

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Stroud Township Sewer Authority	:	
	:	
v.	:	No. 2199 C.D. 2007
	:	Submitted: June 9, 2008
Kevin J. Leondi and Deneene S.	:	
Leondi,	:	
Appellants	:	

**BEFORE:**   **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge  
              **HONORABLE DORIS A. SMITH-RIBNER**, Judge  
              **HONORABLE JOSEPH F. McCLOSKEY**, Senior Judge

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED:** June 30, 2008

Kevin J. and Deneene S. Leondi appeal from the judgment on a writ of *scire facias* for past due sewer assessment charges entered in the Court of Common Pleas of Monroe County (common pleas). We affirm.

The Leondis purchased their property at 55 Bridge Street in Stroud Township in 1991, at the time the Township was installing central sewer lines. In 1992, when the sewer Authority's agent inspected the property to determine the appropriate assessment, the Leondis maintained a three-story building containing two dwelling units and a detached garage. By Resolution 3 of 1989, the Township Authority established, in pertinent part, that:

When more than one Dwelling Unit connects to the Sewer System through one sewer connection, the full

connection charge shall be paid for each such Dwelling Unit, as though each such Dwelling Unit had a direct and separate connection to the Sewer System. . . . In the case of apartment buildings, each apartment shall be considered a Dwelling Unit, and one connection charge shall be paid for each Dwelling Unit within the apartment building.

Section 4 of Resolution 3 of 1989. In order to avoid connection charges for each apartment, Kevin Leondi notified the sewer Authority that he intended to remove one of the two dwellings units and, therefore, the Authority issued a sewer connection permit in March, 1992, for only one Equivalent Dwelling Unit (EDU). For over a decade, the sewer Authority continued to charge the Leondis for only one EDU but, in 2004, the Authority became aware of conditions at the property, such as multiple electric meters and mailboxes, suggesting the presence of three dwelling units. Following a property inspection that revealed two apartments in the original building and one apartment over the garage, the Authority billed the Leondis for the two additional EDUs, charging them a total of \$7,200.00 in connection fees.

After the Leondis refused to pay, in February of 2005, the Authority attached a municipal lien and filed a writ of *scire facias* for the amount of the connection fees plus interest from November 3, 2004. In response to the writ, the Leondis filed an affidavit of defense asserting that the Authority should not be permitted to now charge a connection fee for the second apartment in the residential building because at the time the Leondis first connected to the sewer, the Authority permitted a single connection and, for more than a decade, billed for only one EDU despite knowledge that the building had two apartments.<sup>1</sup> Leondis

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<sup>1</sup> Later, the Leondis moved to amend their affidavit of defense to assert that the Authority's action is time barred under the limitations period established in Section 9 of the Act of May 16, (Footnote continued on next page...)

averred that the Authority agreed to a single connection fee because it was not possible to split the single wastewater line serving the building into more than one connection to the Authority's sewer line.<sup>2</sup>

Following a hearing, common pleas found that Kevin Leondi initially received a connection permit and incurred charges for a single EDU based on his representation to the Township Authority that one of the two apartments would be removed and the house restored to a single dwelling unit. Common pleas concluded that the Township Authority properly assessed connection fees for two additional EDUs, upon discovering that the Leondis maintained the second apartment and later added an apartment to the garage. Thus, common pleas entered judgment in favor of the Authority.

The Leondis filed the present appeal from the judgment, challenging only the assessment of an additional connection fee for the second apartment in the original building; they do not contest the charge for connecting the apartment over the garage. In their brief to our court, the Leondis assert that, in 1992, the Authority granted them an exemption, charging them a connection fee for a single EDU knowing all the while that Leondi would maintain two apartments in the building. They further maintain that the record does not support common pleas'

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**(continued...)**

1923, P.L. 207, *as amended*, 53 P.S. § 7143, which requires, in pertinent part, that municipal claims for sewer rates be filed "on or before the last day of the third calendar year after that in which the taxes or rates are first payable." Common pleas denied the motion. While the Leondis challenged this ruling in their statement of matters complained of on appeal, they do not argue the issue in their brief and, hence, we consider it abandoned.

