

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA

Civil Action – Law

BUCKS COUNTY WATER AND SEWER AUTHORITY : No. 05-05361  
1275 Almshouse Road :  
Warrington, PA 18976 :  
vs. : DECLARATORY JUDGMENT AND EQUITY  
PLUMSTEAD TOWNSHIP :  
Plumstead Township Building :  
5186 Stump Road, P.O. Box 387 :  
Plumsteadville, PA 18949 : Attorney I.D. No. 16237

COMPLAINT

1. Plaintiff is the Bucks County Water and Sewer Authority (“BCWSA”), which is a Pennsylvania municipal authority organized and existing under the provisions of the Pennsylvania Municipality Authorities Act, 53 P.S. §301 et seq., maintaining its office and principal place of business at 1275 Almshouse Road, Warrington, Bucks County, Pennsylvania 18976.

2. Defendant, Plumstead Township (“Plumstead”), is a Pennsylvania second class township with an address at 5186 Stump Road, Plumsteadville, Bucks County, Pennsylvania 18949.

3. BCWSA was incorporated as a Pennsylvania Municipal Authority on January 22, 1962 pursuant to an Ordinance enacted by the Board of County Commissioners of the County of Bucks, Pennsylvania.

4. The Articles of Incorporation of the Authority provide, inter alia, that the Authority is organized for the purpose of engaging in acquiring, holding, constructing, improving, maintaining, operating, owning and leasing sewers, sewer systems or part thereof, and sewage treatment works, including works for treating and disposing of industrial waste.

5. The stated purposes of the Authority include providing assistance to local municipalities concerning the service of sewerage facilities.

6. Pursuant to its Articles of Incorporation and purposes, BCWSA has, since its inception, established various Sewer Facilities consisting of conveyance, collection and treatment facilities which serve portions of Bucks County.

7. Such Sewer Facilities include the BCWSA/Central Bucks Sewer System which provides sewer collection, conveyance and treatment facilities in municipalities in central Bucks County, including Doylestown Township, Doylestown Borough, New Britain Borough, and portions of Plumstead Township and Buckingham Township.

8. On or about June 18, 1973, Plumstead caused to be created the Plumstead Township Municipal Authority ("PTMA") pursuant to the Municipality Authorities Act of 1945, as amended, which Authority's purpose was the construction, maintenance and operation of certain sewage conveyance lines within portions of Plumstead Township.

9. Pursuant to the request of Plumstead, in the mid-1970s, PTMA constructed and financed a sanitary sewage collection system to serve portions of Plumstead Township which were not part of BCWSA/Central Bucks Sewer System.

10. After construction of the Plumstead collection system had been completed, inspections and monitoring revealed that the system had high infiltration, foundation problems, numerous force main breaks and other construction-related problems, as well as financial problems resulting from the financing of the system without front foot assessments, thereby requiring a greater portion of the cost of operating the collection system to be included in sewer rates.

11. As a result of the foregoing, the PTMA experienced problems and difficulties in connection with the operation of its collection system, and also experienced a default in its financial obligations with the Bucks County Bank and Trust Company which had financed construction of the Plumstead collection system.

12. As a result of the foregoing, Plumstead and PTMA sought the help of BCWSA in the management and operation of the Plumstead collection system and on February 1, 1974, the PTMA, Plumstead and the BCWSA entered into a Management Agreement providing for the management of the Plumstead sewer system by BCWSA.

13. Subsequently, as a result of PTMA continuing to experience difficulties in the operation and financing of the Plumstead collection system, Plumstead and the PTMA requested BCWSA to take over the assets and projects of the PTMA, including, but not limited to, its sewer collection system within Plumstead Township.

14. After extensive negotiations among BCWSA, PTMA and Plumstead, the parties entered into an Agreement for the transfer and sale of the assets of the PTMA to BCWSA, and for the transfer and assignment to BCWSA of certain financial commitments of the PTMA (the "Agreement"), a true and correct copy of which Agreement dated November 1, 1978 is attached hereto as Exhibit "A".

