

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

GIRARD BOUCHARD, in his capacity :
as President of the Board of Directors :
of the Central Coventry Fire District, :
Plaintiff, :

v. :

C.A. No. KB-2012-1150

CENTRAL COVENTRY FIRE :
DISTRICT, :
Defendant. :

DECISION

STERN, J. The Court, sua sponte, questions whether it has subject matter jurisdiction over the instant matter. This suit was filed prior to an amendment (the Amendment) to the Fiscal Stability Act (FSA)¹ that prevents any fire district from being put into, or made subject to, any state receivership proceeding. For the following reasons, this Court finds that it has limited jurisdiction over the instant suit, and that the Stay issued on November 13, 2012 (the Stay), within the Permanent Special Master’s Appointment Order (the Appointment Order), is unenforceable and thus dismissed in its entirety.

I

Facts² and Travel

Central Coventry Fire District (CCFD) is a quasi-governmental entity created through legislative charter in 1959. CCFD provides the District of Central Coventry (the District) with

¹ See G.L. 1956 §§ 45-9-1, et seq. Relevant sections of the FSA are quoted, infra, throughout this Decision.

² This matter involves intricate and extensive facts cumulated over three years of litigation; however, for the sake of brevity, the Court will only highlight certain relevant facts. Further, the Court is not making any ruling on the validity of the foregoing facts; rather, it recites these facts to provide context for the ensuing subject matter analysis.

fire protection and emergency medical services. On November 30, 2011, CCFD entered into a secured loan agreement (the Loan) with Centerville Bank (Centerville) for a line of credit totaling \$1,000,000. The Loan is secured by mortgages on several pieces of property and a security interest in CCFD's tax revenues.

Subsequently, CCFD defaulted on the Loan, and CCFD's Board of Directors (the Board) filed a petition for receivership (the Receivership Petition) with this Court on October 15, 2012. The next day, the Court appointed Richard J. Land, Esq. as a Temporary Special Master, and thereafter appointed him Permanent Special Master. At that time, within the Appointment Order, the Court imposed the Stay on all collection matters by CCFD's creditors, including, among others, Centerville. The Stay provided the following:

“That the commencement, prosecution, or continuance of the prosecution, of any action, suit, arbitration proceeding, hearing, or any foreclosure, reclamation or repossession proceeding, both judicial and non-judicial, or any other proceeding, in law, or in equity or under any statute, or otherwise, against said Defendant or any of its property, in any Court, agency, tribunal, or elsewhere, or before any arbitrator, or otherwise by any creditor, stockholder, corporation, partnership or any other person, or the levy of any attachment, execution or other process upon or against any property of said Defendant, or the taking or attempting to take into possession any property in the possession of the Defendant or of which the Defendant has the right to possession, or the interference with the Special Master's taking possession of or retaining possession of any such property, or the cancellation at any time during the Special Mastership proceeding herein of any insurance policy, lease or other contract with Defendant, by any of such parties as aforesaid, other than the Special Master designated as aforesaid, or the termination of telephone, electric, gas or other utility service to Defendant, by any public utility, without obtaining prior approval thereof from this Honorable Court, in which connection said Special Master shall be entitled to prior notice and an opportunity to be heard, are hereby restrained and enjoined until further Order of this Court.”

Subsequently, the FSA was amended to include “fire districts,” preventing CCFD from being subject to a state, judicial, receivership proceeding. The Director of Revenue (DOR) exercised its authority under the FSA and appointed Mark Pfeiffer (Pfeiffer) as receiver. On December 23, 2014, Pfeiffer filed a Bankruptcy Petition (the Bankruptcy Petition) to place CCFD into a Chapter 9 proceeding under the United State Bankruptcy Code. From that time until September 28, 2015, the parties were subject to the provisions of the United States Bankruptcy Code and addressed several issues regarding the priority and validity of creditor claims, including the claim of Centerville. On September 28, 2015, upon the request of Pfeiffer, the Bankruptcy Petition was dismissed, and the Board resumed management, operation and control of CCFD.

Subsequently, CCFD contacted Centerville in an attempt to engage in settlement discussions. Centerville proposed that it would forbear enforcement of the Loan, if, among other financial terms, CCFD agreed to deposit all tax receipts with Centerville. Centerville alleges that despite CCFD acquiescing to the forbearance proposal, it had accumulated \$300,000 on deposit with Coventry Credit Union. As a result, on October 10, 2015, Centerville “froze” CCFD’s deposit accounts in anticipation of exercising its right of “set-off” under the Loan.³ CCFD filed a Motion for a Temporary Restraining Order and a Preliminary Injunction (Motion for TRO) seeking to enjoin Centerville from exercising its right of “set-off.” The Motion for TRO was denied by the Court after Centerville and CCFD agreed that Centerville would honor certain disbursements presented by CCFD and that the remaining funds would remain frozen, but not set-off without prior notice to CCFD and the opportunity to be heard by the Court. Subsequent to this agreement, Centerville filed a “Motion for Determination that the Court’s Stay Does Not

³ According to Centerville’s claim, as of October 27, 2015, CCFD’s deposit accounts total approximately \$980,000, and CCFD owes Centerville roughly \$915,000.

Apply, or in the Alternative, for Relief from Stay” (Motion for Determination) to which CCFD objected to in its “Objection to Centerville Bank’s Motion for Determination” (Objection). The Court also received an objection from the Town of Coventry.

