DOCKET NO. 174

NUMBER	TERM	YEAR
98	May	1961

Curwensville Municipal Authority

VERSUS

Henry W. Elensky

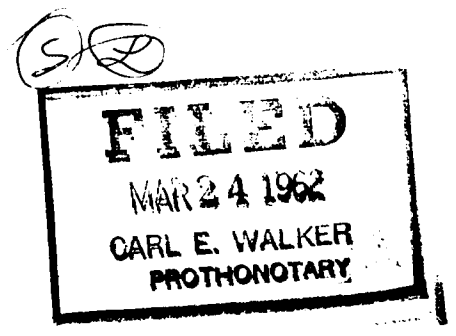
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
Nos. 98 May Term, 1961

CURWENSVILLE MUNICIPAL AUTHORITY

-vs-

HENRY W. ELENSKY

OPINION AND ORDER



JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA.

CURWENSVILLE MUNICIPAL AUTHORITY	:	
	:	No. 56 February Term, 1960
-vs-	:	No. 96 May Term, 1961
CHARLES McGEE	:	
CURWENSVILLE MUNICIPAL AUTHORITY	:	
	:	No. 90 February Term, 1960
-vs-	:	No. 98 May Term, 1961
HENRY W. ELENSKY	:	
CURWENSVILLE MUNICIPAL AUTHORITY	:	
	:	No. 93 February Term, 1960
-vs-	:	No. 99 May Term, 1961
PERRY GELNETT	:	
CURWENSVILLE MUNICIPAL AUTHORITY	:	
	:	No. 106 February Term, 1960
-vs-	:	No. 100 May Term, 1961
JAMES J. LODDO	:	
CURWENSVILLE MUNICIPAL AUTHORITY	:	
	:	No. 2 May Term, 1960
-vs-	:	No. 95½ May Term, 1961
RUSSELL R. HALSTEAD	:	

O P I N I O N

This matter is before the Court on motion for judgment on the pleadings, applicable to each of the municipal liens set forth in the caption.

It has been stipulated by counsel that these five liens shall be consolidated for purposes of argument and disposition by

the Court, since all defendants occupy premises abutting upon the same street, and the same questions of law and fact are exactly the same in each municipal lien.

The Borough of Curwensville created a Municipal Authority for the construction of a sewage treatment plant and the necessary connecting sewer lines, under the provisions of the Municipal Authorities Act of 1945, (53 PS 301, et seq.).

Following the creation of the Authority, and in compliance with the regulations and provisions of the Municipal Authorities Act, a resolution was adopted by the Authority, on April 24, 1958 containing an estimated cost of the construction of connecting sewer lines in the Borough of Curwensville, together with a plan for the connecting sewer system, and on this date (April 24, 1958) was submitted to the Borough of Curwensville, which by Ordinance No. 246, approved and accepted the plan of construction and the estimated cost.

In pursuance of the proceedings, the connecting sewer system was constructed and completed, and the cost thereof fell well below the estimated cost, but it was discovered upon the filing of the municipal liens for the cost of the sewer construction on each of these five properties, that there had been omitted from the plan of construction submitted on April 24, 1958, the street upon which these five properties abut, so that the plan submitted did not cover the properties of these several defendants.

Following the discovery of this omission the Borough of Curwensville then enacted Ordinance No. 270 on the 16th day of October, 1961, assessing these properties for the cost of the sewer improvements and directing the Authority to file liens therefor against the several properties of the five defendants.

The general validating Act of December 15, 1959, P. L. 1774 (53 PS 7444, et seq.) went into effect prior to the enactment of this latter Ordinance.

There is no dispute on the part of the defendants but that the Authority acted generally within the frame of the Municipal Authorities Act, supra, and the Borough of Curwensville acted within the framework of the Borough Code, as well as the Municipal Authorities Act. The only exception being the failure to submit in the plan of construction submitted to the Borough in April 1958, the street and sewer lines therein on which the five defendants have their properties abutting.

