

Lawsuits stemming from Scranton's 2016 sewer sale still unresolved

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JIM LOCKWOOD, STAFF WRITER / PUBLISHED: NOVEMBER 26, 2018

SCRANTON — A Scranton resident suing the city, Dunmore and two law firms involved in the 2016 sewer sale has now added the Scranton Sewer Authority as a defendant.

Anthony Moses sued the municipalities, as well as Abrahamsen, Conaboy & Abrahamsen, special counsel to the city, and Cummings Law, the borough solicitor, in October 2017, claiming the SSA's disbursement of \$87 million in proceeds from the December 2016 sewer sale violated state law.

Moses' recent addition of the SSA as a defendant follows a judge's ruling two months ago that the authority is a necessary party in the case and should have been named as a defendant from the start.

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Sewer authority solicitor Jason Shrive declined to comment, citing SSA policy of not commenting on pending litigation. The authority will get to respond formally to the complaint in Lackawanna County Court.

The lawsuit is significant as an unresolved, potentially costly outgrowth of the sewer sale that closed in late December 2016.

Moses claims that, under law, the SSA was allowed to expend money only for purposes directly related to its mission, and thus prohibited from transferring proceeds to Scranton and Dunmore for their general welfare and for paying sewer sale legal bills.

The suit seeks to have proceeds of \$70 million to Scranton and \$17 million to Dunmore, and \$456,000 in payments of legal bills to the law firms, all returned to the SSA and placed in escrow until the authority settles all of its outstanding claims.

The main outstanding claim comes from a different lawsuit — a class-action case involving 600 properties inexplicably missing sewer-line easements with the SSA. In spring 2016 as the sewer sale advanced, the authority discovered easements missing from 600 properties. Easements allow for emergency access to properties for repairs to sewer lines, if ever needed.

In summer 2016, the SSA offered a choice of \$100 per missing easement or condemnation. But the class-action plaintiffs, one of whom is Moses, rejected the \$100 offers as pittance for properties they now viewed as devalued by the discovery of sewer lines under homes. Some of these pipes are main trunk lines running deep underground, directly under homes.

The class-action lawsuit, filed in November 2016 against the sewer authority and also unresolved, was a precursor to Moses' individual lawsuit against the municipalities and the law firms.

Attorney Patrick Howard of the Saltz, Mongeluzzi, Barrett & Bendesky law firm in Philadelphia, who represents the plaintiffs in both the easement and disbursement lawsuits, expressed frustration with the pace of both cases. He said the defendants have not made any significant moves toward settling the suits. The SSA still needs to obtain the missing easements and supply them to the buyer of the sewer system, Pennsylvania American Water.

“These cases arising from the sewer authority sale could have, and should have, been settled long ago,” Howard said in a phone interview. “These things have got to come to a head. I’m not going away. My clients are not going away. The city needs to get these easements. The practical way and most efficient way is through this (class-action) case.”

Citing pending litigation, Dunmore solicitor Thomas Cummings also declined to comment. Efforts to contact city solicitor Jessica Eskra and special counsel Edwin “Ned” Abrahamsen were unsuccessful.

Some of the issues at hand were debated during a hearing in Moses’ lawsuit in Lackawanna County Court in August. In that hearing, Howard called the disbursement process a “shell game” by the SSA done before it satisfied all claims against it. Also in that hearing, attorneys for the city, borough and the two law firms disputed that characterization, noting that \$12 million in sewer sale proceeds were set aside in an escrow to pay for acquiring missing easements. Howard had countered that it’s unknown whether the \$12 million escrow would be enough to secure all easements.

The city’s audit of fiscal year 2017, completed in October 2018, says city officials believe “that the escrow will be sufficient to extinguish all liabilities.”

Meanwhile, the city in recent months developed an abrupt shift in deployment of \$22.9 million of other sewer sale proceeds set aside for the pension system. The administration and council Nov. 5 approved a plan to use the \$22.9 million as collateral for a pension-note

loan of that same amount, and instead deposit the loan proceeds into the pension system. This move will incur some interest but also result in \$4.6 million in lowered pension contributions required for 2018-19, while at the same time keeping the \$22.9 million collateral on hand, as opposed to depositing it into the pension system, officials have said.

Howard said he told city officials in late summer he would seek an injunction to stop any transfer of the set-aside \$22.9 million into the pension system before the two lawsuits are resolved.

“They didn’t part with the \$22.9 million because they knew I’d run to court to get an injunction,” Howard said.

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