

COMMONWEALTH v. BLOOM, C.P. Franklin County Branch,
No. 4 of 1981

Criminal Action - Violation of Township Ordinance - Connection to Sanitary Sewer

1. The fact that the defendants property lies five and one-half feet below a sewer lateral and would require defendant to install a pump to hook onto the system does not render defendant's property inaccessible to the sewer.
2. Where a municipal ordinance requires the land owners to pay all costs and expenses of connecting his property to a sewer, the cost of purchasing, installing and maintaining a pump necessary to move the sewage to the municipal sewer system is borne by the landowner.

Jan G. Sulcove, Esq., Attorney for Commonwealth

Stephen E. Patterson, Esq., Attorney for Commonwealth

William C. Cramer, Esq., Attorney for Defendant

OPINION AND ORDER

EPPINGER, P.J., August 31, 1981:

H. Richard Bloom was charged twice with violating a provision of a Washington Township, Pennsylvania ordinance requiring him to connect his home to a sanitary sewer. He was found guilty at a summary trial of both offenses and sentenced to pay a fine of \$25.00 and costs in each case. He appealed the decision of the District Justice of the Peace to this Court and we held a hearing de novo and now find the defendant guilty of both counts.

The specifics of the charges are that after receiving notice, Bloom refused to connect his home situated at 14398 Charmain Road to the Washington Township Municipal Authority Sewage System within the required sixty days, all as provided by Washington Township Ordinance No. 54, Sec. 2.01, which provides:

The Owner of any property accessible to and whose principal building is within 150 feet from the Sewer System shall connect such property with and shall use such Sewer System, in such manner as this Township may require, within 60 days after notice to such Owner from this Township to make such connection, for the purpose of discharge of all Sanitary Sewage and Industrial Waste from such Property; Subject, how-

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ever, to such limitations and restrictions as shall be established herein or otherwise shall be established by this Township, from time to time.

Bloom's argument is that he is not required to connect because his house, built on a slab with the sewer outlet away from the main, is five and one-half feet below the lateral and therefore is not accessible to the sewer. He discounts the feasibility of a pumping system to elevate his sewage because, he says, they haven't worked in other situations, resulting in back-up of sewage.

While a tenable argument could be made that is is the property which must be accessible to the sewage system and that if it is the main building that must be connected, we will examine the accessibility of the house. In this connection defense counsel cited no cases specifically enumerating factors (e.g. lack of gravity flow) which would render a structure inaccessible to a sewage system, nor have we. However, it seems right to liken this case to those in which property owners challenge the assessment, claiming they are not benefitted by a municipal sewage system because of circumstances peculiar to their situation.

We conclude that Bloom's property is accessible to the sewer system. The fact that he must use a pump to connect does not render it inaccessible. *Ellport Borough v. Hoque*, 34 D & C 2d 439 (C.P. Lawrence, 1964); *Chippewa Township Sanitary Authority v. Burget*, 72 D & C 2d 727 (C.P. Beaver, 1969). See also *Appeal of Jacob*, 13 Chester 55 (1964). In *Chippewa*, as here, the first floor of the owner's home was lower than the sewer line and he had to install a pump to connect to it. The court upheld the assessment saying the property was benefitted even though the owner had to install and maintain a pump himself.

We recognize that this is a criminal case and that the burden of the Commonwealth is to prove the case beyond a reasonable doubt. We find the Commonwealth has met that burden and that the evidence introduced by the defendant is not sufficient to overcome its effect.

As an alternative argument, Bloom seems to contend that even if he is required to hook up to the system the Authority should be required to install and maintain the pump and that until that is done, he cannot be found guilty of a violation of the ordinance.

"Sewer system" is defined in the ordinance to include,

among other things, "all facilities...for...pumping...sanitary sewage... owned by the Authority." See Ordinance 54, Sec. 1.01L.(Emphasis supplied.) The pump required in Bloom's installation will not be owned by the Authority but by Bloom. He is required to see that his sewage is pumped to the Authority system. According to Sec. 3.05 of the Ordinance, all costs and expenses of connection of a building sewer to a sewer are to be borne by the owner of the building.

ORDER OF COURT

August 31, 1981, the Defendant H. Richard Bloom is found guilty of two counts of failing to connect to a sewer as charged and is sentenced to pay the costs of prosecution, the costs of appeal and a fine of \$25.00 in each case.

GALLAGHER v. WHITE ROCK, INC. C.P. Franklin County Branch, A.D. 1980 - 323

Tresspass and Assumpsit - New Home - Implied Warranty of Habitability - Damages

1. A builder - vendor impliedly warrants that a home he has built and is selling is constructed in a reasonably workmanlike manner and that it is fit for the purpose intended - habitation.
2. Where plaintiffs allege various defects in the roof of their new home, but do not allege such defects have caused water to come into the house, there is no breach of implied warranty of habitability.
3. A breach of the implied warranty of habitability requires proof of a major impediment to habitation.
4. A defect posing a major threat to health and safety is an impediment to habitation.
5. Plaintiffs are not entitled to recover architects fees incurred in ascertaining the extent of alleged defects.
6. Plaintiffs may claim damages for annoyance, inconvenience and discomfort in trespass, but not in assumpsit.

John F. Nelson, Esq., Attorney for Defendant

Stephen E. Patterson, Esq., Attorney for Plaintiffs