15. Pursuant to the terms of the aforesaid Agreement, PTMA and Plumstead agreed, inter alia, to the following:

(a) that PTMA would sell, grant, deliver and convey to BCWSA all of its interest, title and ownership to and in all collection and/or transmission lines now under the ownership of the PTMA, as well as all appurtenant parts, not limited to but by way of illustration, including manholes, valves, pump stations and lateral lines;

(b) that PTMA would cooperate with Plumstead and other governmental agencies involved to effect the termination and dissolution of the PTMA; and

(c) that PTMA would, upon approval of its dissolution and termination, "... not engage in any activity within the County of Bucks having to do with the construction, operation or maintenance of sewage conveyance or transmission lines or in the treatment of sewerage or the handling of sewerage in any form whatsoever."

16. Pursuant to the aforesaid Agreement, Plumstead agreed to abide by all of the provisions and obligations of the PTMA, including but not limited to the agreement not to engage in any activity within the County of Bucks having to do with the construction, operation or maintenance of sewage conveyance or transmission lines, or in the treatment of sewage or in the handling of sewerage in any form whatsoever.

17. In addition, Plumstead warranted that it was not the owner of any land, easements, rights-of-way or sewer lines, or their appurtenant parts which were considered necessary to the operation of the sewage collection facilities within Plumstead Township, and further agreed that

if at any time Plumstead does have an interest in any such facility deemed necessary by BCWSA to be part of the Plumstead sewage collection system, Plumstead will transfer same to BCWSA.

18. In consideration for the conveyance by PTMA and Plumstead of the Plumstead sewer collection system to BCWSA, said Authority expended several million dollars for the purchase, upgrade and repair of the Plumstead collection system.

19. Pursuant to the terms of the aforesaid Agreement, the parties, including Plumstead, effectuated a conveyance of all of the assets of the PTMA to BCWSA and the existence of the PTMA was terminated and dissolved pursuant to the provisions of the Municipality Authorities Act.

20. Pursuant to the conveyance of the PTMA collection system to the BCWSA, BCWSA commenced ownership and operation of the Plumstead sanitary sewer conveyance system and has continued to operate such conveyance and collection system through the current time.

21. As part of BCWSA's ownership and operation of the sanitary collection system within Plumstead Township, BCWSA has over the years expended substantial sums of money to maintain and improve the Plumstead Township collection system so as to provide proper and efficient sewer services to the residents of Plumstead Township.

22. Consistent with the terms of the aforesaid Agreement, Plumstead subsequently participated with BCWSA in various revisions to Plumstead's Pennsylvania Act 537 sewer facilities plan, which revisions included:

(a) The Neshaminy Basin Sub-Region II 201 Facilities Plan, dated January 1992 and approved by the Pennsylvania Department of Environmental Protection ("DEP") in 1984, which Plan affected sewage facilities serving six (6) Bucks County municipalities, including Plumstead Township, and consisted of a Comprehensive Facilities Plan pursuant to the Federal Water Pollution Control Act of 1972, as amended, to, inter alia, expand and upgrade the Chalfont-New Britain Township Joint Sewer Authority treatment plant where sewage from Plumstead Township was treated.

(b) Resolution #8-18-92A adopted by Plumstead on August 18, 1992 revised Plumstead's Sewage Facilities Plan pursuant to the BCWSA's revision to Act 537 Plan for

Bedminster, Buckingham, Doylestown and Plumstead Townships, which provided, inter alia, for the reconstruction of the Old Dublin pipe pump station and force main which conveyed sewage from Plumstead Township to treatment facilities providing treatment for such sewerage.

23. Subsequent to the above referenced 1992 Act 537 Plan revision, Plumstead Township adopted and approved various site specific planning module revisions which were approved by DEP and authorized public sewerage by BCWSA of various developments within Plumstead Township, including developments located outside of the original 537 Plan area for public sewers in the Township

24. The foregoing developments included, but were not limited to, those known as Cabin Run, Landis Greene, Landis Greene North, Patriots Ridge, North Branch, Durham Ridge, Summer Hill and Summer Meadows.

25. Pursuant to and consistent with the 1978 Agreement between the parties, the 537 Planning module revisions approved by the Township and DEP with respect to the foregoing developments provided for the collection lines, pump stations and other facilities appurtenant thereto to be conveyed to, owned and operated by BCWSA and, pursuant thereto, the sewer facilities associated with these developments constructed in the 1990s and early 2000 years were or are in the process of being conveyed to BCWSA.

