

1-1-2002

**Redstone Water Co. v. PUC, No. 531 C.D. 2001, 2001 Pa. Commw. LEXIS 789 (Penn. Oct. 30, 2001)**

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Michael Sheehan, Court Report, Redstone Water Co. v. PUC, No. 531 C.D. 2001, 2001 Pa. Commw. LEXIS 789 (Penn. Oct. 30, 2001), 5 U. Denv. Water L. Rev. 636 (2002).

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concluding Pieper et. al. were “in the same legal and factual situation as the non-defaulting defendants.” Becker appealed judgment in their favor.

Becker contended on appeal the trial court’s ruling placing Pieper et. al. in the same position as non-defaulting defendants was error. He asserted each defendant occupied a different and distinct legal position with respect to the sales agreement for his or her lot, because Becker negotiated each sale on different terms. Pieper et. al. argued the trial court correctly concluded they were in the same position as non-defaulting defendants, therefore they were entitled to be acknowledged in the judgment.

The court determined, “in the same legal position” means that the grounds “on which a successful defendant prevails will necessarily apply to a defaulting defendant with the same force and effect,” meaning the same legal grounds would absolve defaulting defendants of liability as a matter of law. The court concluded Pieper et. al. were not in the same legal position as the co-defendants who “appeared and prevailed in the arbitration.” Becker alleged he or his agent notified each defendant of Becker’s intent to retain the water rights to the land when the land transferred ownership. Further, Becker asserted the non-defaulting parties who answered his complaint denied that allegation, but Pieper et. al. admitted the allegation. The court agreed with Becker. Therefore, the court concluded, all defendants were not so similarly situated as to be in the same legal position as to their defense against Becker’s reformation and declaratory judgments, and ordered reinstatement of the default judgments against Pieper et. al.

*Rachel Sobrero*

## PENNSYLVANIA

**Redstone Water Co. v. PUC, No. 531 C.D. 2001, 2001 Pa. Commw. LEXIS 789 (Penn. Oct. 30, 2001)** (holding the Pennsylvania Public Utility Commission (“PUC”) lacks jurisdiction to issue orders based on water quality disputes, and a lack in adequate water pressure is not sufficient to uphold PUC orders).

Customers of Redstone Water Company (“Redstone”) brought a complaint citing their dissatisfaction with both water quality, and water pressure. The customers testified before an administrative law judge (“ALJ”) that the hardness of Redstone’s water caused considerable damage to hot water heaters and bathroom fixtures. Additionally, customers testified the water had both an unpleasant smell and taste, and had particles floating in it. Many refrained from washing clothing in Redstone’s water based on the fear the water would leave stains. Finally, customers testified as to their dissatisfaction with Redstone’s water pressure.

At the request of the Office of Consumer Advocate (“OCA”), an expert gave testimony tending to support the customers’ claims. The expert explained the concerns regarding water quality were valid. In order to reduce the hardness of Redstone’s water, the expert recommended either construction of a water treatment plant, or mixing softer water from a nearby municipal authority with Redstone’s water in order to dilute it. With regard to water pressure, the expert testified that Redstone did not comply with Pennsylvania Public Utility Commission (“PUC”) water pressure regulations. On cross examination, the expert admitted that in some ways his recommendations were not practical, his analysis was based on potentially inaccurate methods, and his water pressure calculations were based on his “best guess.”

Redstone’s expert testified that water hardness is common in western Pennsylvania, and stated that treating Redstone’s water with softer water might increase sodium levels potentially causing harm to customers with circulatory problems. This expert also testified that based on his findings, Redstone’s pressure was within acceptable limits.

After weighing the expert testimony from both sides, the ALJ determined Redstone failed to provide adequate water service in violation of PUC code. Thus, the court ordered Redstone to conduct a study to find the most practical method for bringing their water within federal and state water drinking standards, as well as compliance with water pressure standards. Redstone appealed to the PUC, which affirmed the ALJ’s holding. The PUC additionally required Redstone to submit reports to the OCA every three months outlining its progress regarding the engineering study, and apply for funding from the Small Drinking Water Engineering Services program. Ultimately, Redstone appealed.

Redstone argued regulation of water quality was outside the jurisdiction of PUC, and, therefore, they should not be bound by PUC’s orders. Redstone further maintained jurisdiction over water quality belongs to the Department of Environmental Protection (“DEP”). PUC argued an exception existed allowing for certification of some water quality issues. However, this procedure was only applicable where water quality was at issue in a case originally before the PUC. Thus, the court held developing and implementing procedures regarding drinking water standards is specifically vested in the DEP.

Finally, the court deemed water pressure as a service, rather than a quality problem. Redstone did not argue the PUC lacked jurisdiction but rather was short of evidence to support its position that the water pressure was inadequate. The court held PUC’s position was based on a “best guess,” thus, there was a lack of substantial evidence, and PUC’s order with regard to water pressure must therefore be reversed.

*Michael Sheehan*