The defendants take the position that the validating Act of December 15, 1958 (53 PS 7444) supra, and Ordinance No.270 are not effective, but retroactive in nature and that Ordinance No. 270 is not effective as coming too late after the issuance of Sci Fa sur Municipal Lien.

It is asserted by the plaintiff, and not disputed by the defendant, that the sewer had been constructed, the several dwelling houses connected thereto, and that they are enjoying the

and again in BELLEVUE BOROUGH VS. GIBSON, 43 Pa. Superior Ct. 561, the same rule is adopted. The Superior Court said a borough may pass a remedial ordinance assessing costs against abutting properties by ordinances validating or corrective in effect, even though passed subsequently to the date of the improvement, and in ALLEGHENY VS. STEWART, supra, it was also held that when it is decided that retroactive legislation is valid which charges property with benefits conferred, no reason exists why the property benefitted should not be charged with its share of such benefit, and that a period of five years is not too long between the construction of the improvement and the ordinance assessing the cost thereof on the abutting land.

Therefore, the position taken by the several defendants must be overruled.

O R D E R

NOW, March 23, 1962, motion for judgment on the pleadings made absolute, and judgment to be entered against each of the several defendants in the amount set forth in the lien, together with costs and interest as provided by the Municipal Lien Law. Exception noted. It is directed that one copy of this Opinion and Order shall be filed in each lien proceedings consolidated herein.

BY THE COURT,

President Judge

28 May 1961
335.02
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benefits and services of the sewer line.

The plaintiff further sets forth that the lien filed against these defendants by virtue of the validating Act of 1959, supra, and Ordinance No. 270, is on the same assessment per foot front, namely, $4.18 per foot, as was assessed against all other properties in the Borough abutting on streets in which sewers were laid, and that the addition of these assessments on the five properties at the foot front rate above mentioned, will still leave the cost of construction substantially less than the estimated cost when the plan was originally adopted.

The Validating Act of 1959 (53 PS 7444, et seq.) supra, is extensive, and is drawn to cover all classes and types of cities, boroughs and townships, and the various and sundry proceedings and actions taken by the several municipalities.

In addition to the validating Act, Ordinance No. 270 makes the assessment against these properties for the benefits afforded by the construction of the sewer, at the same foot frontage rate, and the Borough has the authority and power to authorize a reassessment, as was effected by Ordinance No. 270.

In ALLEGHENY VS. STEWART, 43 Pa. Superior Ct. 534, 537, the Superior Court states,

> "The original assessment for a local improvement proving insufficient, the legislature may, in the absence of special constitutional restriction, authorize a reassessment, and make it operate upon the property benefited, that is, upon all that was originally liable to contribute; and such a law is valid, even against a person purchasing intermediate the assessment and reassessment."

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CURWENSVILLE MUNICIPAL AUTHORITY	:	8 May 1961
	:	No. 90 February Term, 1960
vs.	:	
	:	MUNICIPAL LIEN
HENRY W. ELENSKY	:	

TO WM. T. HAGERTY, PROTHONOTARY:

Issue Scire Facias on the above Municipal Lien.

Dated: May 2, 1961.

Dan P. Arnold
Dan P. Arnold

NOW, this 15th day of May 1961, service of notice of the issuance of the above Scire Facias is accepted and issuance of the Sci. Fa. is waived.

Attorney for Defendant

20

FILED
MAY 17 1961
WM. T. HAGERTY
PROTHONOTARY

LAW OFFICES
CHAPLIN & ARNOLD
CLEARFIELD, PA.

April 28, 1961

Dan P. Arnold, Esq.
Chaplin & Arnold
Clearfield, Pennsylvania

Re: Curwensville Municipal Authority

Dear Sir:

In accordance with the requirements of the Act of May 16, 1923, P. L. 207, Section 16, 53 P. S. 7184, you, as attorney of record for the Curwensville Municipal Authority, are hereby notified to issue a Scire Facias on the municipal lien filed against me to No. 90 February Term, 1960.

