

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation of W.P. Water Company, Inc. And W.P. Sanitary Company, Inc.	:	I-00070114
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W.P Water Company, Inc. and W.P. Sanitary Company, Inc.	:	P-00072313
	:	
	:	
Application of W. P. Sanitary Company, Inc. For Approval to Abandonment of Service	:	A-230550F2000
	:	

**DOCUMENT
FOLDER**

INTERIM ORDER
CONSOLIDATING PETITION AND MOTION AND GRANTING MOTION

Before
Ember S. Jandebeur
Administrative Law Judge

HISTORY OF PENDING PETITION FOR EXPEDITED HEARING
AND MOTION FOR ORDER

This Investigation, Petition, and Application cited above are currently in mediation in hopes that the parties can amicably resolve the issues without resort to litigation.

On May 6, 2008, W.P. Water Company, Inc. and W.P. Sanitary Company, Inc. filed an Emergency Petition for Expedited Hearing on Unauthorized Liens and Mortgages against Regulated Public Utilities. (Petition)

On May 9, 2008, the Commission's Law Bureau Prosecutory Staff (LBPS) filed a Motion for an Order Declaring Mortgage Liens Invalid and Ineffective Pursuant to 66 Pa. C.S. § 2102. (Motion)

On May 27, 2008, Aqua Pennsylvania, Inc. and Little Washington Wastewater Company filed an Answer to Motion and an Answer to Petition. (Answers) No other answers to the Motion and Petition were received by the administrative law judge (ALJ).

For purposes of this Interim Order, the Petition and Motion are consolidated and will be considered together.

DISCUSSION

I. Filing Petitions, Motions and Answers to Pleadings:

The filing of petitions is addressed at 52 Pa. Code § 5.41. The filing of motions is addressed at 52 Pa. Code § 5.103. Answers to pleadings is addressed at 52 Pa. Code § 5.61, this includes answers to petitions and motions. Parties failing to file an answer to a pleading within the applicable period may be deemed to be in default and the relevant facts stated in the pleadings may be deemed admitted. See 52 Pa. Code § 5.61 (c).

The Petition filed by W.P. Water Company, Inc. and W.P. Sanitary, Inc. requested an expedited hearing and that I recommend to the Commission that certain liens and mortgages be declared void. The Petition was accompanied with a certificate of service indicating that the following were served: PUC; Office of Consumer Advocate (OCA); Anthony Litwin, Esq.; Kim Borland, Esq.; Michael Klein, Esq.; United Water PA, Inc.; LBPS; DEP; Wyoming County District Attorney; Aqua America, Inc.; PA American Water, Inc.; Carl L. Kresge & Sons, Inc.; Carl and Sandra Kresge, and myself. As indicated above, the only answer to the Petition that was received was from Aqua America, Inc. and Little Washington Wastewater Company.

Therefore, the remaining served parties as represented by counsel or as listed, PUC, OCA, Litwin, Kimberly Borland, Esq., Michael Klein, Esq., United Water, PA, Inc.; LBPS; DEP; Wyoming County District Attorney, PA American Water, Inc. Carl L. Kresge & Sons, Inc. and Carl and Sandra Kresge are deemed to be in default and the facts alleged in the

Petition are deemed admitted. 52 Pa. Code § 5.61. No objections to the Petition were filed by any party.

The Motion filed by LBPS requested that I find certain mortgages and liens void. The Motion was accompanied by a certificate of service indicating that the following were served: myself; Ernest D. Preate, Esq.; Kimberly Borland, Esq.; Boyd Hughes, Esq.; Anthony Litwin, Esq.; OCA; DEP; Michael Klein, Esq.; Thomas Niesen, Esq.; Joseph Albert, Esq.; and Carl L. Kresge & Sons. As indicated above, the only Answer to the Motion received was from Aqua America, Inc. and Little Washington Wastewater Company.

Therefore, the remaining served parties as represented by counsel or as listed, Ernest D. Preate, Esq., Kimberly Borland, Esq., Boyd Hughes, Esq., Anthony Litwin, Esq., OCA, DEP, Michael Klein, Esq. Joseph Albert, Esq. (counsel for Carl L. Kresge & Son); and Carl L. Kresge & Sons are deemed to be in default and the facts alleged in the Motion are deemed admitted. 52 Pa. Code § 5.61. No objections to the Motion were filed by any party.

II. Encumbrances at Issue:

1. Mortgage and Security Agreement by Fox Rothchild, LLP against W.P. Sanitary Co., Inc. at Wyoming County, PA, Mortgage Book 594. (See ¶ 9(a) of the Petition and ¶ 7(a) of the Motion.)
2. Mortgage agreement between W.P. Water Company, Inc. with Carl L. Kresge & Sons, Inc. for \$1,624,321.92. Filed October 4, 2007. (See ¶ 9(c)(i) of the Petition and ¶ 7(b) of the Motion.)
3. Mortgage agreement between W.P. Sanitary Company, Inc. with Carl L. Kresge & Sons, Inc. for \$1,624,321.92. Filed October 4, 2007. (See ¶ 9(c)(ii) of the Petition and ¶ 7(c) of the Motion.)
4. Mechanic's lien filed by Carl L. Kresge & Sons, Inc. against W.P. Sanitary Company for \$343,479.18 on March 12, 2008. (See ¶ 9(d)(i) of the Petition and ¶ 8(a) of the Motion.)

