

DOCKET NO. 175

NUMBER	TERM	YEAR
539	November	1961

Sandy Township

VERSUS

Carl Monella

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SANDY TOWNSHIP,	:	
Plaintiff	:	
vs.	:	NO. 539 NOVEMBER TERM, 1961
CARL MONELLA,	:	
Defendant	:	<u>In Assumpsit</u>

BRIEF OF DEFENDANT

MEMORANDUM BRIEF
OF
DEFENDANT'S COUNSEL
IN SUPPORT OF PRELIMINARY OB-
JECTIONS FILED BY DEFENDANT
TO PLAINTIFF'S COMPLAINT IN
ASSUMPSIT

F A C T S

Defendant's counsel filed Preliminary Objections to Plaintiff's Complaint in the above captioned Assumpsit action setting forth therein various reasons or allegations why Plaintiff's Complaint was deficient in its pleadings and averring and asking therefor that Plaintiff's Complaint be stricken for its insufficiency upon the face of the pleadings, or in the alternative, that judgment be rendered for Defendant on the face of the pleadings, or in the alternative that Plaintiff be required to file amended or more specific pleadings.

Plaintiff fails in his pleadings to state definitely, succinctly and with sufficient particularity the following:

1. When the sewer system in question became or was made appurtenant to Defendant's premises.
2. When and by what legal premises, agreements or authority the sewer system in question was duly leased to Plaintiff.
3. By what legal authority the lease-back from the authority to the township was entered into, the terms of the lease itself and upon what statutes the legality of the lease-back was predicated both as to

the Authority and the Township in their privity of Lessor or Lessees respectively.

4. No copy of any rate ordinance set forth in the Complaint; nor does the Complaint set forth the legal authority for such ordinance. That the time, place and date of passage, in addition to a verbatim recital of such ordinance.
5. There is no calculation set forth in the Complaint as a basis for the sum of \$73.66 as a rate assessment; nor is there any basis or recital to properly determine the basis or computation for the delinquency penalty set forth in the Complaint for \$25.00.

Hence, the reason for Defendant's Preliminary Objections filed to the above Complaint in Assumpsit; and requesting the Court to strike the pleadings upon their face, render judgment on the face of the pleadings, or in the alternative, require Plaintiff to amend its pleadings by more specific allegations to the matters set forth herein.

Q U E S T I O N S

- (a) Are Plaintiff's Pleadings deficient upon the face of the Complaint itself?

And/or

- (b) Should the Court view favorably Defendant's motion to strike Plaintiff's Pleadings; and subsequent thereto, render judgment upon the face of the Pleadings for Defendant?

And/or

- (c) Are the averments and allegations contained or set forth in Plaintiff's pleadings couched in such generality and verbal vagueness and indefiniteness as to require the Court to order Plaintiff to amend its Pleadings; and aver and allege the nature of its assumpsit complaint with more sufficiency and particularity?

DISCUSSION AND LAW

Plaintiff in his complaint has made certain averments or allegations in his pleadings; and the paragraphs specifically at issue in the preliminary objections are paragraphs three (3), four (4), five (5), six (6), seven (7), nine (9), ten (10), and eleven (11) thereof.

Plaintiff throughout the various paragraphs above-enumerated has referred in general terms to the establishment by Sandy Township Municipal Authority of a sewer system appurtenant to defendant's premises; also to the fact that said Authority has leased the system to the Plaintiff Township; that said Authority or Township's leased sewer system has been available for service to defendant for a period of nine months; that said Plaintiff enacted a rate ordinance providing for fair and reasonable sewer rates; that the Defendant owes Plaintiff for such sewer service the sum of \$48.66; that delinquency penalties amount to the sum of \$25.00; that Defendant presently owes Plaintiff therefor both in service charges and penalties the total sum of \$73.66; and ultimately, Plaintiff avers that such charges are fair, just and reasonable.

However, nowhere in said Complaint does the Plaintiff specifically aver or set forth therein when said sewer system was completed; when the sewer system by exact date was made appurtenant to Defendant's premises; by what statutory authority the sewer system was created and whether the applicable empowering Statute was complied with and the mechanics of such compliance. Neither did Plaintiff set forth the lease in question whereby the lease-back was effected from the Authority as lessor to the Township as Lessee; nor is there any statutory citation on the part of either party to the lease-back which substantiates or authorizes the lease-back in question; nor the statutory authority of both parties to enter into such lease-back; nor the mechanics of compliance, if such statutory authority does exist.

