

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE IN
AND FOR KENT COUNTY**

BARNABAS MALAWI,)	
)	C.A. No. CPU4-09-001420
Plaintiff,)	
)	
v.)	
)	
PHI SERVICE COMPANY)	
)	C.A. No. CPU4-09-004663
Defendant, Third-Party)	
Plaintiff,)	
)	
v.)	
)	
ZEDEKIA MALAWI)	
)	
Third-Party Defendant.)	

February 22, 2012

Mr. Barnabas Malawi
40 Oak Knoll Circle
Lebanon, PA 17042
Pro Se Plaintiff

Mr. Zedekia Malawi
104 Bennett Court
Apartment H
Newport, DE 19801
Pro Se Third Party Defendant

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Pepco Holdings, Inc.
800 North King Street, 5th Floor
P O Box 231
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*Attorney for the Defendant, Third
Party Plaintiff*

**DECISION AFTER TRIAL AND ON DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

This civil case involves a debt action filed by the plaintiff, Barnabas Malawi (Barnabas), against the defendant, third-party plaintiff, PHI Service Company (Pepco), for the reimbursement of a payment that Barnabas made to Pepco of an amount owed by third-party defendant, Zedekia Malawi (Zedekia). Pepco contends that the Court of Common Pleas does not have subject matter jurisdiction to hear Barnabas' claim against

it and moved for the dismissal of Barnabas' claim on such grounds prior to trial. The motion was taken under advisement by the Court and decision was reserved. Pepco argues in the alternative that should the Court find that it has subject matter jurisdiction over Barnabas' claim, that Barnabas is not entitled to reimbursement of any amounts that he paid on behalf of Zedekia because such payments were voluntarily made. It also contends that should Pepco be found liable for the reimbursement of the amounts paid by Barnabas on behalf of Zedekia, Zedekia would need to pay the amount originally due to Pepco. Zedekia claims that he does not owe Pepco anything.

After reserving its decision on Pepco's motion to dismiss, the Court held a trial for this matter and reserved decision. After careful consideration of Pepco's motion to dismiss, the Court finds that it has jurisdiction over this matter. Therefore, Pepco's motion to dismiss is denied. As to the merits of the case, the Court finds in favor of Pepco and enters judgment for Pepco with respect to Barnabas' claim. Pepco's claim against Zedekia is dismissed as moot.

FACTS

The plaintiff, Barnabas Malawi (Barnabas), owned a residence in New Castle County in which he lived. The defendant, third party plaintiff, Pepco Holdings, Inc. (Pepco), through a subsidiary, provided electrical service to the residence.

Barnabas serves in the military and was deployed to Iraq in 2007. While deployed, he rented his residence to his brother, third party defendant, Zedekia Malawi (Zedekia). Barnabas closed his Pepco electric account for the residence and Zedekia opened a new account in his name.

Barnabas moved back to his residence upon his return from deployment in June of 2008 and Zedekia moved out. Barnabas attempted to open a new account for electrical service for his residence with Pepco, but, he was told that he could not do so because Zedekia still had a balance due on his account for the residence. Barnabas was added to Zedekia's account with Pepco for the residence and received a bill from Pepco that included the balance still due from Zedekia on it. He also received a notice that Pepco mailed to his residence, but, addressed to Zedekia, that indicated that the electric service to his residence would be terminated if Zedekia's past due balance of \$644.03 was not paid. Barnabas paid the balance due because he did not want his electric turned off and did not want the unpaid balance to adversely affect his credit record. He told Zedekia he made the payment, but, he never requested any reimbursement from Zedekia for the amount he paid.

Barnabas now seeks the reimbursement of the \$644.03 payment from Pepco because the debt due to Pepco from Zedekia was not his. He contends that he was forced to pay the bill in order to avoid the termination of electrical service to his residence and adverse impact to his credit history. Pepco contends that this Court does not have subject matter jurisdiction to hear Barnabas' claim against it. It moved for the dismissal of Barnabas' claim on such grounds prior to trial, arguing that subject matter jurisdiction belongs to the Public Service Commission. Should the Court find that it has subject matter jurisdiction, Pepco contends that Barnabas made the payment on behalf of his brother voluntarily. Therefore, Barnabas is not entitled to the reimbursement of it. In the alternative, Pepco argues that Zedekia should pay the amount originally due to Pepco. Zedekia claims that he does not owe Pepco anything.