5. Mechanic's lien filed by Carl L. Kresge & Sons, Inc. against W.P. Water Company for \$186,567.48 on March 12, 2008. See ¶ 9(d)(iii) of the Petition and ¶ 8(b) of the Motion (The figure in the Motion is listed as \$186,564.48.)
6. Mechanic's lien filed by Carl L. Kresge & Sons, Inc. against W.P. Water Company (Sleepy Hollow) for \$93,199.77 on March 11, 2008. (See ¶ 9(d)(ii) of the Petition and ¶ 8(c) of the Motion.)
7. Judgment and lien filed by DEP against [not indicated in the Petition] for \$9,270.00. (See ¶ 9(b) Petition. This does not appear in the Motion.)

II a:

Question: Can the Commission declare "null and void"¹ these seven liens and mortgages as provided in W.P. Water Company, Inc. and W.P. Sanitary Company, Inc.'s Petition and the LBPS's Motion? In some instances, yes. For example, encumbrance 2 and 3 listed above are encumbrances entered into by W.P. Water Company, Inc. and W.P. Sanitary Company, Inc. with its affiliated interest, Carl L. Kresge & Sons. Both the W.P. Water and W.P. Sanitary are public utilities and as such are regulated by the Public Utility Code and its supporting regulations. Neither W.P. Water Company, Inc., nor W.P. Sanitary Company, Inc. can issue or assume securities without filing with and receiving from the Commission, notice of registration of a securities certificate. 66 Pa. Code § 1901 (a). Issuance of a security is defined broadly, and includes; "any act of a public utility executing ... evidence of equitable interest in itself...or other evidence of indebtedness of itself." 66 Pa. C.S. § 1901 (b). Clearly, the encumbrances made by W.P. Water Company, Inc. and W.P. Sanitary Company, Inc. with its affiliated interest², Carl L. Kresge & Sons fit this definition. It is also equally clear that neither W.P. Water Company, Inc. nor W.P. Sanitary Company, Inc. registered the encumbrance. The encumbrances by and between W.P. Water Company, Inc. and W.P. Sanitary Company, Inc.

¹ The relief requested in W.P. Water Company, Inc., and W.P. Sanitary Company, Inc.'s Petition is "[M]ake a recommendation to the Commission that such liens and mortgages are null and void and must be stricken from the public records as against and contrary to the public interest under the circumstances of this case."

² An "affiliated interest" is defined at 66 Pa. C.S. § 2101. Carl L. Kresge & Sons is an affiliated interest of W.P. Water Company, Inc. and W.P. Sanitary Company, Inc.

with its affiliated interest, Carl L. Kresge & Sons were made in violation of the Code and are against the public interest, both are void. 66 Pa. C.S. § 1904.

II b.

Of the remaining encumbrances, not enough information was provided to make a determination whether the Commission has the authority necessary to void them. Therefore, a hearing will be scheduled to address the remaining encumbrances.

CONCLUSIONS OF LAW

1. Under such regulations as the commission may prescribe, every public utility, before it shall issue or assume securities, shall file with the commission and receive from it, notice of registration of a document to be known as a securities certificate. 66 Pa. C.S. § 1901(a).

2. Issuance of securities includes any act of a public utility executing...evidence of equitable interest in itself...or other evidence of indebtedness of itself. 66 Pa. C.S. § 1901(b).

3. Assumption of securities includes any act of a public utility assuming primary or contingent liability for the payment of ...any principal or interest of any indebtedness, created or incurred by any other person or corporation. 66 Pa. C. S. § 1901(c).

4. In addition to any other penalty provide in this part for any violation of this chapter, the commission, after due consideration of the public interest, may declare void any securities issued, or any assumption of securities made in violation of this chapter. Any such declaration shall not be construed as a bar to the recovery, by an innocent holder-for-value of such securities, of any losses sustained by reason of the wrongful acts of the issuing or assuming public utility. 66 Pa. C.S. § 1904

ORDER

THEREFORE,

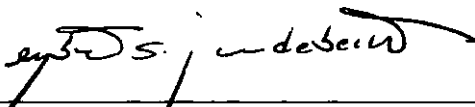
IT IS ORDERED:

1. That the mortgage agreement between W.P. Water Company, Inc. with Carl L. Kresge & Sons, Inc. for \$1,624,321.92, filed October 4, 2007, recorded in Wyoming County at Document No. 2007-4066 is void. W.P. Water Company, Inc., shall bear the responsibility and cost of removing the mortgage agreement from the Wyoming County files.

2. That the mortgage agreement between W.P. Sanitary Company, Inc. with Carl L. Kresge & Sons, Inc. for \$1,624,321.92, filed October 4, 2007, recorded in Wyoming County at Document no. 2007-4065. W.P. Sanitary Company, Inc. shall bear the responsibility and cost of removing the mortgage agreement from the Wyoming County files.

3. That the remaining encumbrances shall be set for hearing.

Date: June 18, 2008



Ember S. Jandeur
Administrative Law Judge