IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Mountaintop Regional Water Authority	:	
	:	
v.	:	No. 1305 C.D. 2010
	:	Argued: December 6, 2010
Snow Shoe Borough Authority and	:	
Snow Shoe Township Municipal	:	
Authority,	:	
Appellants	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: February 4, 2011

Snow Shoe Borough Authority (Borough Authority) appeals from the May 10, 2010, order of the Court of Common Pleas of Centre County (trial court) that granted the motion for peremptory judgment filed by Mountaintop Regional Water Authority (Regional Authority), entered judgment in the Regional Authority's favor in its mandamus action and ordered the Borough Authority and Snow Shoe Township Municipal Authority (Township Authority) to turn over all of their assets to the Regional Authority.[1] The trial court's order further provided that, "[t]o prevent

[1] Although the Borough Authority and the Township Authority jointly filed a Notice of Appeal in this matter, because only the Borough Authority filed a brief, the Township Authority has waived all issues it otherwise might have raised on appeal. *See generally* Pa. R.A.P. 2188 (indicating that dismissal is appropriate where an appellant fails to file a brief). Further, the Township Authority has apparently chosen to comply with the trial court's order. (*See* Regional Authority's Br. at 1-2.)

any interruption in service to the customers, the officers and employees of the [Borough Authority and the Township Authority] shall cooperate fully with the [Regional Authority]." (Tr. Ct. Order at 2.)

On March 16, 2010, the Regional Authority filed a complaint in mandamus against the Borough Authority and the Township Authority, alleging that, despite repeated requests, they failed to transfer their assets, customer lists and operations to the Regional Authority as required by: (1) a Regional Authority Agreement entered into by the parties in July 2005; (2) an agreement, dated July 18, 2005, in which the Borough Authority leased the wellheads on a ninety-nine-year lease to the Regional Authority; and (3) this court's previous decision in *Snow Shoe Borough v. Snow Shoe Borough Authority* (Pa. Cmwlth., No. 179 C.D. 2009, filed November 16, 2009) (*Snow Shoe I*), which held that the Borough Authority properly entered into the Regional Authority Agreement and leased its water rights to the Regional Authority, such that the Regional Authority Agreement and the related lease were valid.[2] The Regional Authority demanded that the trial court enter judgment against the Borough Authority and the Township Authority, "directing them to turn over all of the assets, customer lists, operations and all other items as set forth in the regional water authority agreement within ten (10) days." (Complaint in Mandamus, WHEREFORE Clause, at 5.) The Regional Authority also demanded peremptory

[2] In *Snow Shoe I*, this court affirmed the trial court's order denying a motion for post-trial relief, filed by Snow Shoe Borough; Boyd Paul, the Borough Mayor; and Sandra Reiter, a Borough Council member, from the trial court's underlying order denying their request for declaratory and injunctive relief seeking to prevent the Borough Authority from transferring the entirety of its water system assets to the Regional Authority.

judgment against the Borough Authority and the Township Authority in light of their refusal to comply with the aforementioned agreements.

On May 7, 2010, the trial court heard oral argument on the Regional Authority's motion for peremptory judgment.[3] The trial court granted the motion on May 10, 2010, finding that there was no issue of material fact and that the Regional Authority was entitled to judgment as a matter of law.[4] Thereafter, the Borough Authority filed a motion for reconsideration, alleging that the Regional Authority Agreement bound the parties and, accordingly, the trial court's order requiring them to turn over all of their assets was overbroad and overreaching. The trial court denied the motion. The Borough Authority and the Township Authority then appealed to the Superior Court, which transferred the matter here.

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[3] We explained in *Pennsylvania Land Title Association v. East Stroudsburg Area School District*, 913 A.2d 961, 967 n.5 (Pa. Cmwlth. 2006) (citations omitted) that "'peremptory judgment in a mandamus action may be entered only where no genuine issue of material fact exists, and the case is free and clear from doubt.'"

[4] The trial court explained that, in making its determination, it relied, in part, on our decision in *Snow Shoe I*. (Tr. Ct. Op. at 5.) Moreover, the trial court explained:

> The record is quite clear in this matter which has been litigated since 2006. There exists no genuine issue of material fact and [the Regional Authority] is entitled to judgment as a matter of law. There is no doubt that [the Regional Authority] has the right to have the terms of the 2005 Regional Authority Agreement enforced, that [the Borough Authority and the Township Authority] have the duty to abide by the terms of the agreement and, that [sic] the remedy of directing [the Borough Authority and the Township Authority] to turn over the assets listed in the agreement is appropriate.

