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Navigable Water Determination: Commonwealth Court of Pennsylvania Addresses the Pennsylvania Department of Community and Economic Development, Board of Property's Authority to Determine Navigability

06/24/2020

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The Commonwealth Court of Pennsylvania ("Court") addressed in a June 12th Opinion whether a Pennsylvania Board has the jurisdictional authority to address an issue related to a state waterway. See *Beishline v. Commonwealth, No. 719 C.D. 2019, 2020 WL 3109285* (Pa. Commw. Ct. June 12, 2020).

The question considered was whether the Pennsylvania Department of Community and Economic Development, Board of Property ("Board") could determine whether Fishing Creek is a navigable waterway.

The Board in a May 15, 2019, Final Adjudication and Order ("Final Adjudication") dismissed Petitioners' Amended Caveat finding that it lacked jurisdiction to rule on whether Fishing Creek was navigable. Petitioners appealed the Board's decision.

Petitioners were a group of individuals and entities who, collectively, owned eight properties in Fishing Creek Township, Columbia County, Pennsylvania. All of the properties either abut or are bisected by a stream called Fishing Creek. Petitioners claimed that members of the general public repeatedly entered Petitioners' properties to use Fishing Creek for bathing, boating, fishing, and swimming.

Petitioners reported the occurrences to the Commonwealth, Department of Environmental Protection; Commonwealth, Department of Conservation and Natural Resources; and the Pennsylvania Fish and Boat Commission (collectively, "Respondents"). Respondents refused to protect Petitioners' alleged exclusive ownership of portions of Fishing Creek. They asserted Fishing Creek was a navigable waterway. Consequently, the public was stated to have the right to use Fishing Creek.

Petitioners filed a Caveat with the Board, and shortly thereafter, an Amended Caveat. They argued, in three separate Counts, that they were entitled to declaratory judgments regarding their ownership of Fishing Creek.

Respondents filed preliminary objections, arguing that the Board should dismiss the Amended Caveat because it did not have jurisdiction over Count II. They asserted a lack of authority to determine the navigability of a body of water.

The Board ruled that it could not consider the merits of the Amended Caveat because Section 1207, which governs the Board's jurisdictional authority, did not authorize it to issue a declaratory ruling on Fishing Creek's navigability. Accordingly, the Board issued its Final Adjudication sustaining Respondents' preliminary objection and dismissing Petitioners' Amended Caveat because it lacked authority to determine navigability.

Petitioners argued on appeal that the Board erred in sustaining Respondents' preliminary objection to the Board's jurisdiction. They argued the Board did have the authority to determine the navigability of Pennsylvania waterways. This was premised on the argument that Petitioners and Respondents both made competing claims of ownership of Fishing Creek's streambed. This was argued to place the matter within the broad jurisdictional scope of Section 1207. Thus, the Board could rule upon Fishing Creek's navigability.

The Court noted that Section 1207 vested the Board with jurisdiction over any claim involving title to land brought by persons who claim an interest in lands occupied or claimed by the Commonwealth, including suits to quiet title. It then pointed out that the Amended Caveat revolves around a dispute over land in which Petitioners and Respondents—i.e., the Commonwealth— both claim an interest.

The Court cited several arguments Respondents made, wherein they claimed an interest in Fishing Creek – because it is a navigable waterway – in trust for the benefit of the public. It explained that under Section 1207, the threshold question as to whether the Board has jurisdiction over the matter is:

Is someone claiming an interest in the title to lands occupied or claimed by the Commonwealth?

The Court answered its threshold question in the affirmative. It found that the Board had jurisdiction to determine Fishing Creek's navigability and consider the remaining issues in Petitioner's Amended Caveat.

The Court reversed the Board's dismissal of Petitioners' Amended Caveat and instructed the Board to rule upon the remainder of Respondents' preliminary objections.

A copy of the Opinion can be downloaded [here](#).