

Docket Number: 1193

MAROADI TRANSFER AND STORAGE, INC.,
A Pennsylvania Corporation

Stuart E. Savage, Esquire

VS.
CLOSED
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

~~Kenneth L. Sable, Chief Claims Attorney~~
~~Jeffrey L. Giltenboth, Assistant Counsel~~

VS.

***THE ESTATE OF A. J. DONATELLI**

Lee R. Golden, Esquire

October 19, 1987

By Order of Commonwealth Court, case filed, ORDER as follows: "AND NOW, this 19th day of October, 1987, the above-captioned matter is hereby transferred to the Board of Claims."

THE FOLLOWING FILED IN COMMONWEALTH COURT:

November 17, 1986

The above action is transferred to the Commonwealth Court of Pennsylvania from the Court of Common Pleas of Allegheny County to No. GD86-16068.

CLOSED

Respondent's answer to Complaint in Civil Action and Proof of Service filed.

***January 5, 1987**

Respondent's Complaint to Join Additional Respondent and Proof of Service filed.

January 9, 1987

Petitioner's Reply to New Matter and Proof of Service filed.

January 21, 1987

Argument on Preliminary Objections scheduled for Monday 23, 1987 at Pittsburgh.

February 4, 1987

On Praecipe, the appearance of Lee R. Golden, Esquire is hereby entered on behalf of A. J. Donatelli, Additional Defendant and Certificate of Service filed.

February 4, 1987

A. J. Donatelli's Preliminary Objections and Certificate of Service filed.

February 13, 1987

Respondent's Brief in Support of the Commonwealth Court Retaining Jurisdiction and Proof of Service filed. (fifteen copies)

February 20, 1987

A. J. Donatelli's Brief in Support of Preliminary Objections and Proof of Service filed.

March 12, 1987

Respondent's Brief in Support of Dismissing Donatelli's Preliminary Objections and Proof of Service filed. (fifteen copies)

July 22, 1987

Additional Defendant's first request for production of documents and things and certificate of service filed.

MEMORANDUM OPINION

CLOSED

March 13, 1987

Argued (Before a panel)

October 19, 1987

Memorandum opinion filed. (Judge Blatt)

October 19, 1987

Order rendered by Commonwealth Court. (See previous October 19, 1987 entry)

BEFORE THE BOARD OF CLAIMS

November 17, 1987

Record transferred from Commonwealth Court.

December 2, 1987

File received from Commonwealth Court.

December 11, 1987

Letter forwarded to Plaintiff requesting additional copies of Complaint and filing fee.

December 21, 1987

Filing fee received. Amount of Claim: \$26,437.55+.

January 13, 1988

Additional copies of Complaint received from attorney for Plaintiff.

January 15, 1988

Copies of Complaint forwarded to attorney for Defendant and Chief Deputy Attorney General.

January 21, 1988

Acceptance of Service of Complaint received from Defendant. Receipt of same acknowledged by Defendant January 15, 1988.

January 26, 1988

Acceptance of Service of Complaint received from Office of Attorney General. Receipt of same acknowledged by Office of Attorney General January 20, 1988.

February 8, 1988

Complaint to Join Additional Defendant filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

February 8, 1988

Answer to Complaint in a Civil Action and New Matter filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

February 11, 1988

Copies of Complaint to Join Additional Defendant forwarded to attorney for Plaintiff, attorney for Additional Defendant and Chief Deputy Attorney General.

February 18, 1988

Acceptance of Service of Complaint to Join Additional Defendant received from Office of Attorney General. Receipt of same acknowledged by Office of Attorney General February 16, 1988.

March 22, 1988

Additional Defendant's Preliminary Objections filed by attorney for Additional Defendant. Copy forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Additional Defendant.

April 18, 1988

Petition for a Stay of Proceedings and Proposed Order filed by attorney for Plaintiff. Copies forwarded to attorney for Defendant and attorney for Additional Defendant by attorney for Plaintiff.

April 27, 1988

Additional Defendant's Brief in Support of Preliminary Objections filed by attorney for Additional Defendant. Copies forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Additional Defendant.

May 2, 1988

Answer to Petition for a Stay of Proceedings filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

May 1988

Statement in Opposition to Preliminary Objections of the Additional Defendant filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

September 22, 1988

The Board rendered an Opinion and made the following Order: "AND NOW, this 22nd day of September, 1988, the request of the Additional Defendant is hereby DENIED. The Additional Defendant is given thirty (30) days in which to file responsive pleadings in accordance with this Order."

September 23, 1988

Copies of Opinions and Orders dated September 22, 1988 forwarded to attorney for Plaintiff, attorneys for Defendant, and attorney for Additional Defendant.

September 26, 1988

Acceptance of Service of Opinions and Orders dated September 22, 1988 received from attorney for Defendant (Mr. Sable). Receipt of same acknowledged by attorney for Defendant September 23, 1988.

September 29, 1988

Acceptance of Service of Opinions and Orders dated September 22, 1988 received from attorney for Defendant (Mr. Giltenboth). Receipt of same acknowledged by attorney for Defendant September 26, 1988.

