

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AFFAIRS

JACK SWEENEY,
Complainant

vs.

THE PARKING AUTHORITY OF THE
CITY OF SCRANTON,
Respondent

LOCAL GOVERNMENT UNIT DEBT
ACT SECTION 901
LGUDA- ?1

ORDER

AND NOW, this 28th day of June, 1995, in consideration of the pleadings, and the Report of the Presiding Officer filed this date, the Motion of the City of Scranton, Lackawanna County, to Dismiss the Complaint in the above captioned matter is GRANTED.

BY THE DEPARTMENT

William C. Bostic
Secretary

Order Mailed: June 28, 1995

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AFFAIRS

JACK SWEENEY,
Complainant

vs.

THE PARKING AUTHORITY OF THE
CITY OF SCRANTON,
Respondent

LOCAL GOVERNMENT UNIT DEBT
ACT SECTION 901
LGUDA- 71

REPORT OF THE PRESIDING OFFICER
JOEL WEISBERG, ESQUIRE
Presiding Officer
Department of Community Affairs
Room 334 Forum Building
Harrisburg, PA 17120
Telephone: (717) 783-8027

INTRODUCTION

On May 25, 1995, the City of Scranton, Lackawanna County, filed an Application for Approval of Lease Rental Debt in the amount of \$7,645,000.00. The City sought approval to guarantee a bond issue of the Parking Authority of the City of Scranton. During the period provided by law, the Complainant filed a complaint asserting the invalidity of those proceedings, and named as a respondent the Parking Authority of the City of Scranton. The City filed a Motion to Dismiss that Complaint. Oral argument on the Motion to Dismiss was scheduled for 10:00 a.m. on June 23, 1995. All parties were represented by counsel at the argument-

DISCUSSION

The Complaint in this matter was timely filed under the provisions of section 901 of the Local Government Unit Debt Act (hereinafter "Act"}, Act of July 12, 1972, P.L. 781, as amended, 53 P.S. Sec. 6780-401. The Motion to Dismiss filed by the City alleges, however, that the Complaint is improper because it names the wrong respondent.

In response to the Motion to Dismiss the Complainant, on June 16, 1995, filed a "Responsive Amendment to the Complaint" pursuant to 16 Pa Code §4.9(b}. That section of the Code permits a party to amend a complaint within 7 calendar days of the date of service of the preceding pleading. The City thereafter filed a Motion to Strike Responsive Amendment. The City's last Motion points to the Section 901(a) of the Act requirement that actions must be filed within fifteen days after the date of the submission of the proceedings, with an exception that is not relevant to these proceedings. Although generally permitted within 7 days of a pleading, the City asserts that an amendment is not proper when it would serve to add a new party to the matter after the expiration of the period for filing a complaint. Complainant argues that, in fact, a new party is not being added, but rather the proper party is only being clarified.

The rule of law is clear that the test is "whether the right party was sued but under a wrong designation, or whether a

wrong person was sued and the amendment was designed to substitute another and distinct party." Cianchetti v. Kaylen, 241 Pa.Super, 437 Pa.Super 437, 361 A.2d 842, 844 (1976), as cited in Hamilton v. Bechtel, Pa.Super , 657 A.2d 980, 981 (1995). "An amendment is permitted in the former situation but not in the latter." Ibid. In the instant situation, it is clear that Complainant originally filed his action against the wrong party. The Parking Authority of the City of Scranton is not the City of Scranton. The filing of the Complaint against the Authority was not a timely filing against the City.

Upon receipt of the Complaint, as it is required to under its regulations, the Department notified counsel for the City of the filing. The City filed a Motion to Dismiss not as a party, but as the only method available to protect its interests, and bring the matter to a close .

The Complaint must be dismissed as not timely filed against the only party before the Department, the City of Scranton.

Although this matter should be dismissed without reaching the merits of the Complaint, a review of that complaint reveals that it must also be dismissed on its merits.

It is important to consider initially the basic authority of the Department to review a request for approval. Our Commonwealth Court has continually restated the "greatly circumscribed" authority under which the Department operates in reviewing matters under the Act. Bethel Park Citizens v. Department of Community Affairs, 128 Pa. Cmwlth 439, 563 A.2d 969, 972 (1989). As early as 1983, our State Supreme Court in Bundy v. Belin, 501 Pa. 254, 461 A.2d 197 (1983), indicated that our jurisdiction was limited to:

"First, the regularity of the proceedings; second, the validity of certain papers which represent obligations of the local government unit and third, the legality of purpose of the underlying obligations." 501 Pa. 262.