DISCUSSION

I. Subject Matter Jurisdiction

The initial issue that must be decided by the Court is whether it has subject matter jurisdiction to hear Barnabas' claim. It is Pepco's contention that the Court does not have subject matter jurisdiction because the Public Service Commission (PSC) has exclusive jurisdiction over it. If Barnabas' claim falls within the exclusive subject matter jurisdiction of the PSC, then, this Court would lack jurisdiction, Barnabas' suit must be dismissed and he must pursue his claim with the PSC. The Court finds that it does have subject matter jurisdiction over the claim.

Pepco's contention is that the PSC has exclusive subject matter jurisdiction over claims for the reimbursement of payments for electric service. The relevant powers and authority of the PSC are described in 26 Del. C. § 201(a) as follows:

“The Commission shall have exclusive original supervision and regulation of all public utilities and also over their rates, property rights, equipment, facilities, service territories and franchises so far as may be necessary for the purpose of carrying out the provisions of this title....”

While the statutory authority of the PSC is broadly stated, Delaware case law has established a distinction between the supervision and regulation of public utility services and billing controversies between utilities and their customers. *Artesian Water Co. v. Cynwyd Club Apartments Inc.*, 297 A.2d 387, 389 (Del. 1972).¹ In support of its motion, Pepco cites *Georgia-Pacific Corp. v. Delmarva Power & Light Co.* In that case, Delmarva Power & Light, a public utility providing electrical service to its customers, argued that the Delaware Court of Chancery lacked subject matter jurisdiction to hear a tariff dispute concerning it because the PSC has exclusive jurisdiction over service issues.

¹ While *Artesian Water Co.* relies on the pre-1974 version of the provision granting the PSC its authority, in *Georgia-Pacific Corp. v. Delmarva Power & Light Co.*, the Delaware Court of Chancery maintained the distinction between billing issues and other types of challenges under the current version of the provision. *Georgia-Pacific Corp. v. Delmarva Power & Light Co.*, 1992 WL 396307 at *6-7 (Del. Chan. 1992).

Georgia-Pacific Corp. v. Delmarva Power & Light Co., 1992 WL 396307 at *1 (Del. Chan. 1992). The court in *Georgia-Pacific* held that while a question of service termination was within the exclusive purview of the PSC, a billing dispute was a matter properly decided by a court of law. *Georgia-Pacific Corp.*, 1992 WL 396307 at *6. Further, the Court of Chancery directly upheld the Delaware Supreme Court's distinction that the PSC "does not sit as a court of law" and is, therefore, not the proper venue in which to adjudicate a debt controversy. *Georgia-Pacific Corp.*, 1992 WL 396307 at *6. (citing *Artesian Water Co. v. Cynwyd Club Apartments Inc.*, 297 A.2d 387, 389 (Del. 1972)).

The record clearly shows that Barnabas' claim involves a billing dispute concerning who should pay Zedekia's delinquent electric bill. Barnabas seeks recovery of the payment he made on behalf of Zedekia. In essence, Barnabas is stating that he paid a bill for which he was not responsible and he now wants his money returned. This type of dispute falls squarely in the realm of billing issues. As such, the PSC does not have subject matter jurisdiction over it and the controversy can be properly heard by the Court of Common Pleas. *See also ESF Bid Co., Inc. v. Delmarva Power & Light*, Del. CCP, C.A. No. CPU4-11-000853, Smalls, J. (July 13, 2011). For these reasons, Pepco's Motion to Dismiss for Lack of Subject Matter Jurisdiction is denied.

II. Barnabas' Claim Against Pepco

Barnabas has brought suit against Pepco for the reimbursement of the payment he made for Zedekia's overdue balance. In this regard, the main issue before the Court is whether Barnabas' payment for Zedekia's delinquent balance due with Pepco was made voluntarily or whether it was made under duress. If it was voluntarily made, Barnabas is

not entitled to its reimbursement. If it was made under duress, he is entitled to reimbursement. The Court finds that Barnabas' payment was voluntarily made to Pepco.