October 21, 1988

Letter forwarded to attorney for Plaintiff relative to his unacceptance of service of Opinions and Orders dated September 22, 1988.

October 31, 1988

Plaintiff's Reply to Original Defendant's New Matter filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant and additional attorney for Defendant by attorney for Plaintiff.

November 22, 1988

Answer, New Matter and Counterclaim filed by attorney for Additional Defendant. Copy forwarded to all parties by attorney for Additional Defendant.

December 12, 1988

Preliminary Objections filed by attorney for Defendant (Mr. Giltenboth). Copies forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

January 13, 1989

Brief in Support of Preliminary Objections filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

February 17, 1989

The Board made the following Order: "AND NOW, this 17th day of February, 1989, upon review and due consideration of the pleadings and submissions in this matter, including certain Preliminary Objections filed by the Defendant on December 12, 1988, which raise objections to the Counterclaim, as filed by the Additional Defendant, it is hereby ORDERED that further proceedings in this matter are STAYED until such time as the Board has determined the aforesaid Preliminary Objections and, therefore, issues other and further Orders in respect to the instant case." Copies forwarded to attorney for Plaintiff, attorney for Defendant and attorney for Additional Defendant.

February 22, 1989

Acceptance of Service of Order dated February 17, 1989, received from attorney for Defendant (Mr. Sable). Receipt of same acknowledged by attorney for Defendant (Mr. Sable) February 21, 1989.

February 23, 1989

Acceptance of Service of Order dated February 17, 1989, received from attorney for Defendant (Mr. Giltenboth). Receipt of same acknowledged by attorney for Defendant (Mr. Giltenboth) February 21, 1989.

February 24, 1989

Acceptance of Service of Order dated February 17, 1989, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff February 21, 1989.

March 5, 1989

Acceptance of Service of Order dated February 17, 1989, received from attorney for Additional Defendant. Receipt of same acknowledged by attorney for Additional Defendant February 21, 1989.

March 27, 1989

Brief in Opposition to Preliminary Objections of the Department of Transportation filed by attorney for Additional Defendant. Copies forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Additional Defendant.

December 21, 1989

The Board rendered an Opinion and made the following Order: "AND NOW, this 21st day of December, 1989, the Order of the Board is as follows: 1. The Preliminary Objections as filed by the Defendant to Count II and Count IV are GRANTED. These two (2) counts will be dismissed from the Counterclaim as filed by the Additional Defendant. 2. The Preliminary Objections as filed by the Defendant to the request for any type of declaratory judgment and/or preliminary or permanent injunction and/or any type of punitive damage and attorneys' fees are GRANTED. 3. The Preliminary Objections as filed by the Defendant to the remaining

December 21, 1989 (continued)

Counterclaim are DENIED. The Defendant is given thirty (30) days to respond to the Counterclaim of the Additional Defendant in accordance with this Opinion." Copies forwarded attorney for Plaintiff, attorney for Defendant and attorney for Additional Defendant.

December 27, 1989

Acceptance of Service of Opinion and Order dated December 21, 1989, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant December 22, 1989.

January 8, 1990

Commonwealth's Answer to New Matter and Counterclaim filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

January 16, 1990

Acceptance of Service of Opinion and Order dated December 21, 1989, received from attorney for Additional Defendant. Receipt of same acknowledged by attorney for Additional Defendant January 9, 1990.

January 19, 1990

Acceptance of Service of Opinion and Order dated December 21, 1989, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff January 16, 1990.

January 22, 1990

Copy of Petition for Review as filed in Commonwealth Court filed by attorney for Additional Defendant. Copies forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Additional Defendant.

January 24, 1990

Verification to the Commonwealth's Answer to New Matter and Counterclaim filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff and attorney for Additional Defendant.

January 25, 1990

Petition for Review received from Commonwealth Court. (No. 162 C.D. 1990)

January 29, 1990

Plaintiff's Answer to New Matter and Counterclaim filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant and attorney for Additional Defendant by attorney for Plaintiff.

March 8, 1990

File transmitted to Commonwealth Court.

March 13, 1990

Copy of Order received from Commonwealth Court. Order as follows:

"NOW, March 8, 1990, it appearing that the above captioned Petition for Review was filed on January 19, 1990, and that a notice to certify the record was sent on January 24, 1990, and that the record has not been certified, it is hereby ordered that the respondent shall certify the record to this Court within twenty (20) days of the date of this Order."

July 17, 1990

Copy of Notice of Discontinuance received from Commonwealth Court.

Order as follows: "This is to notify you that the above-captioned matter has been withdrawn, discontinued and ended."

July 17, 1990

File received from Commonwealth Court.

October 19, 1990

Motion for Summary Judgment Against Plaintiff filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

October 19, 1990

Motion for Summary Judgment Against Additional Defendant filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

October 30, 1990

Letter/Motion to Strike the Motion for Summary Judgment filed by Defendant Against Plaintiff filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant and attorney for Additional Defendant by attorney for Plaintiff.

