

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA  
CIVIL DIVISION**

County of Delaware, Pennsylvania	:	
Plaintiff	:	
v.	:	NO: CV- 2020-003185
	:	
Delaware County Regional Water Quality	:	
Control Authority, and Delcora Rate	:	
Stabilization Fund Trust Agreement b/t	:	
The Delaware County Regional Water	:	
Quality Control Authority as Settlor and	:	
Univest Bank and Trust Co. as Trustee	:	
Defendants	:	
	:	
Darby Creek Joint Authority, Southern	:	
Delaware County Authority, and Aqua	:	
Pennsylvania Wastewater, Inc.	:	
Intervenors	:	

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Carol Steinour Young, Esquire, Dana Chilson, Esquire, Thomas Markey, Esquire, William F. Martin, Esquire, Carl Ewald, Esquire,  
for the Plaintiff

Nicholas Poduslenko, Esquire, Matthew S. Olesh, Esquire, Thomas S. Wyatt, Esquire,  
for Defendant, DELCORA

William Hinchman, Esquire and Monica Platt, Esquire for Univest Bank and Trust

Joel Frank, Esquire, Michael Puppio, Esquire,  
for Petitioning Intervenor/Defendant, Aqua Pennsylvania Wastewater

Andrew Reilly, Esquire, Jacquelyn Goffney, Esquire,  
for Intervenor/Defendant, Southern Delaware County Authority

William Malone, Esquire,  
for Intervenor/Defendant, Darby Creek Joint Authority

**ORDER**

AND NOW, this <sup>th</sup> 28 day of December, 2020, upon consideration of the Amended Complaint, all replies thereto, all Counterclaims, and Motions for Summary Judgment, as well as all Exhibits, including Statements of Admission of Parties and hearings on October 21, 27, and December 1 and 2, 2020, NOW, THEREFORE, it is hereby ORDERED as follows;

1. The fundamental issues of this case are the legality, enforceability and integrity of a contract, that being the Asset Purchase Agreement between Delaware County Regional Water Control Authority (“DELCORA”) and Aqua Pennsylvania Wastewater Inc. (“AQUA”), the enforcement of Delaware County’s (COUNTY) Ordinance 2020-04 and the COUNTY’s actions in opposing and allegedly interfering with DELCORA’s performance of the same contract, and the legality and funding of the Rate Stabilization Fund Trust between DELCORA and AQUA.
2. The enforcement of legally binding contracts is the foundation of our law. A COUNTY’s change of governmental administration, management, or political persuasion, being a party to a legally binding contract, may endeavor to renegotiate or not renew nor extend a contract, but the alleged intentional interference, termination, and obstruction requires critical judicial examination. All the parties professionally, skillfully and civilly presented their juxtapose case.
3. Despite the obvious impasse of the legality and enforceability of the Asset Purchase Agreement, and DELCORA’s understandable reluctance to deliver to the COUNTY a Certificate of Termination, this Court heard credible testimony and viewed Exhibits that confirm that DELCORA has significantly cooperated in providing information and documents at the request of the COUNTY.

#### **Asset Purchase Agreement**

4. This Court finds that the Asset Purchase Agreement between DELCORA and AQUA is a legal and enforceable contract, not in violation of the Municipality Authorities Act, public policy, or any other applicable law. This Court further finds that the Asset Purchase Agreement is authorized by Sections 5607, 5619, and 5622 of the Municipalities Authorities Act, subject to the approval of the Pennsylvania Public Utility Commission.
5. This Order is not intended to provide commentary on the pros and cons, advantages or disadvantages of the DELCORA and AQUA Asset Purchase Agreement, but only to confirm the enforceability of a legally adopted Contract. The whims of politics or changing COUNTY administrations do not waive away legally enforceable binding contracts. The reliance and predictability of valid legal contracts is paramountly important and serves public policy.
6. The COUNTY requests that the COUNTY Ordinance 2020-04 be declared valid and enforceable and requests a Writ of Mandamus to DELCORA to comply with the Ordinance and cooperate with termination. But clearly, by way of enforcing Ordinance 2020-04, the COUNTY directs the termination or as the COUNTY refers to the “winding down” of DELCORA. This Court finds that the COUNTY Ordinance 2020-04 does more than “wind down” DELCORA rather interferes and implodes DELCORA’s ability and contractual obligations to perform contractual obligations to effectuate the sale and further interferes with AQUA’s contractual rights.