26. On or about May of 2005, BCWSA became aware through a public notice appearing in The Intelligencer that a sewage facilities planning module revision had been advertised by Plumstead Township for a new development known as the McGinnis Tract located in the vicinity of Twin Silo Road and Point Pleasant Pike in Plumstead Township, Bucks County, which proposed development was to be sewerage through a community sewage treatment plant to be constructed by the developer of the McGinnis property - Toll Brothers - which system was sponsored by Plumstead.

27. Upon information and belief, BCWSA avers that contrary to the provisions of the Agreement of 1978 and the past practice between the parties, Plumstead has entered into an agreement with the developer of the McGinnis Tract which provides for the community sewage treatment plant serving such development to be conveyed to Plumstead for ownership and operation once construction of same has been completed.

28. BCWSA also has reason to believe and, therefore, avers that contrary to the Agreement of 1978 and the practical construction of same and past practices of the parties, Plumstead has entered into other agreements or is in the process of entering into agreements with other developers for the conveyance to Plumstead of other community sewage treatment plants which Plumstead apparently intends to own and operate.

29. BCWSA avers, upon information and belief, that the community sewer treatment "package" plants approved by and agreed to be acquired by Plumstead may not meet the rules, regulations and standards of BCWSA, and that BCWSA may have to incur significant expenses in connection with the upgrade of such facilities so as to provide state-of-the-art sewer service to customers.

30. BCWSA avers, upon information and belief, that as a result of Plumstead's breach of the Agreement between the parties, BCWSA will incur damages, including, but not limited to, loss of revenue from sewer connection, tapping and rental fees, and costs and expenses associated with the acquisition, operation and maintenance of the community sewer treatment plants which Plumstead has approved and agreed to acquire.

31. Pursuant to the 1978 Agreement between the parties, Plumstead may not own or operate sewage facilities within the Township and has agreed to convey or cause to be conveyed any such community sewage treatment plants to BCWSA.

32. The actions of Plumstead in owning or operating community sewage treatment facilities in Plumstead Township is in violation of the 1978 Agreement between the parties.

#### COUNT I – ACTION FOR DECLARATORY JUDGMENT

33. BCWSA herein incorporates by reference paragraphs 1 through 32 of this Complaint, as if set forth in full.

34. Pursuant to the terms of the 1978 Agreement between the parties, Plumstead is precluded from owning and operating community sewage treatment plants in the Township, and is obligated to convey or cause to be conveyed any such facilities to BCWSA.

35. Plumstead has previously recognized and confirmed its foregoing obligations under the 1978 Agreement by conveying or causing to be conveyed to BCWSA all public sewer facilities constructed in the Township.

36. BCWSA believes and therefore avers that in violation of the 1978 Agreement, Plumstead has or will cause community sewage treatment plants and appurtenant facilities to be conveyed to Plumstead for purposes of Township ownership and operation.

37. BCWSA deems the community sewage facilities in Plumstead Township to be a necessary part of the Plumstead sewage collection system to be conveyed to the BCWSA pursuant to the 1978 Agreement between the parties.

38. BCWSA has advised Plumstead of its position that the 1978 Agreement between the parties precludes Plumstead from owning and operating sewage treatment and collection facilities within the Township, but Plumstead has failed and refused to comply with the terms of the Agreement.

39. Under the terms of the Declaratory Judgments Act, 42 Pa. C.S.A. §7531 et seq., any party whose rights, status or legal relations are affected by a contract may request that the court construe the contract and may obtain a declaration of rights and status thereunder.