Very truly yours,

Henry W. Elensky
Henry W. Elensky

AND NOW, THIS 2nd day of May, 1961, receipt of the above notice is hereby acknowledged.

Dan P. Arnold

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

NO. 90 FEBRUARY TERM, 1960

MUNICIPAL LIEN

CURWENSVILLE MUNICIPAL
AUTHORITY

Vs.

HENRY W. ELENSKY

AFFIDAVIT OF DEFENSE

BAIRD & McCAMLEY
ATTORNEYS AT LAW
PHILIPSBURG, PENNSYLVANIA

AND NOW, THIS 3rd day of August, 1961,
service is hereby accepted on the within Affidavit of Defense,
and receipt of a copy thereof acknowledged.

CHAPLIN & ARNOLD

By Louis S. Arnold
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CURWENSVILLE MUNICIPAL AUTHORITY	)	
	(	
	)	NO. 90 FEBRUARY TERM, 1960
Vs.	(	
	)	MUNICIPAL LIEN
HENRY W. ELENSKY	(	

AFFIDAVIT OF DEFENSE

1. This lien was filed assessing the property of the Defendant bounded on the North by Olson, on the East by Della Long, on the South by Alley, and on the West by Alley, for the construction of a sewer on alley fronting the said property.

2. The said charge and assessment, according to the front foot rule, was purportedly filed in conformance with the Municipal Authorities Act of May 2, 1945, P. L. 382, as amended; the Municipal Claims and Liens Act of May 16, 1923, P. L. 207, as amended; the Ordinances of the Curwensville Borough Council in pursuance thereof, particularly Ordinance No. 246 dated April 24, 1958, and the Resolutions of the Board of the Curwensville Municipal Authority, particularly that dated November 23, 1959, providing for the construction of a sanitary sewer system, the assessment of properties therefor, and the filing of liens for unpaid sewer assessments.

3. That the said Municipal Authorities Act of May 2, 1945, P. L. 382, as amended, 53 P. S. 306, Sub-Section S, provides inter alia:

> "That no such charge shall be assessed unless prior to construction of such sewer or water main the Authority shall have submitted the plan of construction and estimated cost to the municipality in which such project is to be undertaken, and the municipality shall have approved such plan and estimated cost."

4. That no plan of construction of the sewer on the alley or the estimated cost thereof was submitted to the Borough

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ATTORNEYS AT LAW
PHILIPSBURG, PA.

of Curwensville, nor was the same approved by such municipality as required by the said statute.

WHEREFORE, the Defendant's land is not liable to assessment for the said improvement.

All of which the Defendant avers to be true and expects to be able to prove at the trial of this suit.

Henry W. Elensky

Henry W. Elensky

BAIRD & McCAMLEY
ATTORNEYS AT LAW
PHILIPSBURG, PA.

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF CLEARFIELD } SS:

Before me, the undersigned officer, personally appeared Henry W. Elensky, who being duly sworn according to law, deposes and says that the facts set forth in the foregoing Affidavit of Defense are true and correct to the best of his knowledge, information and belief.

Henry W. Elensky

Sworn to and subscribed before me this 25 day of May, 1961.

George J. Raish

Notary Public, Lawrence Twp., Clearfield Co.
My Commission Expires December 11, 1963

BAIRD & McCAMLEY
ATTORNEYS AT LAW
PHILIPSBURG, PA.

98 May T 61

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

NO. 90 FEBRUARY TERM, 1960

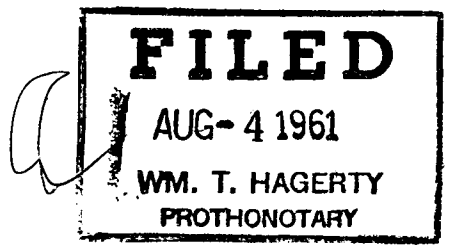
MUNICIPAL LIEN

CURWENSVILLE MUNICIPAL
AUTHORITY

Vs.