7. This Court heard testimony that the COUNTY, despite this litigation beginning May 14, 2020, and the significant merits of DELCORA's and AQUA's defense and counterclaims, are presently investigating, planning, and assuming costs and resources in creating a wastewater utility to replace the function and services of DELCORA. The costs and expenses, and efficiency of creating a COUNTY utility, and the retainment of employees, customer Rate Stabilization, the use and application of DELCORA's assets and funds, and the effect on partnering municipal sewer authorities, as well as any public notice, dialogue or actions to create a new COUNTY authority, are all unknown to this Court and not the subject of these proceedings. (See the testimony of Plaintiff witness Steven A. Goldfield and County Executive Director, Howard Lazarus)
8. The directives, terms, and provisions of the COUNTY's June 3, 2020 Ordinance 2020-04, Exhibit P-1, as demonstrated by the County Solicitor Letter, Exhibit P-2, dated June 4, 2020, and public rhetoric with strong political overtones, evidences the COUNTY's intent and design to thwart, reverse, interfere and extinguish the contractual agreements, and contract previously publicly debated, considered and legally adopted by DELCORA, AQUA and DELAWARE COUNTY. See Exhibits P-1, P-2, D-10, D-11, D-12, D-13 and admitted excerpts of Depositions.
9. The COUNTY's Ordinance of dissolution and termination, evidenced by Ordinance 2020-04 requirements, and the COUNTY Solicitors June 4, 2020 directive, as referred above, that DELCORA immediately provide COUNTY with a Certificate of Termination, and restrictions on expenses, and constraints on the actions and performance required of the Asset Purchase Agreement is a functional equivalent to termination and interference of contractual obligations, as well as essential services and imposes and creates immediate and irreparable harm. Various terms and conditions of Ordinance 2020-04 are a substantial obstacle to DELCORA and AQUA's performance of contract.
10. Contracts, binding agreements, and various legally public actions are not to be extinguished or interfered with merely because of a reorganization of County Council or partisan differences. The integrity and predictability of contracts when legally adopted, shall be relied upon by the parties, represents good public policy, and the COUNTY shall hereby provide full faith and credit to the Asset Purchase Agreement, even as COUNTY administrations may change.
11. AQUA relies upon the representations and warranties (see Article 4 of the Asset Purchase Agreement) provided by DELCORA, as well as relying upon the COUNTY's 2019 consent to the sale transactions.
12. AQUA has a fully binding and enforceable agreement to acquire DELCORA's system, which requires the representations and warranties that can only be made by DELCORA.

13. The COUNTY also asserts that the Asset Purchase Agreement is void ab initio because of the alleged involvement of Robert Willert, Executive Director of DELCORA and Section 5614(e) of the Municipality Authorities Act and as such violates public policy.
14. This Court further finds that the COUNTY's allegation of a conflict of interest is pure speculation, hyperbole, and mere rhetoric, (see Exhibit D-12 and D-13) and not supported by the weight of evidence.
15. Credible testimony and evidence confirms that both DELCORA's Board of Directors and Attorneys' and AQUA representatives dictated, negotiated, drafted, and approved the terms of Asset Purchase Agreement. There is no affirmative evidence whatsoever that Mr. Willert played a material role in the sale. Both deposition and trial testimony confirm he did not undertake to negotiate anything for himself whatsoever. Similar to any existing contract, Mr. Willert's employment contract survives the sale; and he receives no new, supplemental, or additional compensation, benefits, enhancements, or financial gain whatsoever. Nor is there any further modification to his employment contract.
16. This Order does not contest the COUNTY's general authority to terminate DELCORA, but the COUNTY cannot interfere, or restrain, or refuse to comply with the contractual obligations set forth in the Asset Purchase Agreement and amendments thereto.
17. The COUNTY shall be enjoined and restrained from terminating DELCORA prior to the closing of the DELCORA/AQUA Asset Purchase Agreement and enjoined and restrained from interfering in any way with AQUA's existing contractual relationship with DELCORA. DELCORA's and AQUA's requested injunction is necessary to prevent irreparable harm that cannot be adequately compensated in damages.
18. Upon the parties effectuating the sale, as detailed in the Asset Purchase Agreement, and Amendment(s) thereto, all parties to this matter shall cooperate to comply with all sale requirements and conditions, and thereafter cooperate with the efficient winding down and dissolution of DELCORA as Ordinance may require, or as the parties mutually agree, but the winding down shall not interfere or obstruct the terms of the Asset Purchase Agreement, all Amendments thereto, and the funding and Administration of the Rate Stabilization Fund Trust.

