

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elchanan and Esther Abergel	:	
	:	
v.	:	C-2018-3003563
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION GRANTING MOTION FOR JUDGMENT  
ON THE PLEADINGS AND DISMISSING COMPLAINT**

Before  
David A. Salapa  
Administrative Law Judge

INTRODUCTION

Two customers filed a complaint against their natural gas utility alleging that there are incorrect charges on their utility bill. This decision dismisses the customers' complaint because the customers previously filed a complaint with the Pennsylvania Public Utility Commission (Commission) raising the same issues and the Commission issued a decision dismissing the prior complaint.

HISTORY OF THE PROCEEDING

On July 6, 2018, Elchanan and Esther Abergel (Complainants) filed a complaint with the Commission against Philadelphia Gas Works (Respondent). The complaint alleges that there are incorrect charges on the Complainants' bill. By way of further explanation, the complaint states "There was already a hearing, but after the decision was made by the ALJ, PGW filed an exception but never informed us in mail or phone call so we could not respond."

Attached to the complaint is a document. The document sets forth in detail the basis of the Complainants' complaint. The document further states that the Commission conducted two hearings on November 3, 2016 and January 30, 2017 on a prior complaint. The document asserts that after the hearings an initial decision was issued directing the Complainants to pay \$19.76.

The document asserts that the Respondent filed exceptions but did not inform the Complainants that it had filed the exceptions. Attached to the complaint is a copy of the Commission's Opinion and Order dated May 22, 2018 at F-2016-2547528 adjudicating the Complainants' complaint.

The May 22, 2018 Opinion and Order indicates that the Respondent filed exceptions to the initial decision but that no reply exceptions had been filed. The May 22, 2018 Opinion and Order reversed the initial decision and dismissed the Complainants' complaint.

The complaint requests that the Complainants be given an opportunity to respond to the Respondent's exceptions. The complaint also requests that the Commission direct the Respondent to provide the Complainants with a \$500.00 rebate.

On August 7, 2018, the Respondent filed an answer in response to the Complainants' complaint. The answer admits that the Respondent provided natural gas service to the Complainants at the address stated in the complaint.

The answer denies that there are incorrect charges on the Complainants' bill. The answer asserts that the Complainants are attempting to relitigate issues and claims that were previously raised and fully resolved in the proceeding at F-2016-2547528.

The answer admits that the Respondent filed exceptions to the initial decision at F-2016-2547528. The answer states that the Respondent served a copy of its exceptions on the Complainants via Federal Express. The Federal Express receipts and tracking information indicate that the exceptions were delivered to the Complainants. Copies of the Federal Express

receipts and tracking information are attached to the answer and marked as Exhibits A and B. The answer requests that the Commission dismiss the Complainants' complaint.

Also, on August 7, 2018, the Respondent filed a motion for judgment on the pleadings. The motion for judgment on the pleadings contends that the Commission should dismiss the complaint because it raises the same issues and claims raised in the complaint at F-2016-2547528. The motion for judgment on the pleadings requests that the Commission dismiss the Complainants' complaint.

By notice dated September 14, 2018, the Commission notified the parties that it had assigned the case to me as motion judge. As of the date of this decision, the Complainants have not filed an answer to the motion for judgment on the pleadings. The motion for judgment on the pleadings is ready for decision. For the reasons set forth below, I will grant the motion for judgment on the pleadings.

#### FINDINGS OF FACT

1. The Complainants in this case are Elchanan and Esther Abergel.
2. The Respondent in this case is Philadelphia Gas Works.
3. On July 6, 2018, the Complainants filed a complaint against the Respondent.
4. On August 7, 2018, the Respondent filed an answer in response to the Complainants' complaint.
5. On August 7, 2018, the Respondent filed a motion for judgment on the pleadings.
6. The Complainants did not file an answer to the Respondent's motion for judgment on the pleadings.

7. The Complainants filed a formal complaint on May 10, 2016 with the Commission docketed at F-2016-2547528.

8. The Commission issued an Opinion and Order on May 22, 2018 at F-2016-2547528 which reversed the initial decision and dismissed the Complainant's complaint.

### DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.102 govern motions for judgment on the pleadings. Generally, the moving party bears a heavy burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law.

The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa.Super. 1983); Mertz v. Lakatos, 381 A.2d 497 (Pa.Cmwlth. 1978). It must accept as true all well pleaded statements of fact of the non-moving party and consider only those facts that the non-moving party specifically admits. Weik v. Estate of Brown, 794 A.2d 907 (Pa.Super. 2002). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Thomson Coal Company v. Pike Coal Company, 412 A.2d 466 (Pa. 1979).

The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. Williams v. Lewis, 466 A.2d 682 (Pa.Super. 1983); Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a Dominion Peoples, Docket No. C-20028539 (Opinion and Order entered December 19, 2003). Judgment on the pleadings should be entered only when the case is clear and free from doubt. Reuben v. O'Brien, 496 A.2d 913 (Pa.Super. 1985).

Having reviewed the standards for granting a motion for judgment on the pleadings, I will briefly explain the doctrines of res judicata and collateral estoppel. The doctrines of res judicata and collateral estoppel apply to cases brought before the Commission. O'Toole v. Bell Telephone Company of Pennsylvania, Inc., 77 Pa. PUC 98 (1992).