HENRY W. ELENSKY

RULE ON PLAINTIFF TO REPLY



BAIRD & McCAMLEY
ATTORNEYS AT LAW
PHILIPSBURG, PENNSYLVANIA

AND NOW, THIS 3rd day of August, 1961,

service is hereby accepted on the within Rule on Plaintiff to
Reply, and receipt of a copy thereof acknowledged.

CHAPLIN & ARNOLD

By Paul E. Arnold
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CURWENSVILLE MUNICIPAL AUTHORITY	)	
	(	NO. 90 FEBRUARY TERM, 1960
Vs.	)	
	(	MUNICIPAL LIEN
HENRY W. ELENSKY	)	
	(	

RULE ON PLAINTIFF TO REPLY

AND NOW, TO WIT: This 25th day of July, 1961, it appearing that an Affidavit of Defense to the whole of the Plaintiff's claim in the above entitled case has been filed on behalf of Henry W. Elensky, Defendant therein, on motion of Baird & McCamley, Esqs., attorneys for Henry W. Elensky, Defendant, a rule is entered on the above named Curwensville Municipal Authority requiring them to reply to the statements set forth in the said Affidavit of Defense within fifteen (15) days after service of notice of this rule upon them or their attorney of record.

BAIRD & McCAMLEY

By David K. Baird
Attorneys for Defendant

BAIRD & McCAMLEY
ATTORNEYS AT LAW
PHILIPSBURG, PA.

No 98 May T 1961

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 90 February Term, 1960
MUNICIPAL LIEN

CURWENSVILLE MUNICIPAL
AUTHORITY

vs.

HENRY W. ELENSKY

PLAINTIFF'S REPLY TO AFFIDAVIT
OF DEFENSE AND NEW MATTER

TO THE WITHIN DEFENDANT:

You are hereby notified to plead to the enclosed New Matter within twenty (20) days from service hereof.

Dan P. Arnold

Attorney for Curwensville
Municipal Authority

FILED
AUG- 4 1961
WM. T. HAGERTY
PROTHONOTARY

LAW OFFICES
CHAFFIN & ARNOLD
CLEARFIELD, PA.

Service accepted this 3rd day of August A.D. 1961

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CURWENSVILLE MUNICIPAL AUTHORITY	:	
	:	No. 90 February Term, 1960
vs.	:	
	:	MUNICIPAL LIEN
HENRY W. ELENSKY	:	

PLAINTIFF'S REPLY TO AFFIDAVIT OF DEFENSE AND NEW MATTER

1. Admitted.

2. Admitted.

3. Admitted, but the entire applicable portion of Subsection (s) reads as follows:

> "To charge the cost of construction of any sewer or water main constructed by the Authority against the properties benefited, improved or accommodated thereby according to the foot front rule. Such charges shall be based upon the foot frontage of the properties so benefited, and shall be a lien against such properties. Such charges may be assessed and collected and such liens may be enforced in the manner provided by law for the assessment and collection of charges and enforcement of liens of the municipality in which such an Authority is located: Provided, That no such charge shall be assessed unless prior to construction of such sewer or water main the Authority shall have submitted the plan of construction and estimated cost to the municipality in which such project is to be undertaken, and the municipality shall have approved such plan and estimated cost; and provided further, That there shall not be charged against properties benefited, improved or accommodated thereby an aggregate amount in excess of the estimated cost as approved by the municipality."

4. Paragraph 4 is denied and on the contrary the plan of construction of the sewer system was submitted by the Authority to the Borough of Curwensville together with the estimated cost thereof, and the Borough of Curwensville did approve the plan of construction, the estimated cost thereof, and the estimated assessable cost, all of which is more fully set forth in New Matter.

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CLEARFIELD, PA.