#### **Rate Stabilization Fund Trust**

19. The amendment to DELCORA's Articles of Incorporation on or about December 18, 2019 empowered DELCORA to create and fund the Rate Stabilization Fund Trust (the "Trust").
20. On or about December 18, 2019, the COUNTY amended DELCORA's Articles to add the following to the "purpose" provision: "In anticipation of the dissolution of the Authority and/or the transfer and sale of all, or substantially all of the Authority's assets, property and projects in exchange for the receipt of a cash payment, the Authority and its Board, in addition to any other authority granted by applicable law, shall have the full

authority, without limitation to: (1) establish a trust or non-profit entity to exist for the benefit of rate payers to distribute to rate payers some or all of the proceeds received from any transfer and sale, in accordance with applicable law and any agreements concerning the transfer and sale of any assets and/or the Authority's dissolution; and (2) execute any necessary agreement to effectuate this purpose prior, during, or after any transfer and sale and/or dissolution."

21. "According to the Amended Articles, assets of a trust or non-profit entity will be distributed to the rate payers, (DELCORA's Customers) for the purpose of "rate stabilization."
22. On or about December 27, 2019, the Trust between DELCORA, as settlor, and Univest Bank and Trust Co., as Trustee, was created. The validity of the Trust is the subject of this litigation. The stated purposes of the Trust are to benefit the beneficiaries, defined as DELCORA's Customers, by providing Rate Stabilization.
23. The Municipality Authorities Act, 53 Pa. C.S. §§ 5601 et seq. (the "MAA"), provides an independent legal basis for DELCORA to create and fund the Trust. DELCORA had the authority to create the Rate Stabilization Fund Trust (the "Trust") and authority to fund it.
24. The Municipality Authorities Act states that "[t]he purpose and intent of this chapter [is] to benefit the people of the Commonwealth by, among other things, increasing their commerce, health, safety, and prosperity." 53 Pa. C.S. § 5607(b)(2).
25. The Municipality Authorities Act states, without limitation, that "[e]very authority may exercise all powers necessary or convenient for the carrying out of the purposes set forth in this section." 53 Pa. C.S. §5607(d).
26. Under the Municipality Authorities Act, DELCORA has the power to "acquire, purchase, hold, lease as lessee and use any franchise, property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the authority, and to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it." 53 Pa. C.S. §5607(d)(4).
27. Under the Municipality Authorities Act, DELCORA has the power to "make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business." 53 Pa. C.S. §5607(d)(13). The Trust, by its very name, terms and provisions, is an agreement.
28. Under the Municipality Authorities Act, DELCORA has the power to "pledge, hypothecate or otherwise encumber all or any of the revenues or receipts of the authority as security for all or any of the obligations of the authority." 53 Pa. C.S. §5607(d)(16).
29. Under the Municipality Authorities Act, DELCORA has the power to "do all acts and things necessary or convenient for the promotion of its business and the general welfare

of the authority to carry out powers granted to it by this chapter or other law.” 53 Pa. C.S. §5607(d)(17).

30. The Municipality Authorities Act thus allows DELCORA to create the Trust and allows DELCORA to convey proceeds of the DELCORA/AQUA sale into the Trust.
31. The Trust is consistent with 53 Pa. C.S. §5612 because (a) it was authorized by DELCORA’s Articles, as amended, and (b) the money to be placed in the Trust is derived from DELCORA’s fulfillment of its mission and purpose, and will be used to provide a service for the benefit of the customers of DELCORA’s system, who DELCORA served in accordance with its mission, in the form of distributions to offset rate increases.
32. The Trust does not violate the Uniform Trust Act because DELCORA had the capacity to create the Trust when it was created.
33. This Court opines, subject to the Pennsylvania Public Utility Commission’s authority to review, the Rate Stabilization Fund Trust, and operating memorandums thereto or any reasonable legal Rate Stabilization methodology benefits and serves the Wastewater customers both residential and commercial, as opposed to any successor to DELCORA absorbing the assets and funds.
34. SUMMARY JUDGEMENT REGARDING THE VALIDITY AND ENFORCEMENT OF THE ASSET PURCHASE AGREEMENT AND ANY AMENDMENT THERETO AND COUNTY ORDINANCE 2020-04:
  - a. Judgment is hereby ENTERED, and Motions are GRANTED in favor of DELCORA’s Motion for Summary Judgment on Count V of the COUNTY’s Amended Complaint and Counts II and III of DELCORA’s counterclaim, and any responses thereto. Count V of the COUNTY’s Amended Complaint seeking injunctive and mandamus relief regarding DELCORA to comply with the COUNTY’s Ordinance is hereby DISMISSED;
  - b. Judgment is hereby ENTERED, and Motions are GRANTED in favor of Intervenor AQUA Pennsylvania Wastewater Inc., and against the COUNTY, on Count 1 of its Counterclaim for Declaratory Relief, and Count V of the Plaintiff COUNTY of Delaware’s Amended Complaint, and all responses thereto. Count V of the COUNTY’s Amended Complaint seeking injunctive and mandamus relief requiring DELCORA to comply with the COUNTY’s Ordinance is hereby DISMISSED;
  - c. The Court hereby issues a DECLARATORY JUDGMENT that the Asset Purchase Agreement dated September 17, 2019 (as amended on February 24, 2020) between AQUA and DELCORA is a valid, binding, and enforceable contract between AQUA and DELCORA authorized by Sections 5607, 5619, and 5622 of the Municipalities Authorities Act, subject to approval of the transaction by the Pennsylvania Public Utility Commission, and that any

termination of DELCORA by the COUNTY cannot occur prior to the closing on the Asset Purchase Agreement;