<sup>2</sup>Specifically, the Leondis averred: "After its inspection [in 1992], [the Authority] determined that although the property contained multiple hookups, [Leondis] would only be responsible for one (1) EDU because it was not possible to split the line into multiple EDUs." Defendants' Affidavit of Defense, parag. 6.

finding that Kevin Leondi induced the 1992-assessment for only a single EDU by representing to the Authority that he intended to remove the upstairs apartment. Finally, the Leondis contend that if a connection fee is due for the upstairs apartment, the charge should be in the lesser amount that would have been due in 1992.<sup>3</sup>

Specifically the Leondis contend they received an exemption pursuant to Section 3.01 of the Stroud Township's Ordinance 185,<sup>4</sup> which mandates and regulates connection to the sewer. Section 3.01 provides:

Except as otherwise provided in this Section 3.01, each Improved Property [defined in the Ordinance as a "structure intended for continuous or periodic habitation . . . and from which wastes shall be or may be discharged"] shall be connected separately and independently with a Sewer through a Building Sewer [defined as "the extension from the sewage drainage system of any Improved Property to the lateral of a Sewer"]. Grouping of more than one Improved Property on one Building Sewer shall not be permitted except under special circumstances and for good sanitary reasons or other good cause shown, but then only after special permission of the Township and the Authority, in writing, shall have been secured.

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<sup>3</sup> As common pleas recognized, the Leondis made this assertion for the first time in their statement of matters complained of on appeal. Having failed to raise this issue in their affidavit of defense or at the hearing, they have waived it.

<sup>4</sup> While we note that the Leondis, in their affidavit of defense, did not identify specifically this or any other section of the Township Ordinance, we will not consider their argument referencing this section to be waived. In his testimony, Leondi asserted that he was assessed a single EDU pursuant to this section. In its 1925(a) opinion, common pleas noted the argument but did not address it, having resolved the dispute based on the finding that Leondi induced an assessment for a single EDU by representing that he would convert the building to a single dwelling.

R.R. at 176a. Neither Ordinance 185 nor this particular Section address the manner of assessing fees for connection or use of the sewer. Rather, the Ordinance requires property owners within a specified proximity to use the sewer and it regulates the “manner of making connections.” It is apparent that Section 3.01 pertains solely to the physical connection of more than one building to the sewer line via a single line and does not authorize an exemption in the nature of that claimed by the Leondis. Further, in 1992, the Leondis complied with Section 3.01 by connecting their single residential building via a single line and, thus, they did not require the exemption authorized under Section 3.01. Finally, even if they had required relief under this section, such an exemption must be in writing and the record contains no document referencing an exemption under Section 3.01.

As the Leondis’ attorney agreed at the hearing before common pleas, once the Township Authority introduced the lien and supporting documents in support of its action, the burden of proof shifted to the Leondis.<sup>5</sup> The Leondis do not dispute that they maintain three dwelling units on their property – two apartments in the main building and one over a garage. Their defense is premised solely on a claim that they are entitled to an assessment of their two-unit building as a single EDU. In support of their contention, the Leondis submitted their sewer connection permit, which authorized connection of one EDU in April of 1992. In

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<sup>5</sup> See Section 20 of the Act of May 16, 1923, P.L. 207, *as amended*, 53 P.S. § 7187 (stating, in pertinent part: “tax claims and municipal claims shall be prima facie evidence of the facts averred therein in all cases; and the averments in both tax and municipal claims shall be conclusive evidence of the facts averred therein, except in the particulars in which those averments shall be specifically denied by the affidavit of defense, or amendment thereof duly allowed.”). See also, *Borough of Huntingdon v. Dorris*, 78 Pa. Super. 469 (1921), 1922 WL 2813, at \*1 (considering identical language in the precursor statute and stating that after the municipality introduced the lien for charges associated with construction of concrete paving and curbing along the street adjoining the defendant’s property, the burden shifted to the defendant).

his testimony, Kevin Leondi explained that after he initially submitted an application, in September of 1991, for a sewer connection for only one EDU, he decided not to remove the upstairs apartment and obtained a verbal approval from an Authority inspector to pay a connection fee for only a single EDU. The Leondis also submitted copies of two letters – one undated letter from Kevin Leondi to the Authority’s inspector, Mr. Hammond, stating:

Pursuant to the inspection and our telephone conversation, this letter is to document the number of EDU’s at 55 Bridge Street, Stroudsburg, Pa. It is our understanding that after notifying you of two units and your decision of changing or combining the two units into one, there will be only one (1) EDU at 55 Bridge Street and if there is any change to this please notify us immediately.