Certain rate figures are set forth in the Complaint as to charges and penalties; but there is no base rental or figures set forth indicating in what manner these total figures are computed, calculated or achieved.

Plaintiff also refers to said charges as being fair, just and reasonable - this is certainly an assumption or conclusion rather than a specific fact pleading, since the rate ordinance in question upon which these calculations are based is not set forth in the Complaint itself.

Certainly upon the face of the pleadings themselves, the Complaint is defective and warrants either a striking of the deficient paragraphs and judgment for defendant, or in the alternative, that defendant be required to amend his pleadings more specifically.

Our Pa. Rules of Civil Procedure - No. 206 to 209, 1017, 12 P.S. App. cover the use of preliminary objections in our Pennsylvania pleadings system.

Preliminary objections may be used under of system of Pleadings to: 1) raise questions of jurisdiction; 2) to strike off a pleading because of lack of conformity to law or rule of court, or because of scandalous, or impertinent matter; 3) to request a more specific pleading; 4) to demur; 5) to raise questions on the lack of capacity to sue, pendency of prior action, misjoinder and non-joinder.

Consequently, defendant's preliminary objections in the present matter at issue are concerned primarily with items two (2), three (3), and also in a sense item four (4) above enumerated under the explanatory paragraph of the mechanics and usage of preliminary objections in our Pa. Fact Pleading System.

In Higgins Industries, Inc. v. Bastian, 7 Dist. & Co. Rep. (2d) 93 - (1956) - the Court stated that the purpose of preliminary objections is not to delay actions, but to compel the pleading of facts which it is presumed the other party does not possess.

Hence, under our fact pleading system in Pennsylvania the preliminary objection is the device available procedurally to defendant to

require plaintiff to file specific pleadings to which defendant can then in turn file responsive pleadings or an answer thereto; otherwise, once defendant files an answer to plaintiff's Complaint he thereby waives all procedural defects patent upon the face of plaintiff's pleadings or Complaint.

An order for more specific pleadings is proper in the present case; otherwise, defendant would have to resort to discovery proceedings to obtain the necessary information to which he could then file a responsive answer. Although the plaintiff should not be ordered to require plaintiff to develop matters which are essentially evidentiary in character or nature, at least defendant is entitled to have plaintiff present the factual pleadings in the various allegations or averments of his Complaint to enable defendant to at least file a responsive answer thereto. As the plaintiff's Complaint now stands with averments of generalities, references to rate ordinances, lease-backs and fair and reasonable rates, and finally stated sums and amounts of monies owing by way of rate assessments and penalties, a responsive answer or reply thereto is impossible upon the present state of the pleadings.

Certainly plaintiff's Complaint is not sufficiently specific, since the rate ordinance, the Authority itself, the lease-back and the terms thereof, the date of completion of the sewer service and the equity of the rates and other matters alleged in plaintiff's Complaint are better known to plaintiff than to defendant; hence, plaintiff should be required to amend its pleadings and set forth therein the requisite factual allegations with more particularity and sufficiency; otherwise, defendant will be required to launch a prolonged investigation of the formation and legality of the Authority itself, the legality of the lease-back and the terms and authority of the various parties thereto, and likewise the legality or validity of the rate ordinance and the rates

set forth therein; and finally there is not basis or factual pleadings which are sufficiently informative or specific that would apprise defendant how the sums claimed were calculated; hence, a responsive answer or reply to plaintiff's Complaint in the present state of the pleadings is an utter impossibility.

In a sense the Court's refusal to order plaintiff to amend his pleadings, on the reasoning that discovery is available to defendant, shifts the burden, nonetheless, to the defendant; and in specific reply to the rationale of this argument, defendant submits as a rebuttal argument thereto the Courts reasoning in the case of *Fried v. Jordan Park Apts.* - 28 *Leh. Co. L.J.* - 387 (1959) wherein it stated that while the tendency has been to relax the rules of pleading, nevertheless, the defendant is entitled to have notice of what he will be called upon to meet at trial and to eliminate the necessity, where possible, of the taking of depositions.

It is an essential element in our factual pleadings that specific averments of time are required.

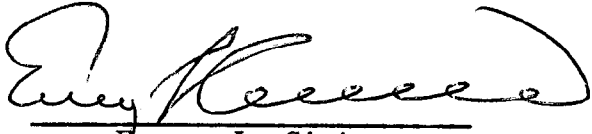
That defendant's preliminary objections are meritorious, on the item or score set forth therein that plaintiff be required to attach verbatim copies of the ordinance setting up the authority, the lease and lease-back terms and the rate ordinance itself and the rates provided for therein, is substantiated by the following cited cases of County of Northumberland v. Gap Coal Co., 29 *Northumberland Leg. J.* 27 (1956), and Cochran Coal Co. v. Municipal Management Co. 6 *Dist. & Co. Rep* (2d) 223 - 1956) wherein the Court required that copies of the writings or written leases should be attached to the Complaint.

Wherefore, defendant submits to Your Honorable Court that its preliminary objections be sustained; and that accordingly the plaintiff's pleadings be stricken for the patent deficiency on their very face and

that judgment be rendered for defendant as a consequence of such deficiency in plaintiff's pleadings; or, in the alternative, that plaintiff be required and ordered to properly amend and plead with more particularity and sufficiently the allegations set forth therein, so that defendant might thereby be enabled to file a more responsive answer or reply thereto.

Respectfully submitted,

KELLEY, JOHNSTON & CIMINO

BY 
Eugene L. Cimino,
Counsel for Defendant

Dated: Thursday,
March 22, 1962

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENN'A.
NO. 539 NOVEMBER T, 1961
IN ASSUMPSIT

SANDY TOWNSHIP,
Plaintiff

vs.

CARL MONELLA,
Defendant

BRIEF OF DEFENDANT

MEMORANDUM BRIEF
OF
DEFENDANT'S COUNSEL
IN SUPPORT OF PRELIMINARY
OBJECTIONS FILED BY DE-
FENDANT TO PLAINTIFF'S
COMPLAINT IN ASSUMPSIT

KELLEY, JOHNSTON & CIMINO
ATTORNEYS AT LAW
PHILIPSBURG, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
SANDY TOWNSHIP

VS.

CARL MONELLA

:
:
: NO. 539 NOVEMBER TERM, 1961
:
:
: In Assumpsit

DEFENDANT'S PRELIMINARY OBJECTIONS TO
PLAINTIFF'S COMPLAINT

AND NOW comes the Defendant, Carl Monella and by his attorneys Kelley, Johnston & Cinino files the following Preliminary Objections to the Plaintiff's Complaint in Assumpsit for the following reasons:

(1) That in the Third Paragraph of the Plaintiff's Complaint it is alleged that the Sandy Township Municipal Authority has constructed a certain sewer system, the appurtenances of which are within one hundred fifty (150') feet of Defendant's residence. However, Plaintiff fails to aver by virtue of what statute said Municipal Authority was duly constituted in law and when and how said Municipal Authority legally and validly came into being.

(2) Plaintiff avers in the Fourth Paragraph of its Complaint that said sewer system was duly leased to Sandy Township; however, Plaintiff fails to specifically aver or allege in said Complaint any ordinance, statute or resolution empowering either a lease of said Authority's sewer system to Sandy Township, or any ordinance, resolution or statutory authority validating the acceptance or entry into such a lease agreement with said Municipal Authority by the Township of Sandy.

(3) Plaintiff avers in the Fifth Paragraph of its Complaint that said sewer system has been for a period of nine (9) months available to the Defendant for service; but Plaintiff fails to specifically aver the exact time or date of completion of such authority or specifically when such appurtenance physically

abutted defendant's property.

(4) Plaintiff avers in the Sixth Paragraph of its Complaint that it duly passed a rate ordinance providing for fair and just charges for sewer services, said rate ordinance being a matter of record in the Township records and is herewith incorporated herein by reference; but Plaintiff fails therein to specifically aver or outline in detail or verbatim said rate ordinance referred to therein.


(5) Plaintiff avers in the Seventh Paragraph of its Complaint that by virtue of said ordinance, Plaintiff has sent to Defendant bills in the amount of \$48.66; however, Plaintiff fails to specifically outline or allege exactly or mathematically how said sum of \$48.66 was calculated, or how same became due and owing by Defendant unto Plaintiff.

(6) Plaintiff avers in the Ninth Paragraph of its Complaint that in addition thereto, there is imposed upon such delinquencies a penalty of \$25.00; but Plaintiff fails to specifically aver or allege with sufficient clarity by virtue of what authority such penalty in the sum of \$25.00 is incurred by Defendant.

(7) The Plaintiff throughout its entire complaint and all of the paragraphs alleged therein, fails to specifically outline, although same is averred therein generally, any authority or privity of contract between Defendant and said Sandy Township, or the legally constituted and duly elected Supervisors thereof, or between Defendant and said Sandy Township Municipal Authority whereby the legality of the Authority itself, or the lease-back by the Municipal Authority to said Sandy Township, or the assessments made thereunder are legally valid and legally constituted services and assessments made properly and in accordance with any statute, ordinance or resolution empowering either or both the Authority or the Township to make, levy, or assess

or collect such sewer assessments.

WHEREFORE, Defendant requests your Honorable Court to enter judgment upon the pleadings in favor of the Defendant and against the Plaintiff upon the face of the pleadings and hereby formally moves for such dismissal of Complaint as being improper pleadings and not constituting in law a valid cause of action; and/or in the alternative, Defendant requests that Plaintiff's Complaint be stricken as not being in conformity with the applicable Pennsylvania Law pertinent to such assumpsit pleadings, and the local Rules of Court, and the Pennsylvania Rules of Civil Procedure applicable to assumpsit actions; and/or in the alternative, that Plaintiff be required to file amended or more specific pleadings in that its Complaint and the averments or allegations contained therein do not set forth its cause of action with sufficient clarity, particularity, or sufficiency to enable Defendant to file a responsive answer thereto. Accordingly, Defendant requests and submits to your Honorable Court to enter judgment upon the face of the pleadings in Defendant's favor and against Plaintiff for the reasons hereinbefore stated and set forth in the with/ⁱⁿDefendant's Preliminary Objections.

KEILLEY, JOHNSTON & CIMINO
By 
Counsel for Defendant.

Now this 6th day of March 1962 served
accepted by copy Smith Smith & Ward
Joseph P. Ward
att'y for plaintiffs

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12th Street

IN THE COURT OF COMMON
PLEAS OF CLEARFIELD COUNTY, PA
NO. 539 NOVEMBER TERM, 1961

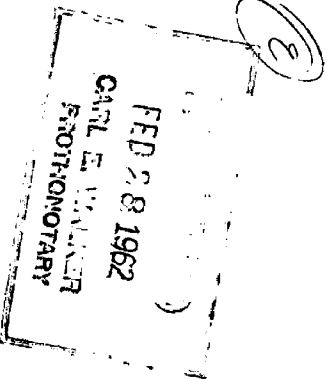
In Assumpsit

SANDY TOWNSHIP

VS.

CARL MONELLA

DEFENDANT'S PRELIMINARY
OBJECTIONS TO PLAINTIFF'S
COMPLAINT



KELLEY, JOHNSTON & CIMINO
ATTORNEYS AT LAW
PHILIPSBURG, PA.

THE PLATONIC CO., WILLIAMSBURG, PA.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SANDY TOWNSHIP

vs.

CARL MONELLA

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NO. 539 NOVEMBER TERM, 1961

IN ASSUMPSIT

BRIEF ON BEHALF ON SANDY TOWNSHIP

Sandy Township filed against Carl Monella a Complaint in Assumpsit, alleging there were certain sums due from the defendant who is a resident of the Township of Sandy, pursuant to Township Ordinance relating to sewer charges. The defendant's preliminary objections are replete with facts which are not verified by affidavit, and which are not proper to a preliminary objection.

Taking each of these by seri atim, we would argue as follows:

PRELIMINARY OBJECTION 1 - Failure to aver the Statute under which the Authority was constituted. The Sandy Township Municipal Authority was, of course, formed under the Municipal Authorities Act of May 2, 1945, P. L. 382. This is a matter of public record, but in any event would not be necessary to a proper pleading.