In Delaware, the voluntary payment rule provides "that 'where money has been voluntarily paid with full knowledge of the facts, it cannot be recovered on the ground that the payment was made under a misapprehension of the legal rights and obligations of the person paying.'" *Nieves v. All Star Title, Inc.*, 2010 WL 2977966 at *6 (Del Super. 2010) (citing *Home Ins. Co. v. Honaker*, 480 A.2d 652, 653 (Del. 1984)).

According to Barnabas, Pepco informed him that there was an outstanding balance on Zedekia's bill, which had been incurred by Zedekia while he was a tenant in Barnabas' house. Pepco notified him that if the balance was not paid in full, it would terminate electrical service to Barnabas' house. Rather than contest the bill or attempt another solution to the problem, such as getting Zedekia to pay it, Barnabas took the safest, most expeditious path, and paid the bill himself. In exchange for Barnabas' opting to satisfy his prior tenant's bill, he received the benefit of uninterrupted electrical service and, to his mind, prevented any risk to his credit history. The outstanding balance paid by Barnabas accurately represented Zedekia's unpaid electrical bill. Absent some showing of duress or misrepresentation by Pepco, Barnabas' payment seems entirely voluntary and, therefore, not recoverable from Pepco.

Barnabas insists that he did not actually pay the bill voluntarily as he was placed under duress by Pepco. Under Delaware law, a party to an action must show three elements to prove duress for contractual purposes: "(1) a 'wrongful' act, which (2) overcomes the will of the person (3) who has no adequate legal remedy to protect his interest." *Way Road Development Co. v. Snavely*, 1992 WL 19969 at *3 (Del. Super.

1992). The term “wrongful act” is not strictly limited to illegal activities but can include morally wrong acts that are not criminal or tortious. *Id.* at *4.

Barnabas is unable to establish the first element of duress as Pepco committed no wrongful act when it threatened to shut off electrical service for non-payment. Non-payment of a bill frequently leads to utility service interruptions or terminations, as the utility provider needs some means to insure payment for services rendered. The threat to halt service was neither illegal nor morally wrong and without a wrongful act by Pepco, Barnabas’ duress argument fails. Further, even if the Court had found in Barnabas’ favor as to the other elements of the duress doctrine, there is no evidence that Barnabas lacked an adequate legal remedy to protect his interests. Rather than refusing to pay or attempting to appeal the decision to terminate service, Barnabas opted instead to simply pay Zedekia’s bill and ensure uninterrupted electrical service. Therefore, Barnabas has failed to establish the elements of duress. The Court finds that his payment to Pepco was voluntarily made. He is not entitled to the reimbursement of the payment he made to Pepco to satisfy Zedekia’s balance due to it.

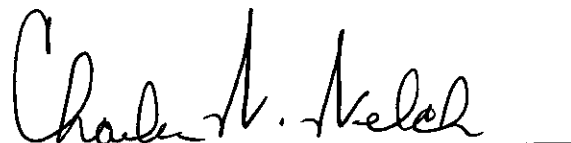
III. Pepco’s Claim Against Zedekia

Since Barnabas satisfied Zedekia’s outstanding debt and his payment is not recoverable, Pepco has no basis to maintain its claim against Zedekia. Pepco’s bill has been paid in full and nothing in this Court’s holdings adversely affect Pepco’s ability to retain that payment. Therefore, Pepco’s claim against Zedekia is dismissed as moot.

CONCLUSION

While the PSC retains exclusive jurisdiction over many types of disputes involving utilities, billing disputes are properly heard in a court of law. Therefore, Pepco's Motion to Dismiss for Lack of Subject Matter Jurisdiction is denied. Further, because Barnabas' payment to Pepco was made voluntarily, with full knowledge of the facts, the voluntary payment rule bars Barnabas from recovering from Pepco. Barnabas' argument that he was under duress when he made the payment fails as there was no "wrongful act" by Pepco, a necessary element of duress. Finally, because nothing in this Court's ruling affects the fact that Zedekia's bill is paid in full, Pepco's claims against Zedekia are moot. Therefore, the Court enters judgment for Pepco with respect to Barnabas' claim, but, dismisses its claim against Zedekia as moot.

IT IS SO ORDERED this 22nd day of February, 2012.



CHARLES W. WELCH
JUDGE