**WHEREFORE**, BCWSA requests that Your Honorable Court enter declaratory judgment in its favor and against Plumstead for the following relief:

(a) declare that pursuant to the terms of the 1978 Agreement, Plumstead Township may not engage in any activity within the County of Bucks having to do with the construction, operation or maintenance of sewage conveyance or transmission lines, or in the treatment of sewage or in the handling of sewage in any form whatsoever;

(b) declare that pursuant to the terms of the 1978 Agreement, Plumstead transfer to BCWSA or cause to be transferred to BCWSA community sewage treatment plants in the Township, including but not limited to those serving or intending to provide service to the McGinnis Tract, the Timberly Farms development or the Carriage Hill development;

(c) order and direct that Plumstead convey to BCWSA any and all interest that it has in any community sewer treatment facilities and collection systems and appurtenances in Plumstead Township;

(d) order and direct that Plumstead pay to BCWSA all costs, expenses and damages incurred by BCWSA as a result of Plumstead's breach of the Agreement and in connection with the enforcement of the Agreement between the parties; and

(e) grant such other further relief as may be just and appropriate under the circumstances.

**COUNT II - IN EQUITY**

40. BCWSA hereby incorporates by reference paragraphs 1 through 39 of this Complaint, as if set forth in full.

41. The actions of Plumstead set forth above imperil the efficient and uniform collection and treatment of sewerage in Plumstead Township and the Central Bucks collection area of Bucks County.

42. The actions of Plumstead are in breach of the 1978 Agreement between the parties.

43. BCWSA avers, upon information and belief, that unless enjoined by this Court, Plumstead will proceed to own and operate community sewage treatment plants and appurtenant facilities within Plumstead Township.

44. BCWSA will suffer immediate and irreparable harm if Plumstead is not enjoined from owning and operating community sewage treatment plants and appurtenant facilities within the Township.

45. BCWSA has no adequate remedy at law to prevent Plumstead from owning and operating community sewage systems and appurtenant facilities and providing service to customers which are rightfully those of Bucks.

46. BCWSA has demanded that Plumstead comply with the 1978 Agreement between the parties by not owning and operating community facilities and appurtenances in the Township, but Plumstead has failed and refused to comply with the terms of the Agreement.

47. BCWAS avers, upon information and belief, that unless enjoined by this Court, Plumstead will continue to represent to prospective customers that they are or will be the owner of sewage facilities in the Township and as such, are entitled to collect connection, tapping and related fees and to collect sewer rentals for providing sewer service within the Township

48. BCWSA has no adequate remedy at law to prevent the foregoing and will suffer immediate and irreparable harm unless the requested relief is granted.

**WHEREFORE**, BCWSA requests that Your Honorable Court enter an injunction, temporarily and/or permanently enjoining Plumstead as follows:

(a) enjoining Plumstead Township from engaging in any activity within the County of Bucks having to do with the construction, operation or maintenance of sewage conveyance or transmission lines, or in the treatment of sewage or in the handling of sewage in any form whatsoever;

(b) directing that pursuant to the terms of the 1978 Agreement, Plumstead transfer to BCWSA or cause to be transferred to BCWSA community sewage treatment plants in the Township, including but not limited to those serving or intending to provide service to the McGinnis Tract, the Timberly Farms development or the Carriage Hill development;

(c) ordering and directing that Plumstead convey to BCWSA any and all interest that it has in any community sewer treatment facilities and collection systems and appurtenances in Plumstead Township;

(d) ordering and directing that Plumstead pay to BCWSA all costs, expenses and damages incurred by BCWSA as a result of Plumstead's breach of the Agreement and in connection with the enforcement of the Agreement between the parties; and

(e) granting such other further relief as may be just and appropriate under the circumstances.

**BEGLEY, CARLIN & MANDIO, LLP**

By: 

Jeffrey P. Garton, Esquire

Attorney I.D. No. 16237

John P. Koopman, Esquire

Attorney I.D. No. 16634

Attorneys for Plaintiff


680 Middletown Boulevard

Langhorne, PA 19047

VERIFICATION

Benjamin W. Jones verifies and says that he is the Executive Director of Bucks County Water and Sewer Authority, and that he is authorized to make this Verification on its behalf; and that the facts and statements contained in the foregoing Complaint are true and correct to the best of his knowledge, information and belief. He understands that false statements contained therein are subject to the provisions set forth in 18 Pa. C.S. Section 4904 relative to unsworn falsification to authorities.