November 7, 1990

Brief in Support of Summary Judgment Against Plaintiff filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

November 9, 1990

Brief in Support of Summary Judgment against Additional Defendant filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

November 19, 1990

The Board rendered an Opinion and made the following Order: "AND NOW, this 19th day of November, 1990, the Motion of the Defendant, Commonwealth of Pennsylvania, Department of Transportation, for Summary Judgment against the original Plaintiff, and the Motion for Summary Judgment against Additional Defendant are hereby **DENIED**. The case will proceed and the hearing will be held in the immediate future in accordance with the schedule to be established." Copies forwarded to attorney for Plaintiff, attorney for Defendant and attorney for Additional Defendant.

November 26, 1990

Acceptance of Service of Opinion and Order dated November 19, 1990 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff November 20, 1990.

December 4, 1990

Acceptance of Service of Opinion and Order dated November 19, 1990 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant November 26, 1990.

November 13, 1992

Hearing scheduled for December 9, 10 and 11, 1992, before Western District, to be held at Saint Joseph's Center, 2900 Seminary Drive, Greensburg, Pennsylvania, commencing at 9:00 a.m.

December 9, 1992

Hearing held at Saint Joseph's Center, 2900 Seminary Drive, Greensburg, Pennsylvania before the Western District at 9:00 a.m. Case completed.

January 13, 1993

Testimony of hearing held December 9, 1992, filed.

January 19, 1993

Copy of testimony forwarded to attorney for Defendant.

January 25, 1993

Acceptance of Service of Testimony of hearing held December 9, 1992 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 21, 1993.

March 29, 1993

Plaintiff - Moadi's Proposed Findings of Fact and Conclusions of Law and Brief in Support thereof, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 9, 1993

Defendant - Commonwealth of Pennsylvania Department of Transportation's Proposed Findings of Fact and Conclusions of Law and Brief in Support, thereof, filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

May 17, 1993

Order of Court (Rule to Show Cause) forwarded to attorney for Plaintiff, attorney for Defendant and attorney for Additional Defendant.

June 1, 1993

Motion to Amend the Complaint as well as Proposed Order filed by attorney for Defendant. Copies forwarded to attorney for Plaintiff and attorney for Additional Defendant by attorney for Defendant.

June 16, 1993

Answer to Rule to Show Cause filed by attorney for Additional Defendant. Copies forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Additional Defendant.

August 30, 1993

Western Panel report filed.

***September 28, 1993**

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 28th day of September, 1993 the Motion to Amend the Complaint as filed by the Defendant, Commonwealth of Pennsylvania, Department of Transportation, is hereby **GRANTED**. Counsel for Defendant is directed to act in accordance with this Opinion. The caption of this case shall hereinafter be as follows: MAROADI TRANSFER & STORAGE, INC. VS. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION VS. THE ESTATE OF A. J. DONATELLI The request of Lee R. Golden, Esquire as it relates to his request to be dismissed as counsel for the Additional Defendant, A. J. Donatelli, is held in reserve pending the outcome of the directive set forth by the Board in this Opinion." Copies forwarded to attorney for Plaintiff, attorney for Defendant and attorney for Additional Defendant.

October 21, 1993

Acceptance of Service of Opinion and Order dated September 28, 1993, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 4, 1993.

February 16, 1994

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 16th day of February, 1994, upon due consideration of the pleadings and other submissions of the parties filed in this matter, it is hereby **ORDERED** and **DECREEED** that the Claim filed by Maroadi Transfer and Storage, Inc., A Pennsylvania Corporation is **DISMISSED** for lack of jurisdiction of the Board of Claims, because the Complaint was untimely filed." Copies forwarded to all parties of record.

February 23, 1994

Acceptance of Service of Opinion and Order dated February 16, 1994, received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General February 22, 1994.

February 25, 1994

Acceptance of Service of Opinion and Order dated February 16, 1994, received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 22, 1994.

March 16, 1994

Copy of Petition for Review as filed in Commonwealth Court filed by attorney for Plaintiff. Copy forwarded to all parties of record by attorney for Plaintiff.

April 22, 1994

Petition for Review received from Commonwealth Court. (No. 573 C.D. 1994)

April 25, 1994

File transmitted to Commonwealth Court.

July 11, 1995

Copy of Opinion and Order received from Commonwealth Court. Order as follows: "NOW, this 11th day of July, 1995, the order of the Board of Claims, dated February 16, 1995, at No. 1193, is hereby affirmed."

March 25, 1996

Copy of Order received from Supreme Court. Order as follows: "AND NOW, this 22nd day of March, 1996, Appellant's Petition for Enlargement of Time to File Brief is granted. Appellant's brief and reproduced record are due to be filed on or before May 31, 1996."

February 26, 1997

Copy of Order received from the Supreme Court of Pennsylvania, Western District. Order as follows: "**PER CURIAM** DECIDED: FEBRUARY 24, 1997 The appeal is dismissed as having been improvidently granted. Madame Justice Newman did not participate in the consideration or decision of this case. Mr. Justice Nigro dissents."

March 19, 1997

File returned from Commonwealth Court.