Res judicata, which is also known as claim preclusion, is the concept that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties. Hopewell Estates, Inc. v. Kent, 646 A.2d 1192 (Pa.Super. 1994). For the doctrine of res judicata to apply, four conditions must be met: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality and capacity of the parties suing or sued. Day v. Volkswagenwerk Aktiengesellschaft, 474 A.2d 1313 (Pa.Super. 1983).

Similar to the doctrine of res judicata is the doctrine of collateral estoppel or issue preclusion. Collateral estoppel is a doctrine of issue preclusion that seeks to prevent the relitigation of a finally litigated issue of law or fact in a subsequent proceeding between the same parties. Baker v. Pa. Human Relations Comm'n., 462 A.2d 881 (Pa.Cmwlth. 1983). For the doctrine of collateral estoppel to apply, four requirements must be met: (1) the issues decided in the prior adjudication are identical to the ones presented in the later action, (2) there was a final judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication, and (4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in question in the prior action. Day v. Volkswagenwerk Aktiengesellschaft, 474 A.2d 1313 (Pa.Super. 1983).

In addition to the doctrines of res judicata and collateral estoppel, the complaint in this case may be barred by 66 Pa.C.S. § 316 which states in part:

Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review. . . .

66 Pa.C.S. § 316 (emphasis added).

Having briefly explained the doctrines of res judicata and collateral estoppel and set forth the statute at 66 Pa.C.S. § 316, I will now view the factual averments in the complaint and attachments as true for purposes of disposing of the motion for judgment on the pleadings. Those averments in the complaint are that the Commission conducted a hearing.

The averments in the copy of the Commission's Opinion and Order dated May 22, 2018 at F-2016-2547528 adjudicating the Complainants' prior complaint and attached to the current complaint indicate that the issues in the prior proceeding are the same as the issues set forth in the current complaint.

The complaint at F-2016-2547528 alleged that there were incorrect charges on the Complainants' bill because the Respondent claimed the Complainants had stolen gas and requested that the Complainants pay \$850.00. The complaint at F-2016-2547528 stated that the Complainants had installed a high efficiency heater and were entitled to a \$500.00 rebate. The complaint at F-2016-2547528 requested that the Commission order the Respondent to correct the Complainants' bill. The allegations in the prior complaint are identical to the assertions in the current complaint.

Having reviewed the facts set forth in the prior complaint at F-2016-2547528, I will now discuss whether the complaint in this case is barred by res judicata. I conclude that the complaint in this case should be barred by res judicata because there is identity of issues, identity of causes of action, identity of persons and parties to the action, and identity of the quality and capacity of the parties suing or sued between the proceeding docketed at F-2016-2547528 and the complaint in this proceeding.

The issues in the proceeding docketed at F-2016-2547528 and the complaint in this proceeding are identical. The complaint in this case acknowledges that there was a prior proceeding concerning the Complainants' billing dispute, that there had been hearings in that prior proceeding and that the Commission issued an opinion and order in the prior proceeding.

The causes of action are identical since both are complaints before the Commission involving allegations of incorrect charges on the Complainants' bill and the Complainants' claim that they are entitled to a rebate from the Respondent.

Concerning identity of the parties, the Complainants at F-2016-2547528 are the same individuals that filed the current complaint. Therefore, the parties are identical, and the quality and capacity of the parties suing or sued are identical. Since all four of these conditions are met, res judicata should apply to bar the complaint in this proceeding.

The Commission issued an Opinion and Order on May 22, 2018 at F-2016-2547528. The Complainants did not file a petition for reconsideration or an appeal of that Opinion and Order.

The issues at F-2016-2547528 were resolved by the Commission through its May 22, 2018 Opinion and Order after the ALJ conducted hearings where the Complainants had the opportunity to present their case. Accordingly, the Complainants cannot file another complaint raising the same issues because the issues have already been resolved in the May 22, 2018 Opinion and Order at F-2016-2547528.

The doctrine of res judicata and the provision at 66 Pa.C.S. § 316 preclude the Complainants from pursuing the same claims they raised in the prior complaint at F-2016-2547528. Since the doctrine of res judicata and the statute at 66 Pa.C.S. § 316 bar the claims raised in the Complainants' complaint, I will dismiss the complaint.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. In ruling on a motion for judgment on the pleadings, the Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit

of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa.Super. 1983); Mertz v. Lakatos, 381 A.2d 497 (Pa.Cmwlth. 1978).

3. The Commission must accept as true all well pleaded statements of fact of the non-moving party and consider only those facts that the non-moving party specifically admits. Weik v. Estate of Brown, 794 A.2d 907 (Pa.Super. 2002).

4. All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Thomson Coal Company v. Pike Coal Company, 412 A.2d 466 (Pa. 1979).

5. For the doctrine of res judicata to apply, four conditions must be met: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality and capacity of the parties suing or sued. Day v. Volkswagenwerk Aktiengesellschaft, 474 A.2d 1313 (Pa.Super. 1983).

6. A complainant will be prohibited from raising the same issues before the Commission a second time. 66 Pa.C.S. § 316.

7. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2018-3003563 is dismissed without hearing.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion for judgment on the pleadings of Philadelphia Gas Works at Docket No. C-2018-3003563 is granted.

