \$600 per ownership unit" demanded by the Authority under protest, and then sought reimbursement pursuant to the Municipalities Authorities Act (the procedure which Defendants assert to be mandatory).

The Court has been unable to find language in *Life Services* or *Beaver Falls* which supports Defendants' assertion that payment of Defendants' Storm Water Fee is a condition precedent to Plaintiffs' challenge. Nevertheless, the process followed in *Life Services* is obviously what 52 Pa.C.S. Section 5607(d)(9) intends. Plaintiffs offer no authority in support of their assertion that payment of Defendants' Storm Water Fee under protest equates to a waiver of Plaintiffs' claims. The Court notes that no such argument was advanced in *Life Services*, where the appellant made payment under protest in exactly the manner which Defendants suggest here. The Court will require that Plaintiffs pay Defendants' Storm Water Fee under protest, and proceed with this litigation in the manner which 52 Pa.C.S. Section 5607(d)(9) suggests. The Court finds the payment under protest will not result in waiver.

AND NOW, this 9th day of August, Defendants' Preliminary Objections to the Complaint are granted in part and denied in part. Plaintiffs are directed to file an Amended Complaint within thirty (30) days of the date of filing of this Order, as follows:

- a. The Amended Complaint will seek relief against the Defendants and against both the City of Williamsport and Loyalsock Township.
- b. The Amended Complaint will name as either Plaintiffs or Defendants all owners of all parcels of real property listed in the Amended Complaint, in the manner provided by Pa.R.C.P. 2227.
- c. The Amended Complaint will clearly state whether the claims asserted therein are advanced on behalf of only the named Plaintiffs, or others.
- d. Plaintiffs will pay Defendants' Storm Water Fee under protest prior to filing the Amended Complaint, which will state that Plaintiffs have paid Defendants' Storm Water Fee under protest, and that Plaintiffs seek reimbursement for the reasons listed in the Amended Complaint, pursuant to the applicable provisions of the Municipalities Authorities Act.
- e. Because Plaintiffs have judicially challenged their obligation to make payment of the Storm Water Fee, payment of that fee under protest pursuant to this Order of Court will not be regarded as a waiver of the claims asserted in this litigation.
- f. Nothing set forth herein is intended to preclude the Plaintiffs from alleging multiple causes of action in the alternative in the Amended Complaint, as permitted by Pa.R.C.P. 1020(c), including, but not limited to, claims pursuant to Municipalities Authorities Act and claims for declaratory relief.

By The Court,

Hon. William P. Carlucci, Judge

CC: Lee H. Roberts, Esq.
146 East Water Street
Lock Haven, PA 17745

E. Lee Stinnett II, Esquire
Suite 300-1801 Market Street
Camp Hill, PA 17011