BUCKS COUNTY WATER and  
SEWER AUTHORITY

BY:   
Benjamin W. Jones  
Executive Director

Dated: 8/3/05

AGREEMENT and BILL OF SALE

WITNESS, THIS AGREEMENT entered into the ~~1<sup>st</sup>~~ <sup>November</sup> day of ~~May~~, 1978, between the BUCKS COUNTY WATER AND SEWER AUTHORITY, (hereinafter BCWSA), and the PLUMSTEAD TOWNSHIP MUNICIPAL AUTHORITY, (hereinafter PTMA) and the TOWNSHIP OF PLUMSTEAD, (hereinafter TOWNSHIP).

WHEREAS, BCWSA is a municipal authority created under the Municipality Authorities Act of 1945, by the Commissioners of the County of Bucks to operate, construct and maintain sewerage conveyance facilities; and

WHEREAS, PTMA is an Authority created under the same Act by the Township of Plumstead whose purpose was the construction, maintenance and operation of certain sewerage conveyance lines within portions of the Township; and

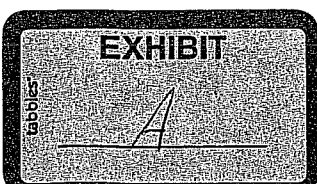
WHEREAS, TOWNSHIP is a Second Class Township existing under the laws of the Commonwealth of Pennsylvania; and

WHEREAS, PTMA has experienced difficulties in the operation and financing of those sewerage transmission lines and its necessary appurtenances within the Township; and

WHEREAS, the BCWSA has as its stated purpose the assistance of local municipalities concerning the service of sewerage facilities; and

WHEREAS, the TOWNSHIP and PTMA have entered into certain discussions and arrived at the conclusion evidenced by certain Resolutions of each municipal body to transfer the sewage conveyance lines to the Bucks County Water and Sewer Authority; and

WHEREAS, BCWSA, PTMA and TOWNSHIP have entered into discussions and participated in certain joint meetings concerning the transfer and/or sale of the assets of the PTMA to BCWSA and to transfer or assign certain commitments to the BCWSA from the United States Department of Agriculture, Farmers Home Administration; and



WHEREAS, BCWSA, PTMA and TOWNSHIP have caused their Solicitors, Engineers, Bond Counsel and advisors to consider all issues concerning the acquisition of the sewage conveyance facilities by the BCWSA and each party hereto having discussed the multiple matters with the said advisors and after consideration and discussion at public meetings, the parties enter into this agreement which is signed in multiple counterparts, each being the same and the effect of the signature on each municipality or municipal authority's copy being as effective as if each of the three acted concurrently do hereby agree as follows:

I. The Plumstead Township Municipal Authority does hereby agree:

(a) For and in consideration of One Dollar (\$1.00) and other good and valuable consideration, PTMA does sell, grant, deliver and convey to BCWSA all of its interest, title and ownership to and in all collection and/or transmission lines now under the ownership of PTMA as well as all appurtenant parts not limited to, but by way of illustration, including manholes, valves, pump stations, and lateral lines as more particularly noted on certain plans and exhibits not attached to this Agreement, but signed and certified by the Chairman of the TOWNSHIP and the PTMA as being the complete and accurate description of same.

(b) PTMA authorizes and directs its Solicitor to transfer to the Solicitor of BCWSA all documents within his file, either making copies or submitting the originals with the understanding that BCWSA and/or its Solicitor will make available for inspection and copy any document within the PTMA Solicitor's file should he require copies.

(c) Said Authority will direct its Engineer or others who may be in possession of engineering plans, reports, data and other information concerning the construction of the system to deliver same to the Engineer of the BCWSA.

(d) PTMA agrees that it will cooperate with the TOWNSHIP and/or any other governmental agency to effect the termination and/or dissolution of the said Plumstead Township Municipal Authority. PTMA further agrees that up to the approval of the Commonwealth of Pennsylvania Corporation Bureau is received dissolving or terminating the said Authority, that it (PTMA) will not engage in any activity within the County of Bucks having to do with the construction, operation or maintenance of sewage conveyance or transmission lines or in the treatment of sewerage or the handling of sewerage in any form whatsoever.

(e) In addition to all the legal and engineering documents, PTMA further agrees to deliver to the BCWSA all its financial records as well as endorsing all bank accounts, savings accounts, certificates of deposit or other forms of investment to the BCWSA.