NEW MATTER

5. On April 24, 1958 the Curwensville Municipal Authority adopted a Resolution approving the petition of Curwensville Municipal Authority submitting to the Borough of Curwensville for its approval a plan of construction and estimated cost of sewers to be constructed by the Authority, and that said petition was presented to the Council of the Borough of Curwensville the same day.

6. That in the aforesaid petition of the Curwensville Municipal Authority to the Borough of Curwensville, the Authority set forth that the total estimated cost of the proposed collection sewers and trunk line sewers amounted to $601,135, and further that the estimated total assessable cost of said construction amounted to $209,925.

7. That on April 24, 1958 the Borough of Curwensville, by its Ordinance No. 246, approved the plan of construction submitted by the Curwensville Municipal Authority and also approved the estimated cost of construction in the amount of $601,135, and further specifically approved the estimated assessable cost of the construction in the amount of $209,925. Said Ordinance was approved and signed by the Burgess on April 26, 1958, was recorded in the Ordinance Book of the Borough on April 28, 1958, and was duly advertised according to law on May 1, 1958.

8. That through inadvertance the sewer constructed in front of the premises of the defendant herein was not included in the plan as submitted by the Authority to the Borough of Curwensville.

9. That while the Borough of Curwensville authorized the assessment of $209,925 of the cost of construction of the sewer system, the actual total amount of the assessed cost of construction was $165,767.

LAW OFFICES
CHAPLIN & ARNOLD
CLEARFIELD, PA.

10. That the inadvertant omission of the sewer in front of the defendant's property from the plan as submitted to the Borough did not increase the total assessable cost of construction as actually assessed, and the total assessed cost of construction was substantially less than the amount authorized by the Borough in its Ordinance No. 246.

11. That the defendant herein is connected with the sewer line as set forth in its Affidavit of Defense, and is enjoying all the benefits of said sewer system and treatment plant as are enjoyed by any of the other residents of the Borough of Curwensville.

12. That the construction of the sanitary sewers and the sewage treatment plant was completed on the 10th day of November 1959, and after proper notice of said assessment and failure to pay the same by the defendant herein, the above captioned municipal lien was filed against his property on the 19th day of February 1960 in the amount of $335.02.

13. On the 15th day of December 1959, the General Assembly of the Commonwealth of Pennsylvania adopted the Act of 1959, P. L. 1774 (53 P. S. 1774).

14. The aforesaid Act of Assembly was a curative or validating Act and cured any and all defects in the assessing of municipal liens for the construction of sewer systems entered prior to the effective date of the Act and validated all such liens.

15. That the within captioned municipal lien was valid when filed and the provisions of the Act of 1945, as amended, 56 P. S. 306 B (s) were complied with by the plaintiff herein, and in the alternative, the plaintiff herein pleads that the validating Act of 1959, P. L. 1774, 53 P. S. 7444, has cured any defects in the procedure followed by the plaintiff herein, and makes the above captioned lien valid.

LAW OFFICES
CHAPLIN & ARNOLD
CLEARFIELD, PA.

WHEREFORE, plaintiff asks that judgment be entered in favor of the plaintiff in the above captioned municipal lien, and the plaintiff be awarded the costs of the proceeding and an attorney's fee in the amount of $16.75 in accordance with the provisions of the Act of May 1923, 53 P. S. 7187.

Attorney for Curwensville Municipal Authority

LAW OFFICES
CHAPLIN & ARNOLD
CLEARFIELD, PA.

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :

JAMES V. MARRA, being duly sworn according to law, deposes and says that he is President of Curwensville Municipal Authority and that the facts set forth in the foregoing Answer are true and correct to the best of his knowledge, information and belief.

James V Marra

Sworn to and subscribed
before me this 3rd day
of August, 1961.

C. Paul J. Bloom
Justice of the Peace

MY COMMISSION EXPIRES FIRST
MONDAY IN JANUARY 1962

LAW OFFICES
CHAPLIN & ARNOLD
CLEARFIELD, PA.