Notably, this undated letter also does not contain a date received stamp or any indication as to when it may have been sent. The second letter, dated May 4, 1992, from Brenda Klein, Clerk Stroud Township Sewer Authority, to Mr. Leondi states:

We received your letter on May 1, 1992 regarding the number of EDU’s allocated to your property at 55 Bridge Street. You should have been allocated only one (1) EDU instead of two (2). We will adjust our records to reflect this change.

I will draw your attention to our letter of February 4, 1992, copy enclosed. Effective March 1, 1992 we charged all properties for sewer usage, even though they were not hooked up to the municipal sewer system.

You are still responsible for one (1) EDU. Since the due date is past the total due is \$36.30. Therefore, I am enclosing your corrected invoice.

While Kevin Leondi suggests in his testimony that the second of these letters was in response to the first and, thus, establishes the Township Authority’s agreement

that the two unit building would be considered one EDU, this suggestion does not hold up against the more complete series of correspondence in the record.<sup>6</sup>

The Township's documentation in support of its lien includes a series of letters, painting a very different fact picture than that promoted by Leondi and, thus, undermining his account of what transpired around the time he first connected to the sewer system. Specifically, a letter dated February 1, 1992 from Mr. Hammond to Mr. Leondi, in pertinent part, states:

It has come to our attention that you have an apartment as well as your home at 55 Bridge Street, Stroudsburg, Pa. Therefore, your EDU allocation will be two (2) EDU's and your hook up fee will be \$2,500.00.

In a letter hand dated "3/1/92" and marked received by the Township on March 5, 1992, Mr. Leondi wrote to Mr. Hammond, in pertinent part, stating:

There will only be "one" (1) EDU at 55 Bridge Street and if there are any changes to this, I will notify the Township immediately.

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<sup>6</sup> Indeed, it appears likely that the letter Brenda Klein referred to is one received by the Township on May 1, in which Leondi stated:

I have enclosed the actual quarterly sewer bill for 55 Bridge Street . . . It is totally incorrect . . . It has 55 Bridge Street with two hook ups not one . . . which it should reflect. Also, I have officially installed my single sewer line on 13 April 1992 and should be billed from that time on "only!"

I am not paying for a service that I was not using or hooked up to prior to this time.

I have notified legal counsel and will pursue this matter if the above is not immediately resolved.

In this letter, Leondi did not provide the Township with any information regarding the continued maintenance of a second apartment so as to permit an inference that the follow-up letter from Brenda Klein documents Township acquiescence in treating two apartments as a single EDU.

The house is currently undergoing renovations which include moving the upstairs kitchen to the first floor.

Based upon this correspondence, common pleas reasonably inferred that the Township issued the Leondis a sewer connection permit for a single EDU based upon the representation that the upstairs apartment would be removed. Upon becoming aware that the Leondis did not remove the upstairs apartment, the Authority properly assessed them an additional connection fee. Questions as to the weight and inferences to be drawn from the evidence are the province of the trial court and we must reject the Leondis' invitation to substitute our judgment in this regard.

Inasmuch as the Leondis do not dispute the imposition of a connection fee for the garage apartment, common pleas appropriately entered judgment for the fees and interest due for two additional sewer connections. Accordingly, we affirm.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge



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Kevin J. Leondi and Deneene S.	:	
Leondi,	:	
Appellants	:	

**ORDER**

AND NOW, this 30th day of June, 2008, the judgment of the Court of Common Pleas of Monroe County in the above captioned matter is hereby AFFIRMED.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge