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2016 IL App (3d) 150425
(Consolidated with 150426)

Order filed June 2, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2016

VILLAGE OF BOLINGBROOK, an Illinois Municipal Corporation,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellant,)	
v.)	Appeal No. 3-15-0425
)	Circuit No. 10-CH-6838
ILLINOIS-AMERICAN WATER COMPANY, an Illinois Corporation, and AMERICAN LAKE WATER COMPANY, an Illinois Corporation,)	Honorable Theodore J. Jarz Honorable Michael J. Powers, Judges, Presiding.
Defendants-Appellees.)	

VILLAGE OF BOLINGBROOK, an Illinois Municipal Corporation,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0426
)	Circuit No. 10-CH-6838
ILLINOIS-AMERICAN WATER COMPANY, an Illinois Corporation, and AMERICAN LAKE WATER COMPANY, an Illinois Corporation,)	Honorable Theodore J. Jarz, Judges, Presiding.
Defendants-Appellants.)	

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice O'Brien and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The Illinois Commerce Commission has exclusive jurisdiction over plaintiff's claim. The judgment of the circuit court of Will County is void.

¶ 2 The plaintiff brought a breach of contract claim against the two defendant utilities in the circuit court of Will County. The suit alleges that defendants' breach of contract resulted in an overcharge to plaintiff. Defendants moved to dismiss, arguing the Illinois Commerce Commission (Commission) had exclusive jurisdiction over plaintiff's claim. The trial court denied defendants' motion. Both sides moved for summary judgment. The trial court granted summary judgment in favor of the plaintiff, finding that defendants breached the contract. The trial court also ruled that the Commission should determine damages. Plaintiff appeals the trial court's ruling that the Commission is the proper forum to determine damages. Plaintiff insists that damages should be determined by the trial court. In a separate appeal, defendants argue the trial court did not have jurisdiction to hear plaintiff's complaint. In the alternative, defendants assert that the trial court erred in finding that either defendant breached the agreement at issue. We consolidate the two appeals. We find that the trial court does not have jurisdiction to hear plaintiff's complaint and the trial court's judgment is therefore void.

¶ 3 BACKGROUND

¶ 4 In April 1996, American Lake Water Company's (ALWC) predecessor in interest, Citizens Water Resource Company (CWRC), entered into an agreement with Bolingbrook for the delivery of water to the village. The 1996 delivery agreement defined CWRC's obligation to deliver water to Bolingbrook from Lake Michigan through a pipeline owned and operated by

CWRC. Bolingbrook was considered an “initial customer” under the terms of the agreement, assisting CWRC in its mission to service “additional customers.”

¶ 5 In exchange for becoming part of its burgeoning customer base, CWRC offered Bolingbrook a concession, which was listed in section 7.5 of the 1996 delivery agreement. That section states, in pertinent part, as follows:

“Initial Customers Pricing. [CWRC] represents and warrants that the Unit Charge for delivery of Lake Michigan Water to all Initial Customers (including CUCI, but only with respect to CUCI’s Homer Township and West Suburban & Santa Fe Water Districts) shall be calculated as provided in this Article VII. Notwithstanding anything to the contrary set forth in this Agreement, in the event that the actual Unit Charge for the delivery of Lake Michigan Water to any Initial or Additional Customer is less than would otherwise be calculated under this Article VII (the ‘Lesser Unit Charge’), then the Lesser Unit Charge shall automatically be the Unit Charge for Lake Michigan Water delivered to the Customer hereunder.”

¶ 6 In October 1996, Illinois-American Water Company’s (IAWC) predecessor in interest, Citizens Utilities Company of Illinois (CUCI), entered into an asset purchase and exchange agreement with CWRC and Bolingbrook. In the agreement, Bolingbrook agreed to transfer its water system to CUCI, who became the sole provider of water to Bolingbrook users. Under the terms of the agreement, CUCI and CWRC agreed that Bolingbrook, as a third party beneficiary, would retain the right to enforce the April 1996 water agreement. The asset exchange agreement also stated that Bolingbrook “shall have the right to enforce or compel performance of any of the

covenants*** [which included section 7.5 of the 1996 water delivery agreement] in law or in equity, by suit, action, mandamus, or any other proceeding, including specific performance, until January 1, 2037.” Prior to the closing of this agreement, IAWC purchased the assets of CUCI and assumed its obligations at closing.

¶ 7 In September 2003, ALWC agreed to deliver water to the Village of Plainfield (Plainfield). By the terms of the agreement, ALWC agreed to provide Plainfield a 10 cent reimbursement for every 1,000 gallons of Lake Michigan water delivered. IAWC (and, therefore, Bolingbrook) did not receive the same reimbursement. ALWC and Plainfield amended their agreement in November 2008, eliminating the 10 cent reimbursement.

¶ 8 After learning that Plainfield had been reimbursed by ALWC, Bolingbrook filed this breach of contract action against IAWC and ALWC in November 2010. Bolingbrook claimed that ALWC’s reimbursements to Plainfield between 2003 and November 2008 breached Bolingbrook’s water delivery agreement. The action seeks reimbursements to Bolingbrook. During litigation, Bolingbrook also discovered Plainfield received the same 10 cent reimbursement for five months at different times from 2011 to 2013 and amended its pleadings to include these claims.

¶ 9 Defendants moved to dismiss the plaintiff’s cause of action on the grounds that the Commission had exclusive jurisdiction over the matter. The trial court denied defendants’ motion. In October 2014, the parties filed cross-motions for summary judgment. In January 2015, the trial court granted summary judgment in favor of Bolingbrook on its breach of contract claim. The trial court found that the defendants’ failure to charge Bolingbrook a lesser unit charge than that which was provided to Plainfield was a breach of the contract. In March 2015, defendants filed a motion to reconsider the trial court’s summary judgment order. The trial court

denied defendants' motion and issued a written order in May 2015, further indicating that Bolingbrook's damages claim should be submitted to the Commission for determination.

¶ 10 Both parties appeal.

¶ 11 ANALYSIS

¶ 12 In the first appeal (No. 3-15-0425), Bolingbrook argues the ensuing damages from defendants' breach of contract should not be adjudicated before the Commission. Bolingbrook asserts that its cause of action is a civil damages claim and, therefore, the trial court has jurisdiction over the matter. IAWC and ALWC argue that Bolingbrook's cause of action seeks rate relief and thus, the Commission has exclusive jurisdiction over the matter.

¶ 13 In the second appeal (No. 3-15-0426), IAWC and ALWC argue, again, that Bolingbrook's cause of action seeks rate relief and, therefore, the trial court does not have jurisdiction over plaintiff's claim. IAWC and ALWC further argue that the trial court erred in finding that either of them breached the 1996 water delivery agreement with Bolingbrook. We find that the trial court did not have jurisdiction to hear plaintiff's complaint and its rulings are void.

¶ 14 We review the trial court's grant of summary judgment *de novo*. *Chatham Foot Specialists, P.C. v. Health Care Service Corp.*, 216 Ill. 2d 366, 376 (2005). Prior to reviewing summary judgment, however, we must determine if this court has jurisdiction over the matter. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009).

¶ 15 At issue, is whether Bolingbrook's claim seeks civil damages or reparations. A civil damages claim falls within the trial court's jurisdiction while the Commission has exclusive jurisdiction over reparations claims. 220 ILCS 5/9-252 (West 2014); *State ex rel. Pusateri v. The Peoples Gas Light & Coke Co.*, 2014 IL 116844, ¶ 18; *Sheffler v. Commonwealth Edison Co.*,

2011 IL 110166, ¶¶ 41-42. “[A] claim is for reparations when the essence of the claim is that a utility has charged too much for a service, while a claim is for civil damages when the essence of the complaint is that the utility has done *something else to wrong the plaintiff*.” (Emphasis added.) *Id.* ¶ 42 (citing *Flournoy v. Ameritech*, 351 Ill. App. 3d 583, 585 (2004)).

¶ 16 Bolingbrook argues the Commission is not the proper forum to determine damages in this case. Its claim rests squarely on an assessment of its cause of action as one alleging civil damages due to breach of contract. IAWC and ALWC argue that Bolingbrook’s claim is a request for rate relief and, as such, belongs before the Commission. Our supreme court has provided guidance on this very issue in two recent cases: *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, and *State ex rel. Pusateri v. The Peoples Gas Light & Coke Co.*, 2014 IL 116844.

¶ 17 In *Sheffler*, the court stated that the focus for a court of review when faced with this issue should be on the nature of the relief sought, not the basis for the relief. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 50. The plaintiffs in *Sheffler* alleged damages beyond an increased rate, including personal injury, property damage, and additional financial damages. *Id.* ¶ 44. The court found that the relief sought by the plaintiffs directly implicated the utility’s service and infrastructure and therefore their complaint fell under the exclusive jurisdiction of the Commission. *Id.* ¶¶ 50, 56.

¶ 18 In *Pusateri*, the plaintiff asserted that the defendant utility used fraudulent means to justify higher rates before the Commission, forcing the plaintiff to pay too much for service. *State ex rel. Pusateri v. The Peoples Gas Light & Coke Co.*, 2014 IL 116844, ¶ 19. The court noted the reason the plaintiff’s allegations might be actionable was because they would have

resulted in a rate increase. *Id.* Ultimately, the court ruled that the plaintiff's complaint requested reparations and, therefore, fell under the exclusive jurisdiction of the Commission. *Id.*

¶ 19 Here, Bolingbrook asserts it is not claiming that it is merely being charged too much for water, but that defendants breached an existing contract by charging it a rate higher than another customer. Bolingbrook does not allege the defendants did anything other than charge it too much. Relationships between utilities and their customers are virtually always contractual in nature. Likewise, virtually every alleged overcharge is a breach of that contractual agreement. Calling this a contract action does not change the issues. Accordingly, we find that the Commission has exclusive jurisdiction over plaintiff's claim. As such, the trial court's rulings in this matter are void.

¶ 20 Since the trial court had no jurisdiction over the matter, its prior rulings are vacated; this court is left without jurisdiction and can only dismiss the appeal. See *Baker v. Harper*, 2012 IL App (3d) 110343, ¶ 24 (citing *People v. Flowers*, 208 Ill. 2d 291, 307 (2003), and *KT Winneburg LLC v. Calhoun County Board of Review*, 403 Ill. App. 3d 744, 752 (2010)). Having found the trial court did not have jurisdiction to hear plaintiff's claim, we need not address the parties' remaining arguments.

¶ 21 **CONCLUSION**

¶ 22 For the foregoing reasons, we vacate the judgment of the circuit court of Will County and dismiss this appeal.

¶ 23 Judgment vacated and appeal dismissed.