At oral argument Complainant, through his counsel, made clear that his objection was solely to the building by the Parking Authority of a new 350 parking space facility. That facility to be built in the air space above a theater to be built by the Scranton Mall Associates, for United Artists Theaters. The basis for Complainant's argument is clearly set forth in paragraph 33 of his Complaint. He states therein that:

" [a] review of the Agreement, the Addendum and the description of the Garage project reveals that all of the 350 parking spaces provided by the Garage will be reserved for use solely for patrons of UA's [United Artists] Theater and its employees."

Based substantially on the case of Price v. Philadelphia Parking Authority, 422 Pa. 317, 221 A.2d 138 (1966), Complainant contends that "the SPA Garage is but a public investment in a private profit making venture. ..." Complaint paragraph 33. It is clear from Price, and other legal precedent, that the Parking Authority could not properly fund its bond issue, and the City could not guarantee that issue, unless the public is the

primary and paramount beneficiary of the project. 422 Pa. at 339.

A careful review of the record presently before the Department, however, reveals that Complainant has completely misread the intentions of the City and the Parking Authority. There is no evidence in the record presented to the Department that the City and Authority have agreed to make the new facility available solely and completely to the Mall Association and United Artists. To the contrary, the record indicates that the agreement is to make parking available free of charge to the theater's employees and customers, on a non-exclusive first come first serve basis. When not utilized by the theater, the spaces shall be available to the general public.

Complainant has attached as Exhibit #1 to his Complaint a copy of the agreement entered into between the City, the Parking Authority, the City Redevelopment Authority, Scranton Mall Associates and United Artists. Paragraph 8 of that agreement provides that all patrons and employees of United Artists who are on duty shall park in the garage free of charge. The agreement also provides for payment to the Authority in lieu of the parking fees of said patrons and employees. There is no indication in that paragraph, or any other provision of the agreement, that the right to park is exclusive and covers all of the parking area.

In addition to the above, the City has filed for exclusion of the debt as self-liquidating under section 206 of the Act. The Report on Self-Liquidating Debt of the Investment Banker filed by the City as part of its proceedings before the Department shows projected revenues from the new facility to be built with the proposed bond issue. The revenues far exceed those that would be collected if the sole source of revenue were the annual payment for the United parking spaces provided for in the agreement above .

Finally, the parties have agreed that the Authority's Official Statement, prepared in connection with this bond offering, may be included in the record. That Statement includes as Appendix F a parking consultant report that details the income expected to be generated by the new facility. The annual payment from United Artists represents only a small portion of the overall expected income. The remainder of the income will be generated from rentals to the general public.

If, as Complainant alleges, there were any question as to the exclusive usage of the facility by United Artists, the Complaint in this matter would require a full hearing, and might result in the rejection of the City's filing. There is, however, nothing in the record to support Complainant's allegations.

Our court's have indicated that in determining whether a project is essentially public or private in nature it is appropriate to look to the issues frequently presented in an eminent domain proceedings. Campbell v. Bethlehem Parking Authority, 20 Cmwlth Ct. 445, 454, 342 A.2d 114 (1975). Citing a number of other cases, the Court in Campbell concluded that an action "does not lose its public character merely because there may exist therein some feature of private gain, for, if the public good is enhanced, it is immaterial that a private interest also may be benefit." Ibid.

"In the absence of bad faith, fraud, capricious action,

or abuse of power adequately proven in the record" we should not interfere "with the discretion granted to local municipalities and authorities by the General Assembly." 20 Cmwlth Ct. at 455. The pleadings in this matter provide no indication that the City has in any way acted outside of the discretion granted to it in these matters.

CONCLUSION

The Complaint filed in this matter should be Dismissed and the lease rental debt of the City approved.

Joel Weisberg, Esquire
Presiding Officer

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AFFAIRS

JACK SWEENEY,
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LOCAL GOVERNMENT UNIT
DEBT ACT NO.71

THE PARKING AUTHORITY OF THE
CITY OF SCRANTON,
Respondent

ORDER

AND NOW, this 31st day of July, 1995, the Application of Complainant, Jack Sweeney, for a Stay of the Order of the Secretary of the Department of Community Affairs, of the Order of June 28, 1995, in the above entitled matter is DENIED.

William C. Bostic
Secretary

DATE MAILED: July 31, 1995