

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Municipal Authority of Hazle Township :  
v. : No. 2346 C.D. 2007  
Lagana Enterprises, Inc., : Submitted: May 9, 2008  
Appellant :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER**

**FILED: July 24, 2008**

Lagana Enterprises, Inc. (Lagana) appeals the December 3, 2007 order of the Court of Common Pleas of Luzerne County (trial court) that denied Lagana’s Motion for Post-Trial Relief (December 2007 Decision). Essentially, the trial court upheld its prior order of August 2, 2007, which: (1) granted the Municipal Authority of Hazle Township’s (Authority) claim for quarter annual service charges pursuant to the Resolution of October 24, 2002 (Resolution), from January 1, 2003 to June 30, 2007, plus interest, to be paid by Lagana in the amount of \$194,634.81; (2) denied Lagana’s counterclaim seeking payment from the Authority for placing a sewer line across Lagana’s property; and (3) granted the Authority’s petition for attorney’s fees to be

paid by Lagana in the amount of \$19,230.50. On appeal, Lagana argues that the trial court erred by concluding that the doctrine of res judicata precluded its defense that the service charges were neither reasonable nor uniform, and ultimately erred in granting the Authority attorney's fees. Lagana also contends that the trial court erred in dismissing its counterclaim because the trial court gave an insufficient explanation in its opinion.

The present appeal arises from a complaint filed by the Authority against Lagana on October 21, 2005 for quarter annual service charges for the collection and transmission of sanitary sewage from Lagana's 50-unit mobile home park, Holly-Lynn Mobile Home Village (Village). The Village obtains its sewage services via a connection to the sewerage system of the Authority's Airport Road Project. The complaint alleges that Lagana failed to pay charges incurred from January 1, 2003 to June 30, 2007 pursuant to the Resolution. The Resolution established a billable unit as having 250 gallons of usage per day. This figure was derived from statistics that the average person uses 100 gallons of water per day, and that an average household is occupied by approximately 2.5 people. Pursuant to the Resolution, the charges billed to Lagana were at a flat rate of one billable unit<sup>1</sup> for each of the 49 occupied units of the Village. (Resolution at 3-4.) The complaint further alleges that the charges and rates billed by the Authority, pursuant to the Resolution, had been "previously and finally adjudicated by [the trial court] as uniform, proper and lawful," (Complaint ¶ 8), in the case of Municipal Authority of Hazle Township v.

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<sup>1</sup> The rate for one billable unit is \$165.07 per quarter, every three months, plus a \$30.00 sewage treatment fee per billable unit for sewage treatment by a third party, Greater Hazleton Joint Sewer Authority.

Lagana Enterprises, Inc., No. 6728-C of 2000, (Lokuta, J.), filed May 30, 2003 (2003 Decision).

At trial, the Authority presented evidence that Lagana did not pay any of the charges incurred by the Village from January 1, 2003 to June 30, 2007. Lagana conceded at trial that it failed to pay the sewerage charges during that period, but argued that the flat rate billed was not allowed because it was unreasonable and not uniform when compared to other billable units that consumed a larger volume of usage than the Village. More specifically, Lagana argued that the mobile home units averaged 1.5 people per mobile home and, thus, the mobile home units located at the Village should be assigned .6 billable units per mobile home instead of one unit per mobile home pursuant to a discretionary clause within the Resolution, which states:

Authority shall at any and all times have the right to determine the amount of due and chargeable billable units by actual sanitary sewage flow determined by sanitary sewage flow meters and/or by water usage determined by water meters as against any or all the above real properties instead of pursuant to the above schedule where the Authority has determined that it is difficult or impossible to apply the above schedule to the same and/or as against any real properties not covered by the above schedule.

(Resolution at 6.)

