

2011 IL App (1st) 102177-U

No. 1-10-2177

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FIFTH DIVISION
December 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOSEPH K. BAGDONAS,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 09 M3 3464
)	
COMMONWEALTH EDISON COMPANY,)	Honorable
)	James Etchingham,
Defendant-Appellee.)	Judge Presiding.
)	

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Epstein and Justice McBride concurred in the judgment.

ORDER

¶ 1 **HELD:** The trial court properly dismissed plaintiff's complaint because the court did not have jurisdiction over the matter.

¶ 2 Plaintiff Joseph K. Bagdonas appeals from an order of the circuit court dismissing his complaint against defendant Commonwealth Edison Company for damages resulting from an extended power outage. For the reasons set forth below, we

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affirm the decision of the circuit court because the circuit court has no jurisdiction to hear this case.

¶ 3 BACKGROUND

¶ 4 Plaintiff Joseph K. Bagdonas filed a *pro se* small claims complaint against defendant Commonwealth Edison Company (ComEd) on October 16, 2009, in the circuit court. The complaint consists of 22 numbered paragraphs and quotes section 5-201 of the Public Utility Act (220 ILCS 5/5-201 (West 2008)). Bagdonas alleges, among other things, that since 1985, he has experienced numerous power outages at his home in Des Plaines. On October 23, 2007, he experienced an extended power outage which resulted in the spoilage of food stored in a refrigerator in his home. Bagdonas alleges that a ComEd employee advised that he could file a claim with the utility to recover the cost of the spoiled food. Bagdonas alleges that he lost a total of \$148.56 in spoiled food as a result of the power outage.

¶ 5 Bagdonas alleges that ComEd denied his claim because the power outage was weather related and beyond its control. Bagdonas alleges that the power outage was a result of ComEd's negligence in maintaining its infrastructure. The complaint does not contain a prayer for relief.

¶ 6 ComEd filed a section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2008)) the complaint on January 8, 2010. In its

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motion, ComEd claims that under the Public Utilities Act, it is not responsible for a failure to deliver electricity unless such failure is due to its own willful default or negligence.

¶ 7 ComEd claims in its motion that Bagdonas failed to establish the elements of negligence in his complaint. ComEd claims:

"[p]laintiff alleges no specific misconduct or omissions on the part of [d]efendant that it supposedly breached other than its failure to provide a constant and steady supply of electricity, or perhaps clairvoyance as to where equipment will fail and replacement of that equipment prior to its failure as well as storm-proofing that equipment. Without more, [p]laintiff fails to allege any specific acts of negligence committed by Defendant, Commonwealth Edison Company, and [p]laintiff makes no specific allegations of how any such acts or omission may have been corrected."

¶ 8 ComEd claims there is no justiciable issue between the parties and it is entitled to a dismissal.

¶ 9 In reply, Bagdonas quotes section 8-101 of the Public

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Utilities Act (220 ILCS 5/8-101 (West 2008)) which provides, in part, that a public utility shall maintain its equipment and promote the safety, health and comfort of its patrons. Bagdonas goes on to quote several more sections of the Act, discusses the difficulties in maintaining his mobile home when there is a power outage, claims owners of mobile homes are discriminated by ComEd, then he quotes more statutes. Also in the reply, Bagdonas discusses and quotes a report authored by the Illinois Commerce Commission (Commission). He claims the report is evidence of ComEd's negligence. Bagdonas also claims that ComEd failed to offer evidence that the power outage at issue was indeed weather related and he requests a report from ComEd listing service outages in his service location for a five-year period. Various sections of the Act, Administrative Code, and Commission report are included as exhibits in Bagdonas's reply.

¶ 10 On February 26, 2010, Bagdonas was granted leave to file an amended complaint which he filed on March 26, 2010. The amended complaint contains 13 counts. In each count, Bagdonas quotes a statute and requests the same prayer for relief -- compensatory damages in the amount of \$148.68, punitive damages in the amount of \$445.68, and costs. The allegations in the amended complaint are essentially the same as the original complaint.

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¶ 11 On April 16, 2010, ComEd filed a section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2008)) Bagdonas's amended complaint, making essentially all the same claims as in its earlier motion to dismiss in addition to claiming that the amended complaint fails to provide a plain and concise statement of the pleader's cause of action as required by section 2-603 of the Code of Civil Procedure (735 ILCS 5/2-603 (West 2008)).

¶ 12 On April 28, 2010, the trial court ordered ComEd to provide Bagdonas with the customer report he requested earlier.

¶ 13 Bagdonas filed a motion for summary judgment on May 27, 2010. The motion is written in the same style as Bagdonas's earlier documents containing statutes and snippets of argument. In the motion, Bagdonas sought the ComEd service report and sanctions for ComEd's failure to provide the report. ComEd responded on June 10, 2010, again requesting the court to dismiss Bagdonas's amended complaint.

¶ 14 On June 28, 2010, the trial court denied Bagdonas's motion for summary judgment and granted ComEd's motion to dismiss. Bagdonas filed this timely appeal of the trial court's order from June 28, 2010.

¶ 15 ANALYSIS

¶ 16 A motion to dismiss under section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)) is a challenge to the legal

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sufficiency of the complaint. *Iseberg v. Gross*, 366 Ill. App. 3d 857, 860 (2006). In reviewing the legal sufficiency of the complaint, we regard all well-pled facts as true and draw all reasonable inferences in favor of the plaintiff. *Id.* We construe the complaint generally and dismiss only when it appears that the plaintiff cannot recover under any set of facts. *Id.* at 861. We review a section 2-615 motion to dismiss under the *de novo* standard. *Flournoy v. Ameritech*, 351 Ill. App. 3d 583, 586 (2004).

¶ 17 On appeal, Bagdonas claims the trial court erred when it granted ComEd's section 2-615 motion to dismiss, citing numerous sections of the Act in support of his claim. We respect Bagdonas's efforts in proceeding on this matter *pro se*. However, there is a unique relationship between the Act, the courts, the Illinois Commerce Commission and public policy, which requires us to affirm the trial court's decision.

¶ 18 This relationship was recently explained by our supreme court in *Sheffler v. Commonwealth Edison Co.*, No. 1-10-0166, slip op. (Ill. June 16, 2011). In *Sheffler*, the plaintiffs filed a class action lawsuit alleging, among other things, that ComEd was negligent on August 23, 2007, for failing to provide reliable power and failing to maintain its equipment, resulting in damages in the form of spoiled food, water damage to walls, furniture,

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appliances, and medical equipment. *Sheffler v. Commonwealth Edison Co.*, No. 1-10-0166, slip op. at 4 (Ill. June 16, 2011). The complaint in *Sheffler* is based on the same power outage as the instant case and the supreme court offers an in-depth discussion on why it affirmed the trial court's granting of ComEd's motion to dismiss. *Id.* at 5-6.

¶ 19 Initially, our supreme court found that the plaintiffs' claims in *Sheffler* were barred by ComEd's tariff. *Id.* at 11. A tariff is a public document setting forth services being offered, the rates and charges with respect to services, and the governing rules, regulations and practices relating to those services. *Id.* at 8-9. Section 9-102 of the Act requires public utilities such as ComEd to file tariffs with the Commission. 220 ILCS 5/9-102 (West 2006). Generally a tariff is drafted by the regulated utility, but when the tariff is duly filed with the Commission, the tariff binds the utility and the customer, and governs their relationship. *Id.* at 9.

¶ 20 At the time of the power outage at issue in the instant case and *Sheffler*, ComEd's tariff provided:

" 'The Company [ComEd] shall not be responsible in damages for any failure to supply or deliver electricity *** if such failure *** is without willful default or

negligence on its part ***.' " *Id.* at 11.

¶ 21 Under the tariff, ComEd is not responsible for damages resulting from weather-related equipment malfunctions. *Id.* at 13. Although the plaintiffs in *Sheffler*, as well as Bagdonas here, state a claim for negligence, their claims are entirely based upon equipment malfunctions caused by weather. *Id.* As a result, the supreme court in *Sheffler* affirmed the dismissal of the plaintiffs' complaint, as we must also do here.

¶ 22 In addition, the supreme court found that even if the plaintiffs' negligence claims were not barred by ComEd's tariff, the claims were properly dismissed because jurisdiction of the complaint lies in the Illinois Commerce Commission and not the circuit court. *Id.*

¶ 23 As our supreme court explained, the Commission exists to maintain a balance between the rates charged by utilities and the services performed. *Id.* (citing *Village of Apple River v. Illinois Commerce Comm'n*, 18 Ill. 2d 518, 523 (1960)). The Commission's exclusive jurisdiction over rates is set forth in section 9-252 of the Act:

" 'When complaint is made to the Commission concerning any rate or other charge of any public utility and the Commission finds, after a hearing, that the public utility has

charged an excessive or unjustly discriminatory amount for its product, commodity or service, the Commission may order that the public utility make due reparation to the complainant thereof, with interest at the legal rate from the date of payment as such excessive or unjustly discriminatory amount.' " *Id.* at 14 (quoting 220 ILCS 5/9-252 (West 2006)).

¶ 24 If a claim is for reparations, jurisdiction is in the Commission, while jurisdiction of an action for civil damages lies in the circuit court. *Id.* The jurisdiction of the circuit court is set forth under section 5-201 of the Act (220 ILCS 5/5-201 (West 2006)) which essentially provides that the utility is liable for damages caused by its own negligence. *Id.*

¶ 25 The plaintiffs in *Sheffler* argued that their claim for damages, such as spoiled food, was properly brought to the circuit court under section 5-201. *Id.* However, the court noted that the plaintiffs' claims are predicated on allegations that ComEd was not providing adequate service under the Act and the court found that such a claim goes directly to ComEd's service and infrastructure which is within the Commission's original jurisdiction. *Id.* at 17.

¶ 26 Moreover, courts have long recognized that it is essential that the Commission consider matters relating to services and rates of utilities, given the complex data underlying those matters. *Id.* at 18 (citing *Village of Apple River*, 18 Ill. 2d at 253). Allowing claims to proceed in the circuit court would place the circuit court in the position of assessing what constitutes adequate service, and whether ComEd has fulfilled its responsibility of providing adequate service. *Id.*

¶ 27 In affirming the trial court in *Sheffler*, our supreme court overturned *Village of Deerfield v. Commonwealth Edison Co.*, 399 Ill. App. 3d 84 (2009), which narrowly interpreted reparations as excluding any claims concerning service. *Id.* Consequently, complaints concerning the adequacy of ComEd's services fall within the jurisdiction of the Commission and fall within the rubric of "reparations." *Id.*

¶ 28 Therefore, according to our supreme court in *Sheffler*:
"[W]here *** a plaintiff's complaint is based upon allegations concerning ComEd's infrastructure and its provision of electrical services, and seeks relief based upon systemic defects in the provision of electrical services or the repair of those

services when a power outage occurs, that complaint seeks reparations and is within the exclusive jurisdiction of the Commission."

Id. at 19.

¶ 29 As a result, even if Bagdonas's claim was not barred by ComEd's tariff, the circuit court did not have jurisdiction over the matter and its ruling on ComEd's motion to dismiss is affirmed.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 32 Affirmed.