IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

MUNCY CREEK TOWNSHIP, Plaintiff	: :	
v.	:	NO. 98-01,551
PAUL K. SCHODT and MARION SCHODT, husband and wife, Defendants	: : :	

OPINION and ORDER

This is the story of a man who bucked the system to try to save a few bucks. After Muncy Creek Township and Muncy Borough installed a sewage processing system for their residents' use, Defendant Paul Schodt[1] pulled every trick in the book to avoid installing the required number of sewer pipes to connect his property to the system and pay the extra $2000 connection fee required for a double house. Eventually his efforts landed him in front of this court for a non-jury trial.

Ordinarily the court would award the Township all the relief requested, to send individuals like Mr. Schodt a strong message that they will pay a high price for pulling these sort of maneuvers. Unfortunately, however, our hands are somewhat tied because of the regrettable incompetence with which Muncy Creek Township and Muncy Borough handled the entire procedure.

Findings of Fact

[1] Mr. Schodt's wife, Marion, co-owns the property at issue and is therefore a defendant. In this opinion, however, the court refers only to Mr. Schodt because there was no evidence Mrs. Schodt played any role in the matter. Furthermore, she did not appear at trial because both parties stipulated her presence was unnecessary and because she is an invalid.

Muncy Creek Township and the Muncy Borough Municipal Authority entered into an agreement whereby the Borough would install and administer a municipal sewage treatment plant to serve residents of the Muncy area. The Township contributed money toward the installation of the plant. Property owners were charged a "tap-in fee"[2] to connect their property to the system.

The Borough passed Resolution #96-2 (Plaintiff's Exhibit #2) to govern the operation of the sewage system. Among other things, the resolution set forth hook-up specifications. Residents were to install a lateral, or sewer pipe extending from their property to the curb or property line. Paragraph 208 of the resolution stated that a single lateral may not supply more than one customer, without approval by the Borough. A "customer" was defined variously, including "The one side of a double house having a solid vertical partition." Paragraph 208(c). The resolution also set forth a connection charge of $1,000 for all taps. Paragraph 201(b). That fee was later preempted by Borough Resolution No. 96-18, which raised the cost to $2,000 per EDU for District B residents such as Mr. Schodt. EDU was defined in Paragraph (e) of that resolution: "For purposes of this Resolution, an "EDU" shall mean water usage at the rate of 50,000 gallons per year."

To determine the number of laterals required for each structure and the cost to each owner, the Borough sent an application permit to property owners requesting information such as the number of dwelling units contained in the structure and their water system account number.

Mr. Schodt filled out his application improperly. Although he owns a double

[2] This is also referred to in various places as a "tapping fee."

house, in which he lives in one side and rents out the other, he stated on the application that the property contained only one dwelling unit. And although each unit had a separate water account number, he failed to write down either number. Mr. Schodt installed one lateral and paid one tap-in fee of $2000.

The sewer system was completed by early 1998 and in February of that year Borough and Township officials conducted a "walk-through," viewing each of the residential connections to ensure all properties were correctly hooked up and appropriately charged. Mr. Schodt's property naturally sent up red flags because he had installed only one lateral for his double house and had paid only one $2000 fee.

On 25 June 1998 the Borough sent Mr. Schodt a notice informing him that he was not connected to the sewer system. On 28 September 1998 the Township filed the instant court action.[3] An amended complaint was filed on 6 January 1999. Some time near 13 September 1999 the Schodts applied for a waiver of the requirement to construct another lateral. The waiver was granted on 11 October 1999.

[3] Under the Intermunicipal Sewerage Agreement (Plaintiff's Exhibit #1), the Township must pay the Borough any fees that remain uncollected six months after completion of the system. After that time, the township had the burden of collecting the delinquent fees.

Conclusions of Law

1. Mr. Schodt did not comply with Muncy Borough Municipal Authority Resolution #96-2 Paragraph 208(c), which required him to install two laterals to service his double house.
2. Under Muncy Borough Municipal Authority Resolution #96-2 Paragraph 105, Mr. Schodt was in violation of that resolution from 6 January 1999 until 11 October 1999.
3. An appropriate penalty for this violation is $9 per day, or $2502.00.
4. Under Muncy Borough Municipal Authority Resolution # 96-18, Mr. Schodt owes a total tap-in fee of $2000 for connecting his home to the sewage system, which he has already paid.

Discussion

Two issues are presented in this case: (1) Was Mr. Schodt required to install two laterals on his property, and (2) Does Mr. Schodt owe another $2000 tap-in fee? Although common sense would lead one to believe that the answer must be the same for both questions, due to shoddy draftsmanship of two Borough resolutions, that is not the case. The intent of the Borough was, no doubt, to charge $2000 per lateral. When it comes to legislation, however, good intentions are not good enough.

I. Installation of Laterals

A. *The Violation*

Muncy Borough Municipal Authority Resolution #96-2 Paragraph 208 clearly states that one lateral may not supply more than one customer without permission. Mr. Schodt's property clearly falls under Paragraph 208(c), which states that each side of a double house having a solid vertical partition wall is a customer. Mr. Schodt's property is also covered under Paragraph 208(i), which states that each dwelling unit in a house or building constitutes one customer. "Dwelling unit" is defined as "a building or portion thereof with exclusive culinary and sanitary facilities designed for occupance [sic] and used by one person or one family (household)."

Mr. Schodt contends the resolution is confusing because it uses various terms interchangeably and contains a number of typographical errors. While the resolution certainly is sloppily constructed and in need of a thorough editing job, the particular passages at issue are clear and unambiguous. There can be no doubt that two laterals are required for Mr. Schodt's double house.

Mr. Schodt advances some pitifully weak arguments to try to escape this conclusion. First, he contends that no violation exists because last week the Township waived the two-lateral requirement. That twelfth-hour reprieve, however, does not wash away Mr. Schodt's past sins.

Next, Mr. Schodt masquerades as a victim by claiming he was misled by Robert Campbell's approval of the one lateral he installed. Mr. Campbell, however, explained in his testimony that in making the inspection he was authorized only to check the pipes for various problems, namely leakage. He was not approving or even considering the number of laterals that had been installed, and gave Mr. Schodt no reason to believe he was doing so. It is immaterial that Mr. Campbell wore another hat: Muncy Creek Township Zoning Enforcement Officer. At the time he made the inspection, he was acting on behalf of the Borough, and was not authorized to determine how many laterals were needed. The court finds credible Mr. Campbell's testimony that he did not say anything to lead Mr. Schodt to believe that in addition to approving the construction of the lateral he was also approving the number of laterals installed.

B. ***The Penalty***

Having found that Mr. Schodt did not comply with Borough Resolution #96-2, we now face the question of exactly when he was in violation. On that issue, Mr. Schodt benefits from the bumbling of the Township which, after two strikes, finally hit the ball.

Resolution #96-2 Paragraph 105 states that if, three months after receiving notice, a property owner has failed to connect to the system as required, the failure is

then declared a violation.[4] The notice sent to Mr. Schodt on 25 June 1998 directed him to "connect the above-described property to the sewer system. The failure to connect to the sewer system will result in the institution of legal proceedings." The problem, of course, is that Mr. Schodt's property was already connected to the system when he received the notice. Therefore, the notice did not properly inform him of the exact nature of his noncompliance. The Township made exactly the same mistake when it filed suit against Mr. Schodt. It was not until 6 January 1999 that the Township finally got it right and officially informed Mr. Schodt that he must install another lateral.

Although we could possibly find the first notice sufficient because it also stated, "The connection must be made in accordance with the regulations," we decline to do so because in America, we expect more from governmental entities. We expect them to communicate clearly when accusing a citizen of violating a law. Our hard-won rights would be fragile indeed if we so easily excused governmental i ncompetence.

There is little doubt in our mind that Mr. Schodt knew exactly what the problem was. In fact, it appears that he deliberately misled the Borough by stating on his application that his property contained one dwelling unit instead of two.[5] In addition, he failed to provide his two water account numbers–a sure signal that there are two dwelling units–even though he retained copies of his water bills and could easily have obtained the account numbers. Moreover, Mr. Schodt testified that he

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[4] Muncy Creek Township Ordinance 96-1(5) contains a similar provision.

[5] The limp explanation Mr. Schodt offered for this inaccuracy was that the house was one structure, with one tax parcel number.

talked to Muncy Creek Township Supervisor David Rupert after receiving the violation, that Mr. Rupert said he personally had nothing to do with the regulation, and that it was imposed by the Department of Environmental Protection. Mr. Rupert also promised to call DEP to find out the reason for the regulation. Although Mr. Schodt denied that the two men were discussing the need for two laterals to a double house, all the evidence indicates that was precisely what they were discussing. Therefore, the court could easily find that Mr. Schodt had actual notice of the violation.

And even if Mr. Schodt was completely ignorant of his transgression, he certainly should have taken the proper steps to find out what was wrong. It is difficult for this court to understand why he would decline to do anything, while under the threat of a lawsuit. It is far more likely that he holed up, dug in his heels, and stubbornly refused to install another lateral or ask for a waiver–just to give the Township a hard time.