The trial court issued an order on August 2, 2007 (August 2007 Decision), granting judgment in favor of the Authority and finding that the doctrine of res judicata barred Lagana from raising the defense that the charges were not reasonable or uniform. The trial court explained that the 2003 Decision found that:

The October 24, 2002 Quarter Annual Service Charge Resolution of the Authority is reasonable, uniform and lawful, and applies to all said sanitary sewerage generating facilities of James Lagana and Lagana Enterprises, Inc. connected to the Airport Road Project of the Authority.

(August 2007 Decision at 2 (quoting the 2003 Decision, finding of fact (FOF) ¶ 20).)

The trial court further noted that this Court dismissed Lagana's appeal from the 2003 Decision on procedural grounds.<sup>2</sup> (December 2007 Decision at 5.)

The trial court explained "that the only distinction between the parties and issues before Judge Lokuta, in May of 2003, and the parties and issues before [the trial court in 2007], was the time period for which the unpaid annual sewerage charges were sought." (December 2007 Decision at 3.) Because the trial court found that Lagana's defense was barred by the doctrine of res judicata, the trial court concluded that its verdict in favor of the Authority was without error. As to Lagana's counterclaim that it is entitled to payment by the Authority for placing a sewage line on its property and its argument that awarding attorney's fees to the Authority was erroneous, the trial court merely stated that Lagana "offered no credible evidence in support of the counterclaim or against the attorney's fees. Such being the case, those verdicts were also without error." (December 2007 Decision at 6.) Lagana now appeals to this Court.<sup>3</sup>

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<sup>2</sup> Lagana describes the procedural grounds as the failure to file post-trial motions. (Lagana's Br. at 7.)

<sup>3</sup> "This [C]ourt's scope of review of a trial court's denial of post-trial motions is limited to determining whether the trial court abused its discretion or committed an error of law." Municipal Authority of the Borough of Edgeworth v. Borough of Ambridge Water Authority, 936 A.2d 538, 544 n.8 (Pa. Cmwlth. 2007).

On appeal, Lagana first argues that the trial court erred in finding that Lagana's defense based on unreasonable and non-uniform charges was barred by the doctrine of res judicata. Lagana argues that res judicata is not applicable in this matter because the prior litigation in 2003 was for charges incurred prior to January 1, 2003. Thus, Lagana argues that the prior litigation was a separate cause of action. Further, Lagana contends that to the extent the Authority argues that collateral estoppel or issue preclusion applies, these doctrines are not applicable because: the issues before the trial court in 2003 are not identical to those presented in this case; the prior judgment was not final on the merits; and Lagana did not have a full and fair opportunity to litigate the billing charges from January 1, 2003 to June 30, 2007. Moreover, Lagana argues that to the extent billing under the October 24, 2002 Resolution was addressed by the 2003 Decision, it merely addressed the short period of October 24, 2002 to December 21, 2002, during which there would have been, at most, one quarter annual service billing.

The doctrines of claim and issue preclusion, often referred to as res judicata and collateral estoppel, are common law doctrines which apply under circumstances which this Court, in J.S. v. Bethlehem Area School District, 794 A.2d 936 (Pa. Cmwlth. 2002), succinctly described, as follows:

Res judicata encompasses two related, yet distinct principles: technical res judicata and collateral estoppel. Technical res judicata provides that where a final judgment on the merits exists, a future lawsuit on the same cause of action is precluded. Collateral estoppel acts to foreclose litigation in a subsequent action where issues of law or fact were actually litigated and necessary to a previous final judgment.

Technical res judicata requires the coalescence of four factors: (1) identity of the thing sued upon or for; (2) identity of the causes of action; (3) identity of the persons or parties to the action; and (4) identity

of the quality or capacity of the parties suing or being sued. Res judicata applies to claims that were actually litigated as well as those matters that should have been litigated. Generally, causes of action are identical when the subject matter and the ultimate issues are the same in both the old and new proceedings.

Similarly, 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 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.

Id. at 939 (citations omitted). Thus, for the trial court to make a determination regarding either technical res judicata or collateral estoppel, the above-mentioned elements must have been identified.

After reviewing the 2003 Decision, we conclude that collateral estoppel applies and that Lagana was barred from re-litigating before the trial court the issue of the reasonableness, uniformity, and lawfulness of the Authority's quarter annual service charges pursuant to the Resolution.<sup>4</sup> In the earlier 2003 litigation there were three separate lawsuits that had been consolidated for trial involving Lagana's utilization of the Authority's facilities after connecting and tapping into the facilities on or about July 1, 1999 through the time of trial. The 2003 Decision describes the litigation as involving: "[Lagana] contesting the reasonableness and uniformity of the Authority's charges as applied to [Lagana]; and, the Authority seeking to recover charges which it

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<sup>4</sup> We note that the trial court found Lagana was barred from re-litigating the issue of the reasonableness of the Resolution based on "res judicata." We agree with the outcome and believe that the trial court was using the term "res judicata" in its broad sense to encompass the two related principles as described in J.S., 794 A.2d at 939.

claimed were rightfully due from [Lagana].” (Trial Ct. Op. at 2-3, May 30, 2003.)

The trial court then made the following pertinent findings of fact in its 2003 Decision:

9. *Laganas have at all times material hereto contested, as unreasonable and discriminatory, the quarter annual service charges of Authority imposed upon them by the Authority for its Airport Road Project, but Laganas have since paid and have been timely paying the same, except for charges imposed by the Authority on forty-nine residential trailer park pads owned by Lagana Enterprises, Inc., at the Holly-Lynn Mobile Home Village.*

....  
13. On October 24, 2002, the Authority passed a Connection and Tapping Fee Resolution which imposed connection and tapping fees on parties who thereafter would apply to the Authority for a tap-on and would then connect and tap-on to its Airport Road Project facilities and on parties such as James Lagana and Lagana Enterprises, Inc. . . .

....  
15. The Act 203 Study upon which the Authority’s October 24, 2002 Connection and Tapping Fees Resolution was based utilized the latest . . . census of . . . 2.50 persons in the average household . . . generating 250 gallons of sanitary sewage per day.

16. The Authority’s October 24, 2002 . . . Resolution applied said 250 gallons of sanitary sewage generated per day E.D.U. or billable unit basis . . . as flat connection and tapping fees to any and all sanitary sewage generating units, such as office units . . . .

17. Thus . . . each of the residential pads or units of Lagana Enterprises, Inc. was accordingly and properly charged thereunder a flat rate of one billable unit.

....  
19. On June 24, 1998, the Authority passed a Quarter Annual Service Charge Resolution which was uniformly applicable to Laganas . . . until October 24, 2002, when it was replaced by another such Resolution of Authority on October 24, 2002.

20. *On October 24, 2002, Authority passed a Quarter Annual Service Charge Resolution . . . which is uniformly applicable to Laganas and other customers of the Authority’s Airport Road Project and which is still effective.*

....  
23. *Sewage flow cannot be accurately measured by water consumption for any E.D.U. or billable unit.*

24. Laganas . . . benefited from the [sanitary sewage generating facilities since July 1, 1999] so as to warrant and validate the imposition upon them of the . . . October 24, 2002 Quarter Annual Service Charge Resolution of the Authority.

(2003 Decision, FOF ¶¶ 9, 13, 15-17, 19-20, 23-24 (emphasis added).) The trial court also made the following pertinent conclusions of law in its 2003 Decision:

4. 53 Pa. C.S.A. § 5607(d)(24) provides the [Authority with the power] to impose and charge the fees enumerated therein against property owners who are required to connect to the Authority's sewage disposal system, and further provides that fees shall be based upon the duly adopted fee schedule which is in effect at the time of payment . . . .

5. Pursuant to the aforesaid legislative mandate, the [Authority] duly enacted *two Resolutions on October 24, 2002, which established and imposed connection and tapping fees, together with quarter annual service charges for the Airport Road Sewage and Waste Water System Project . . . , which Resolutions the Court determines to be the operative basis for the fees imposed by and sought to be collected by the Authority in this litigation.*

. . . .  
12. The Laganas, as the parties questioning the reasonableness, uniformity and lawfulness of the Authority's quarter annual service charges, have failed to demonstrate and prove, as an essential part of their burden of proof, an alternative system or set of quarter annual service charges or rates, in place of the Authority's October 24, 2002 Quarter Annual Service Charge Resolution, and they have failed to demonstrate and prove how such an alternative would cover the yearly cost of maintenance and operation of the Authority's Airport Road Project and still be reasonable, uniform and lawful . . . .

. . . .  
14. *The Laganas, as the parties questioning the reasonableness, uniformity and lawfulness of . . . the Authority's . . . quarter annual service charges, have failed to prove, as an essential part of their burden of proof, by expert testimony or by other expert evidence, that such charges are not reasonable, uniform and lawful.*

15. *The Laganas have failed to prove that the quarter annual service charges imposed upon them and, to which they testified, were made under the October 24, 2002 Resolution or under the previous Quarter Annual Service Resolution, now repealed, are not reasonable, uniform and lawful.*



.....  
20. *The October 24, 2002 Quarter Annual Service Charge Resolution of the Authority is reasonable, uniform and lawful, and applies to all the said sanitary sewerage generating facilities of James Lagana and Lagana Enterprises, Inc. connected to the Airport Road Project of the Authority.*

.....  
27. Lagana Enterprises, Inc. owes the Authority quarter annual service charges on its forty-nine residential pads or billable units . . . pursuant to the Authority’s October 24, 2002 Quarter Annual Service Charge Resolution, a total of \$111,740.03 as of December 31, 2002 . . . .

(2003 Decision, Conclusions of Law (COL) ¶¶ 4-5, 12, 14-15, 20, 27 (emphasis added).)

Based on the factual findings and conclusions of law made by the trial court in the 2003 Decision, we conclude that the doctrine of collateral estoppel applies to this case.

First, the issue in this case is whether the Resolution of the Authority is reasonable, uniform, and lawful as applied to Lagana in connection to the Airport Road Project of the Authority servicing the 49 occupied units of the Village. This issue was the same issue presented to and disposed of by the trial court in the earlier litigation in 2003.

Second, the Order issued in 2003 was, indeed, a final order because it “dispose[d] of all claims and of all parties.” Pa. R.A.P. 341(b)(1). Lagana appealed the final order issued in 2003, but this Court quashed the appeal on procedural grounds for failure to file post-trial motions and subsequently denied Lagana’s

Petition for Reargument.<sup>5</sup> On appeal to the Supreme Court, the Supreme Court denied Lagana's Petition for Allowance of Appeal and subsequently denied Lagana's Motion for Reconsideration.<sup>6</sup> Lagana argues that because the appeal was quashed on procedural grounds there was no final judgment on the merits. (Lagana's Br. at 12.) However, this is incorrect. Although the quashal order issued by this Court did not address the merits of the appeal, it does not affect the fact that the trial court's order of 2003 was a final order. In other words, this Court's order effectively quashed the appeal from the final order of the trial court. The trial court's order was thus "permitted to remain unaffected by such final order." See Pa. R.A.P. 2573. Therefore, the trial court's 2003 Decision holding that the Resolution is reasonable, uniform, and lawful as applied to Lagana is a final order and a final judgment on the merits.

Third, there is no argument that Lagana, the party against whom collateral estoppel is asserted, was not, in fact, the party in the prior action before the trial court.

Finally, Lagana had a full and fair opportunity to litigate the issue of the reasonableness of the Resolution before the trial court in 2003. Although the time frame for which charges are due is different in this case than in the prior action, the identical *legal* issue was presented and argued by both the Authority and Lagana. Lagana argues that the trial was held so soon after the Resolution was passed that

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<sup>5</sup> See Municipal Authority of Hazle Township v. Lagana, 848 A.2d 1089 (Pa. Cmwlth. 2004), reargument denied, June 25, 2004.

<sup>6</sup> See Municipal Authority of Hazle Township v. Lagana, 581 Pa. 709, 867 A.2d 525 (2004), reconsideration denied, Feb. 3, 2005.

Lagana did not have “a full and fair opportunity to raise the issues currently argued.” (Lagana’s Br. at 12). However, Lagana did raise the legal issues in the prior litigation and specifically argued that the Authority’s charges were not reasonable, uniform, or lawful. What Lagana appears to be arguing is that there was different factual evidence presented before the trial court, which was not litigated before the trial court in the prior action, such as the average number of persons per household and the different rates the Authority charges the kidney center and another residential development, Hollywood Village, in comparison to the Village. Lagana argues that:

[t]here is no evidence to suggest that . . . [Lagana] knew of the difference in the average people per household currently argued. The prior decision makes no reference to the current deviation from the flat rate system to charge the kidney center based on volume usage. The prior decision provides no clear analysis of the reduced rate per billable unit for Hollywood Village.

(Lagana’s Br. at 12). The flaw in Lagana’s argument is that it does not contend that it was not aware or could not discover the average number of people living in the Village at the time of the earlier trial before the trial court in 2003, nor that it could not have discovered the method it was being charged by the Authority in the kidney center, which Lagana owns, or the billing rates for Hollywood Village. Lagana challenged the reasonableness, uniformity, and lawfulness of the rates in the 2003 litigation before the trial court, and is challenging the reasonableness, uniformity, and lawfulness of the same rates in this appeal; although the time period during which the rates were levied is different, the challenged rates are the same. Were we to find that collateral estoppel does not apply, it would open the door for Lagana to re-litigate the

very same legal issue every time it failed to pay its quarter annual service charges. Accordingly, we find no error on the part of the trial court.<sup>7</sup>

Next, Lagana argues that the trial court erred in dismissing its counterclaim against the Authority for payment due to breach of contract or unjust enrichment because the trial court gave an insufficient explanation in its opinion. We disagree.

Because this is a counterclaim, Lagana is the petitioning party and, therefore, has the burden of proving a breach of contract and/or unjust enrichment. To sustain a claim for breach of contract, the petitioning party must show: “(1) the existence of a contract, including its essential terms; (2) a breach of a duty imposed by the contract; and (3) resultant damages.” CoreStates Bank, N.A. v. Cutillo, 723 A.2d 1053, 1058 (Pa. Super. 1999). Likewise, when a petitioning party alleges that a defendant has been unjustly enriched, the petitioning party must show that: “(1) [the petitioning party] conferred a benefit on the defendant; (2) the defendant appreciated the benefit; and (3) acceptance and retention by the defendant of the benefits, under the circumstances, would make it inequitable for the defendant to retain the benefit without paying for the value of the benefit.” Commonwealth v. TAP Pharmaceutical Prods., Inc., 885 A.2d 1127, 1137 (Pa. Cmwlth. 2005). In the case at bar, the trial court merely found that Lagana “offered no credible evidence in support of the counterclaim.” (Trial Ct. Op. at 6, December 3, 2007.)

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<sup>7</sup> Because we find that collateral estoppel applies, we can not reach Lagana’s argument on the merits that the Resolution was unreasonable or not uniform.

A review of the hearing transcript reveals that Mr. Lagana was the only witness to testify in support of the counterclaim alleging breach of contract and/or unjust enrichment. Mr. Lagana testified that Woodcrest Estates, which is a residential development that he initially owned and developed, is situated across the street from the Village. Mr. Lagana explained that, in the 1990s when he went forward to subdivide Woodcrest, the issue of Woodcrest connecting to a sewage line was raised. (Trial Ct. Hr’g Tr. at 69.) Counsel for Lagana questioned Mr. Lagana about the options that were presented to connect Woodcrest to a sewer line:

Q. The options were to either use a pump to go up toward Hollywood and go around [the Village] to connect to the [Authority’s Airport Road Project]. That was one option, correct?

A. Correct.

Q. The other option was – which ended up being what happened, was to put a line just directly across [the property of the Village] to connect to the [Authority’s Airport Road Project]?

A. That’s correct.

(Trial Ct. Hr’g Tr. at 71.) Mr. Lagana further testified that no easement has ever formally been recognized for crossing the Village property. (Trial Ct. Hr’g Tr. at 74.) Additionally, when questioned as to whether Mr. Lagana finalized any agreements regarding usage fees, maintenance, or future ability to move the sewerage line if he ever wanted to, Mr. Lagana answered in the negative. (Trial Ct. Hr’g Tr. at 73-74; see also Hr’g Tr. at 80-81.) In fact, Mr. Lagana conceded that his prior threat to remove the line from the Village property was subsequently rescinded after litigation commenced, and that he made “a commitment . . . that I would not in any way, shape or form harm the residences of [Woodcrest]; and therefore, I would not block the line.” (Trial Ct. Hr’g Tr. at 75.)

While we agree with Lagana that the trial court did not give a sufficient explanation in its opinion when it denied Lagana's counterclaim, we find any error on the part of the trial court harmless. As discussed above, Lagana had the burden to prove a breach of contract and unjust enrichment. With regard to its breach of contract claim, Mr. Lagana conceded at the hearing that no agreement was ever entered into with the Authority for its placement of the sewage line across the Village property. (Trial Ct. Hr'g Tr. at 73-74, 80-81.) Thus, Lagana failed to prove the existence of a contract, with its essential terms, and, accordingly, did not sustain its burden of proving that the Authority breached a contract. Likewise, Lagana failed to prove that the Authority was unjustly enriched by placing the sewage line across the Village property. It is unclear to this Court what kind of benefit the Authority received from placing the sewage line across Lagana's Village property. The record seems to show that, at the time the sewerage line was placed over the Village property to *benefit* Woodcrest, Mr. Lagana actually owned Woodcrest. While this Court understands that Mr. Lagana has subsequently sold his rights to Woodcrest to another buyer, it does not negate the fact that Lagana failed to provide any evidence or testimony showing how the Authority has benefitted by this placement. Because Lagana has failed to sustain its burden of proving unjust enrichment on the part of the Authority, we affirm the trial court's decision denying Lagana's counterclaim.

Finally, Lagana argues that attorney's fees should not have been awarded to the Authority. In its brief, Lagana merely argues that "[t]he Trial Court awarded attorney's fees based on [the Authority's] success in the claim. As [the Authority] should not be successful in its claim, said fees should not be awarded." (Lagana's Br. at 13.) Lagana does not take issue with the amount of fees or reasonableness of the

fees imposed but, rather, argues that fees should not have been imposed because Lagana should have prevailed. However, because we affirm the trial court's decision, and Lagana has not prevailed, Lagana's argument must fail.<sup>8</sup>

Accordingly, we affirm the order of the trial court.

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**RENÉE COHN JUBELIRER, Judge**

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<sup>8</sup> To the extent Lagana meant to argue that the attorney's fees were unreasonable or improperly imposed for reasons other than those raised in its brief, said argument is waived for failing to properly develop those arguments in its brief. See Radman v. Commonwealth, 580 A.2d 480 (Pa. Cmwlth. 1990); Pa. R.A.P. 2119(a) ("The argument shall be divided into as many parts as there are questions to be argued . . . followed by such discussion and citation of authorities as are deemed pertinent.")

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Municipal Authority of Hazle Township :

v. :

Lagana Enterprises, Inc., :

Appellant :

No. 2346 C.D. 2007

**ORDER**

**NOW**, July 24, 2008, the December 3, 2007 order of the Court of Common Pleas of Luzerne County in the above-captioned matter is hereby affirmed.

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**RENÉE COHN JUBELIRER, Judge**