(f) PTMA will adopt all Resolutions necessary to effect the transfer of its assets to the BCWSA and execute all documents necessary to effect such a transfer, including, but not limited to deeds, assignments of other ownerships of interest in land, bills of sale and other securing instruments. The aforesaid are by way of illustration and are not considered by PTMA to be words of limitation.

(g) PTMA agrees to cause its professional advisors to transfer and assign any interest that it has under policies of insurance and to provide certificates from the insurance carriers, including as named insured on such documents to the BCWSA. Evidence of this insurability shall be delivered contemporaneously with the signing of this document.

(h) PTMA hereby certifies that the attached list of creditors is all of those known as of the date of this agreement.

II. The Township of Plumstead hereby agrees as follows:

(a) TOWNSHIP hereby acknowledges and agrees to all those provisions noted in Section I above and where desirable or necessary, agrees to comply with all the provisions stated therein.

(b) TOWNSHIP will cause its Solicitor to proceed as quickly as possible to attend to the winding up, dissolution or termination of the Plumstead Township Municipal Authority.

(c) TOWNSHIP warrants that it is not the owner of any land, easements, rights-of-way or sewer lines or their appurtenant parts which are considered necessary to the operation of the sewage collection facilities within the Township of Plumstead. If it is discovered at any time that the TOWNSHIP does have an interest in any facility deemed necessary by BCWSA to be part of the Plumstead sewage collection system, the TOWNSHIP will resolve, execute and deliver all documents necessary to effect a transfer to BCWSA.

(d) In addition to all the legal and engineering documents, PTMA further agrees to deliver to the BCWSA all its financial records as well as endorsing all bank accounts, savings accounts, certificates of deposit or other forms of investment to the BCWSA.

III. Bucks County Water and Sewer Authority

agrees as follows:

(a) BCWSA will accept the sale, transfer, conveyance or dedication of all sewerage lines, parcels of lands, easements or rights-of-way as well as any appurtenant structures necessary to the operation of the sewerage system within portions of the Township of Plumstead.

(b) That portion of the sewage facility being transferred to the BCWSA will be operated as a part of the BCWSA sewerage collection system.

(c) The sewerage system hereby conveyed by this Agreement will be operated in a good and workmanlike manner within a sewer zone to be created for that section of the Township which is concerned with this agreement and that the rates charged to those residents within the sewer district shall be that which is necessary to operate within such a district.

(d) That once transferred, BCWSA will operate and maintain the system in a good and orderly fashion.

(e) That BCWSA will create a sewer district for the system being acquired and that the annual rental charges will be in the aggregate sufficient to pay debt service and all charges attributable to the Plumstead Sewer District.

WITNESS our hands and seals the date first above written.

BUCKS COUNTY WATER & SEWER AUTHORITY

PLUMSTEAD TOWNSHIP

PLUMSTEAD TOWNSHIP MUNICIPAL AUTHORITY

*[Signature]*  
Chairman

*[Signature]*  
Chairman

*[Signature]*  
Chairman

Vice-Chairman

Vice-Chairman

Vice-Chairman

Secretary

Secretary

Secretary


*[Signature]*  
Treasurer

Treasurer

Asst. Treas/Sec.

*[Signature]*  
Asst. Treas/Sec.


, being duly sworn according to law, deposes and says that he is the \_\_\_\_\_ of the Bucks County Water and Sewer Authority and that the within Agreement was approved at a regular or special meeting of the Authority on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 1978 at which time, by a majority vote of the Board the Agreement was accepted and signed.

  
Secretary

, being duly sworn according to law, deposes and says that he is the \_\_\_\_\_ of the Plumstead Township and that the within Agreement was approved at a regular or special meeting of the Township Supervisors on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 1978 at which time, by a majority vote of the Board the Agreement was accepted and signed.

\_\_\_\_\_  
Secretary

, being duly sworn according to law, deposes and says that he is the \_\_\_\_\_ of the Plumstead Township Municipal Authority and that the within Agreement was approved at a regular or special meeting of the Authority on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 1978, at which time, by a majority vote of the Board the Agreement was accepted and signed.

  
Secretary