In short, Mr. Schodt is a cheapskate, trying to save a few bucks at the expense of his government and his fellow citizens. Cheapskates, however, have the same Due Process constitutional rights as everyone else, and Mr. Schodt's rights were violated by faulty notices. Therefore, the court finds that his violation began on 6 January 1999, when the amended complaint was filed.

The Muncy Creek Township Ordinance 96-1(12) provides that the penalty for a violation of the sewer connection provisions is a fine of not more than $300 a day and/or imprisonment for not more than 90 days. Imprisonment is not appropriate in this case, but a hefty fine is. Mr. Schodt has clearly been in violation of the connection provision from 6 January 1999, when he received the Amended

Complaint, until 11 October 1999, when he received a waiver from the Township–a total of 278 days. The court finds that an appropriate penalty, in light of his extreme bad faith in contesting his clear noncompliance, is $9.00 per day, or $2,502.00.

II. Tap-In Fee

Naturally, one would assume that the connection fee would be assessed per lateral, and there is little doubt Mr. Schodt understood that to be the case. However, once again he profits from the Borough's failure to say what it meant. Although Borough Resolution #96-2 established a connection charge of $1,000 for all taps, that was later pre-empted by Borough Resolution No. 96-18, which listed the fee for properties in District B as $2000 for "Each EDU of the Sewer System." EDU is defined in (e) of that ordinance: "For purposes of this Resolution, an 'EDU' shall mean water usage at the rate of 50,000 gallons per year."

Muncy Borough Chairman James Muffly explained at trial that "EDU," which means "equivalent dwelling unit," is used when the number of dwelling units is difficult to establish, with structures such as hospitals or factories. In those cases the fees are assessed based on the amount of water used, rather than the number of dwelling units.

Apparently, the Borough resolution was meant to establish a tap-in fee of $2000 per dwelling unit, and in cases where the number of dwelling units cannot be determined, then $2000 per equivalent dwelling unit, to be calculated at 50,000 gallons of water usage a year. Unfortunately, that is not what the resolution says. Nor can we save the Township by referring back to Borough Resolution # 96-2, which refers to and defines "dwelling unit." Resolution #96-18 clearly usurps

Resolution #96-2, and it establishes fees based upon EDUs, and not dwelling units.

The Township is asking this court to enforce the ordinance, and we will certainly do that. However, we must enforce it based on what it says–not what the drafters intended. When a piece of legislation is clear and ambiguous, courts are not free to speculate on what it was meant to mean or should mean. All citizens have a right to know exactly what they are required to do or are prohibited from doing, and precisely what the consequences of disobedience will be.

Sloppy writing is never good. In literature or expository writing, it is regrettable. In legislation that directly affects the lives and rights of citizens, it is unacceptable. We will enforce the ordinance as it is written. Since Mr. Schodt's two units together used less than 50,000 gallons of water, his property constitutes one EDU. Therefore, the fee is $2000, which he has already paid.

Conclusion

The court does not look kindly on the sort of behavior engaged in by Mr. Schodt. He stubbornly refused to comply with the regulations enacted to bring a municipal sewer system to his community. While his friends and neighbors complied with the regulations and paid the proper fees, Mr. Schodt steadfastly refused, forcing the Township to take him to court. If all citizens treated their local governments with such scorn and contempt, this country would never have attained its great stature.

On the rare occasions when the government oversteps its bounds or commits other improprieties, citizens are invited to step forward and fight. Mr. Schodt's

fight, however, was not one of principle. It was about money. Since money seems to speak to Mr. Schodt, he is appropriately penalized by the $2502.00. fine this court has imposed. As for the tap-in fee, the Borough would be well advised to take more care when drafting resolutions that impact so strongly on the public.

O R D E R

AND NOW, this _____ day of October, 1999, for the reasons stated in the above opinion, the court finds that the defendants, Paul and Marion Schodt, were in violation of Muncy Borough Municipal Authority Resolution #96-2 Paragraph 208 from 6 January 1999 until 11 October 1999, a total of 278 days. The defendants are hereby assessed a penalty of $9.00 per day, or $2,502.00, to be paid to Muncy Creek Township within 30 days of the date of this opinion. The court further finds that the defendants have already paid the appropriate tap-in fee for their property, as established in Muncy Borough Municipal Authority Resolution # 96-18.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Howard Langdon, Esq.
David Chuprinski, Esq.
Gary Weber, Esq.