

GUEST FARM VILLAGE, Plaintiff, v. VICTORIA CHURCHEY, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action — Law, No. 2006–3087

Petition to Vacate Award — Personal Jurisdiction — Agency — Homeowners' Association

1. Objections to personal jurisdiction may be waived by the filing of an answer challenging the merits of the case.
2. When a homeowners' association answers on behalf of members who have been sued as individuals and not as members of the association, personal jurisdiction over the members exists only if the association was authorized to file such an answer.
3. The homeowners' association agreement may authorize the association to file an answer on behalf of individual members.
4. Where a homeowners' association agreement merely permits the association to sue its members to collect fees due to the association, the agreement does not impliedly empower the association to defend a lawsuit that a third party has initiated against individual members of the association.
5. An arbitration award that has been entered in the absence of personal jurisdiction over the defendant must be vacated.

Appearances:

James M. Stein, Esq., *Counsel for Plaintiff/Respondent*

Clinton T. Barkdoll, Esq., *Counsel for Defendants/Respondents*

Victoria Churchey, *Petitioner*

OPINION

Facts

The Court must decide Victoria Churchey's Petition to Vacate Award. This case began as a suit by Plaintiff, Guest Farm Village, for overdue sewer fees. Although all defendants were members of the same Homeowners' Association, they were sued as individual home owners and not as members of the Association. Nonetheless, the board of directors of the Association hired Clinton Barkdoll, Esq. to represent the interests of the individual members who had been sued. The association believed that the "Bylaws and Authority" permitted them to do this. Churchey strenuously objected to the arrangement and, from the outset, disavowed any participation with Mr. Barkdoll's representation. Ms. Churchey was never properly served with a copy of the complaint, as required under Pa. R.C.P. 402 (a).^[1] On January 31, 2007, Mr. Barkdoll filed an answer to the complaint. The answer purported to be on behalf of all defendants including Ms. Churchey. At the pretrial conference, the Court ordered the case to arbitration pursuant to local rule. On April 11, 2008, the panel returned an award in Plaintiff's favor and against the individual defendants. The award held Churchey responsible for \$2,320 in overdue sewer fees. On May 9, 2008, Churchey filed her Petition to Vacate Award, and, on August 25, 2008, the Court held a hearing on the Petition. The parties agreed that the only issue to be determined at the hearing was whether Churchey had waived an objection to personal jurisdiction when Mr. Barkdoll filed an answer on her behalf. The Court will now resolve that issue.

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Discussion

Objections to personal jurisdiction may be waived by the filing of an answer challenging the merits of the case. Crown Construction Company v. Newfoundland American Insurance Company, 239 A.2d 452, 454 (Pa. 1968). Here, an answer on the merits was entered on Churchey's behalf by counsel retained by the Homeowners' Association. Since Churchey never specifically authorized the Association to represent her interests, the determinative issue becomes whether the "Bylaws and Authority" of the Association impliedly authorized it to do so. The Association and the plaintiff argue that the "Bylaws and Authority" created an agency agreement between the Association and all lot owners authorizing the Association to initiate litigation on behalf of the group. Exhibit C at 13. This argument extends the scope of the agency relationship beyond that intended by the parties.

"The paramount goal of contract interpretation is to ascertain and give effect to the parties' intent." Laudig v. Laudig, 624 A.2d 651, 653 (Pa. Super. 1993). As a result of her April 4, 1999 deed, Churchey is a member of the Association and, thus, is subject to the "Bylaws." But the "Bylaws" do not authorize the Association to engage defense counsel to represent individuals in a suit for damages brought by a third party. Specifically, Article II of the "Bylaws" provides that the Association shall own the sewage treatment plant, and, as long as it owns the plant, it shall have the right to collect fees for use and maintenance of the plant. Exhibit C at 7-10. Also, the "Bylaws" give it the right to initiate litigation to collect sewer fees and to do anything necessary to "own control, regulate or maintain the sewage treatment plant. Id. at 7, 10. Through these provisions, the parties intended to empower the Association to take any measures necessary to collect sewer fees owed to it. However, the provisions do not permit the Association to defend an action initiated by a third party owner of the sewage plant against the individual lot owners for overdue sewer bills. Thus, the "Bylaws" did not authorize the Association to retain Clinton Barkdoll, Esq., to represent Churchey and file an answer on her behalf. Finally, since the answer was not filed on her behalf, Churchey has not answered the complaint on its merits, and she has not waived her objection to this Court's personal jurisdiction over her. Accordingly, the arbitration award was

entered against Ms. Churchey without personal jurisdiction over her, and she is entitled to have it vacated. The Court will do so.

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Conclusion

In conclusion, Churchey is entitled to have the arbitration award vacated because she was not personally served with a copy of the complaint and she has not waived an objection to personal jurisdiction through the filing of Mr. Barkdoll's answer. The award will be vacated, but the complaint against Churchey will not be dismissed. Rather, Plaintiff will be permitted to continue to press the claim against Churchey provided it serves her with the complaint in compliance with the Rules of Civil Procedure.

ORDER OF COURT

August 29, 2008, the Court having reviewed the Petition to Vacate Award of Defendant, Victoria Churchey, the answers of Guest Farm Village and the Homeowners' Association, the record, the arguments, and the law, it is hereby ordered that Defendant's Petition to Vacate Award is granted. Plaintiff may serve Churchey in accord with the Rules of Civil Procedure and continue the action against her.

[\[1\]](#) The parties stipulated to this at the August 25, 2008, hearing held on Churchey's petition.