PRELIMINARY OBJECTIONS 2, 4, 6 and 7 - Each of these objections while raising a different specific matter, allege the Complaint is defective because it does not plead ordinances, contracts, leaseback arrangements, etc. First, there is no authority whatsoever that such pleading is necessary and it would, in fact, make the Complaint of tremendous length. Secondly, each and every one of these subjects is a matter which appears among the public books and records of the Township of Sandy, to which the defendant has access as would any citizen and, therefore, the necessity of this pleading is not shown nor can any reason be advanced why this would be necessary for

the defendant to answer, either he owes the money or he does not.

PRELIMINARY OBJECTION 5 - This is an allegation by the defendant that plaintiff does not show specifically how the bill was calculated. Since this is a matter of public record, e. g. the rate ordinance, and since the defendant has previously been adequately informed through bills of this method, this does not seem a legitimate reason for amendment.

In sum total, the defendant asks that the plaintiff plead public statutes and other public records which are equally available to both and which have no bearing upon the cause. The pleading is dilatory on its face, and we ask that the same be dismissed.

SMITH SMITH & WORK
BY William H. Smith
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
NO. 539 NOVEMBER TERM, 1962
ASSUMPSIT

SANDY TOWNSHIP

VS.

CARL MONELLA

BRIEF ON BEHALF OF SANDY
TOWNSHIP

SMITH, SMITH & WORK
ATTORNEYS-AT-LAW
CLEARFIELD, PA.

Lap-over Margin

Sandy Township
vs.
Carl Monella

by handing to him personally Complaint in Assumpsit and made
a true and attested copy of the original Costs. Sheriff Reese \$13.10
known to him the contents thereof. (pd. by Attys.S.S.&W)

Sworn to before me this 30th day of January A. D. 19 62

James B. Reese
James B. Reese

Prothonotary

Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

SANDY TOWNSHIP

VS

CARL MONELLA

:
:
:
:
:

No. 539 November Term, 1961

In Assumpsit

C O M P L A I N T

(1). The name of the Plaintiff is the Township of Sandy, a second class township and body politic under the Laws of the Commonwealth of Pennsylvania.

(2). The name of the Defendant is Carl Monella, a resident of 54 Lincoln Drive, DuBois, Pennsylvania.

(3). The Sandy Township Municipal Authority has constructed in the Township of Sandy a certain sewer system whose appurtenances are within 150 feet of the residence of the Defendant.

(4). Said sewer system was duly leased to Plaintiff.

(5). Said sewer system has been for a period of nine months available to the Defendant for service.

(6). The Plaintiff has duly passed a rate ordinance providing for fair and just charges for sewer services, said rate ordinance being a matter of record in the Township records and is herewith incorporated herein by reference.

(7). By virtue of said ordinance, Plaintiff has sent to Defendant bills in the amount of \$48.66.

(8). The Defendant has refused and does refuse to pay the same.

(9). In addition thereto, there is imposed upon such delinquencies a penalty of \$25.00.

(10). Plaintiff has repeatedly requested Defendant to pay said sum, to-wit \$73.66, but Defendant has refused and does refuse to pay the same.

(11). The charges to Defendant are fair, just and reasonable, and Defendant has no reason not to pay the same.

WHEREFORE, the Plaintiff demands judgment against the Defendant in the amount of \$73.66, together with interest.

SMITH, SMITH AND WORK

BY William U. Smith
Attys. for Plaintiff

STATE OF PENNSYLVANIA:

SS

COUNTY OF CLEARFIELD :

WM. H. GRATTON, being duly sworn according to law, deposes and says as Agent for the Sandy Township he is authorized to make this Affidavit; further, that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Wm H Gratton
(Wm. H. Gratton)

Sworn and subscribed to
before me this 22d day
of January, 1962.

Mrs Mildred B. Singer

NOTARY PUBLIC
My Commission Expires
JANUARY 7, 1963

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA.	
No. <u>539</u> Nov. Term, 1961 In Assumpsit	
SANDY TOWNSHIP	
VS	
CARL MONELLA	
COMPLAINT	
TO THE WITHIN DEFENDANT:	
You are hereby required to file defensive pleadings to the within Complaint with- in twenty days of service hereof.	
SMITH, SMITH & WORK BY <u>William L. Work</u> Attys. for Plaintiff	
<div>FILED JAN 23 1962 CARL E. WALKER FRUITHON SMITH, SMITH & WORK ATTORNEYS-AT-LAW CLEARFIELD, PA. 450 Atty</div>	