(*Id.*)

On appeal,[5] we consider the Borough Authority's assertion that the trial court improperly granted the Regional Authority's request for peremptory judgment because the Borough Authority and the Regional Authority were co-defendants in *Snow Shoe I* and, thus, the Borough Authority was not able to fully and finally litigate in that action the issue of the legality of the Regional Authority Agreement. Essentially, the Borough Authority contends that principles of *res judicata* do not operate to bar review of the issue of the validity of the Regional Authority Agreement in this case.

The term *res judicata* encapsulates two separate doctrines: technical or strict *res judicata*, also known as claim preclusion, and broad *res judicata*, also known as collateral estoppel or issue preclusion. *McGill v. Southwark Realty Company*, 828 A.2d 430, 433 (Pa. Cmwlth. 2003). We appropriately consider whether the principles of collateral estoppel should be invoked in this case. "Collateral estoppel, or issue preclusion, is designed to prevent relitigation of questions of law or issues of fact, which have already been litigated in a court of competent jurisdiction." *Id.* at 433-34. As we explained in *J.S. v. Bethlehem Area School District*, 794 A.2d 936, 939 (Pa. Cmwlth.), *aff'd*, 569 Pa. 638, 807 A.2d 847 (2002):

> collateral estoppel bars a subsequent lawsuit where (1) an issue decided in a prior action is identical to one presented in a later action, (2) the prior action resulted in a final

[5] Our review is limited to determining whether the trial court committed an abuse of discretion, an error of law, or rendered a decision that lacked supporting evidence. *Pennsylvania Land Title Association*, 913 A.2d at 967 n.5.

> judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action, and (4), the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.

Here, the Borough Authority challenges the legality of the 2005 Regional Authority Agreement simply because it no longer wants to abide by its terms.[6] However, the Borough Authority's change of heart with respect to its obligations does not mean it did not have a full and fair opportunity to litigate the matter in *Snow Shoe I*.[7] Rather, because we clearly upheld the validity of the Regional Authority Agreement and the related lease in that prior action, any question of their legality is now precluded. Therefore, the trial court did not err in determining that the Borough Authority must abide by the terms of the Regional Authority Agreement.

In the alternative, the Borough Authority argues that the trial court's order requiring it to transfer all of its assets to the Regional Authority is overbroad and overreaching because we have previously determined the Regional Authority Agreement is the binding legal agreement between the parties and that agreement does not provide for all of the Borough Authority's assets to be transferred to the

[6] In fact, when asked by the trial court why the Borough Authority and the Regional Authority were no longer on the same side, the Borough Authority's counsel explained that the Borough Authority has "had a change in their membership now and they're opposed to this the same as the Borough is." (N.T., May 7, 2010, at 8-9.)

[7] Certainly, the Borough Authority could have filed a cross-complaint against its co-defendant, the Regional Authority, raising the issue presently before this court.

Regional Authority. Instead, with respect to property belonging to the Borough Authority, the Regional Authority Agreement provides in relevant part:

> The Snow Shoe Borough Authority owns a parcel of land, which shall remain titled in the name of the Borough and shall not be transferred to the Mountaintop Regional Water Authority. There are two well sites on the land, the wells and the water are to be leased to the Regional Authority for 99 years without restrictions.

(Regional Authority Agreement at 4, ¶ 2.)

We agree with the Borough Authority that the trial court's order did not specifically consider this limitation and that it should have done so. Further, the Regional Authority concedes this fact, acknowledging that the trial court, in ordering the parties to turn over all of their assets as set forth in the Regional Authority Agreement, failed to include this limitation. Accordingly, we affirm the trial court's order, with the modification that the parties comply with the above limitation set forth on page 4, paragraph 2 of the Regional Authority Agreement.[8]

ROCHELLE S. FRIEDMAN, Senior Judge

[8] However, to the extent that the Borough Authority seeks clarification of the trial court's statement that, "[t]o prevent any interruption in service to the customers, the officers and employees of the [Borough Authority and Snow Shoe Township Authority] shall cooperate fully with the [Regional Authority]," (Tr. Ct. Order at 2), we hold that this provision speaks for itself.

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O R D E R

AND NOW, this 4th day of February, 2011, the order of the Court of Common Pleas of Centre County, dated May 10, 2010, is hereby affirmed, with the modification that Snow Shoe Borough Authority and Mountaintop Regional Water Authority comply with the limitation set forth on page 4, paragraph 2 of the July 2005 Regional Authority Agreement, consistent with the attached opinion. Furthermore, the appeal of the Snow Shoe Township Municipal Authority is hereby dismissed.

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ROCHELLE S. FRIEDMAN, Senior Judge