- d. The COUNTY of Delaware is hereby permanently enjoined and restrained from terminating or contractually interfering with the Asset Purchase Agreement, any amendment thereto, and the COUNTY is further enjoined and restrained from terminating the Delaware County Regional Water Control Authority prior to closing on the Asset Purchase Agreement between DELCORA and AQUA Pennsylvania Wastewater Inc;
- e. The injunctive relief is reasonably suited to abate the offending activity, as the Court does not intend to challenge the COUNTY's authority to wind down and terminate DELCORA. DELCORA and AQUA only seek to preserve the Asset Purchase Agreement by requiring that closing occur prior to termination of DELCORA.
- f. Judgment is hereby ENTERED in favor of Darby Creek Joint Authority's Counterclaim (Count I) to the COUNTY's Amended Complaint, hereby entering a Declaratory Judgment that the Service Agreement, Exhibit DC-1, between DELCORA and DCJA and the Assignment Consent, Exhibit DC-2, are valid and enforceable contracts. The further request of Darby Creek Joint Authority to enjoin the COUNTY from dissolving DELCORA is DENIED as moot in light of this Order;
- g. Judgment is further ENTERED in favor of the Southern Delaware County Authority confirming the legality and enforceability of the Asset Purchase Agreement and Rate Stabilization Fund Trust for all the reasons set forth herein.

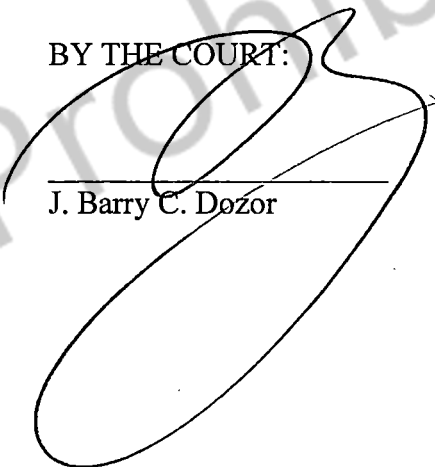
**35. SUMMARY JUDGMENT REGARDING ALL COUNTS RELATING TO THE DELCORA RATE STABILIZATION FUND TRUST:**

- a. Judgment is hereby ENTERED in favor of Defendant, Delaware County Regional Water Quality Control Authority (DELCORA), and against Plaintiff, the COUNTY of Delaware, Pennsylvania, (COUNTY), on all Counts I, II, III, and IV of the COUNTY's Amended Complaint and Count I of DELCORA's Counterclaim;
- b. It is hereby DECLARED that the DELCORA Rate Stabilization Fund Trust does not violate (i) DELCORA's Articles of Incorporation, (ii) the Municipality Authorities Act, (iii) the Uniform Trust Act, (iv) public policy, or (v) any other applicable law;
- c. It is hereby DECLARED that upon the completion of the transaction between DELCORA and AQUA Pennsylvania Wastewater, Inc., (AQUA), sale proceeds shall be deposited into the Trust pursuant to the terms of that transaction as set

forth in the Asset Purchase Agreement between DELCORA and AQUA and all related agreements, including the Rate Stabilization Fund Trust, and any enabling Trust agreements, and the COUNTY is hereby ENJOINED from preventing same in any way.

36. The Counterclaims of Tortious Interference with existing Contractual Relationships for compensatory and Punitive Damages and Attorney fees filed by AQUA Pennsylvania Wastewater Inc and Darby Creek Joint Authority have both been withdrawn subsequent to the December 1, 2020 hearing.
37. This Order is not intending to interfere with the authority and jurisdiction of the Pennsylvania Utility Commission at Docket No. A-2019-3015173 (PUC Application).
38. In consideration of this Order, the Stipulated Injunction Order of September 9, 2020 is now moot and hereby VACATED.
39. This Court reserves jurisdiction, upon Petition and hearing, if necessary, to enforce the terms and conditions of this Order.

BY THE COURT:

  
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J. Barry C. Dozor