On November 20, 2015—the scheduled date for hearing on the Motion for Determination—the Court received a proposed order (the Proposed Order) resolving the underlying issues between CCFD and Centerville. The Proposed Order provided, inter alia, the approval of the entirety of Centerville’s claim, finding that Centerville had a first-priority security interest in a variety of collateral, including the tax receipts. Further, it provided that a set-off of certain funds and payments in the future were to be authorized by the Court. The Court held a conference with the parties that appeared for the Motion for Determination, which included CCFD, Centerville, the Town of Coventry (the Town), the firefighters Union and Kent County Water Authority. Centerville, CCFD, and the Town offered the Proposed Order to the Court, but the Court refrained from signing it due to its concerns about its subject matter jurisdiction over the Proposed Order’s findings and the relief requested therein. The Court ordered CCFD to provide notice to all members of the distribution list in the receivership matter with notice that the Court, sua sponte, had raised the issue of subject matter jurisdiction and that the parties, if they so choose, must submit briefing on the issue on or before November 23, 2015. The Court indicated that on November 25, 2015, it would rule, by written decision, on whether it had subject matter jurisdiction over the matter and under what authority CCFD, Centerville and the Town may proceed, if at all.

II

Analysis

“The Superior Court of Rhode Island is a trial court of general jurisdiction. It is granted subject-matter jurisdiction over all cases unless that jurisdiction has been conferred by statute upon another tribunal.” Chase v. Bouchard, 671 A.2d 794, 796 (R.I. 1996); see G.L. 1956 § 8-2-13; La Petite Auberge, Inc. v. R.I. Comm’n for Human Rights, 419 A.2d 274, 279 (R.I. 1980) (“the Superior Court is a court of general equitable jurisdiction”). “[A]lthough its jurisdiction is not limitless, the Superior Court possesses, as a matter of fundamental judicial power, the jurisdiction to hear and confront the merits of any case wherein the power of determination has not been specifically conferred upon another tribunal.” La Petite, 419 A.2d at 279.

Further altering the jurisdiction of the Superior Court, article 10, section 2, of the Rhode Island Constitution prescribes the power of the judiciary and states that courts inferior to our Supreme Court “shall have such jurisdiction as may, from time to time, be prescribed by law.” As such, it has long been held that “[t]he jurisdiction of the Superior Court is solely statutory in nature and cannot be extended by judicial interpretation.” Pratt v. Woolley, 117 R.I. 154, 157, 365 A.2d 424, 426 (1976) (citing Boss v. Sprague, 53 R.I. 1, 162 A. 710 (1932)). Accordingly, “[t]he Superior Court may [hear] by petition only those matters for which it has specific statutory authorization.” Id. at 160, 365 A.2d at 428.

The jurisdiction of the Superior Court has been codified in several sections of the Rhode Island General Laws. See §§ 8-2-13 and 8-2-14. Section 8-2-13, entitled “Exclusive jurisdiction of equity actions,” grants the court “exclusive original jurisdiction of suits and proceedings of an equitable character and of statutory proceedings following the course of equity.” Sec. 8-2-13. It further permits the court to sustain jurisdiction over “other actions arising out of the same

transaction or occurrence” of an equity action. Id. The Superior Court also has exclusive jurisdiction over an action arising at law in which the amount in controversy exceeds the sum of \$10,000. Sec. 8-2-14(a). In certain instances, the Superior Court has concurrent jurisdiction over an action at law with the district court when the amount in controversy is between \$5000 and \$10,000. Id. As in an equity proceeding, the Superior Court has jurisdiction over any action arising out of the same transaction or occurrence of the action within the jurisdiction conferred by § 8-2-14(a).

While the Superior Court may hear any matter for which it has such specific, statutory authorization, the Superior Court cannot hear those matters which a statute prohibits it from hearing. Section 45-9-13, entitled “Other state receivership laws inapplicable,” limits the jurisdiction of the Superior Court by providing that:

“No city, town, or fire district shall be placed into, or made subject to, either voluntarily or involuntarily, a state judicial receivership proceeding, and nothing in this act shall in any way pre-empt or restrict the powers and remedies available to a state-appointed receiver under Chapter 9 of Title 11 of the United States Code and the receiver’s ability to exercise such powers and remedies on a city’s, town’s, or fire district’s behalf in a federal proceeding filed under Chapter 9 of Title 11 of the United States Code.” (Emphasis added.)

The statute explicitly provides that as of the Amendment, a state court cannot adjudicate a judicial receivership if the insolvent party in the action is a fire district.⁴ In essence, the FSA eliminates from the Court’s subject matter jurisdiction any receivership proceeding involving a fire district, town, or city because it prevents the Court from hearing the nature of the case (a

⁴ “Subject-matter jurisdiction is the very essence of the court’s power to hear and decide a case.” Long v. Dell, Inc., 984 A.2d 1074, 1079 (R.I. 2009). “Black’s Law Dictionary defines subject-matter jurisdiction as, “[j]urisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things.” Id. (citing Black’s Law Dictionary 931 (9th ed. 2009)).

receivership proceeding) or ordering the relief sought (appointment of a special master, receiver, etc.). See id.

The revocation of subject matter jurisdiction has drastic effects as it “is an indispensable requisite in any judicial proceeding.” Id. As a result, any Court order or decision issued without subject matter jurisdiction over the nature of the case must be deemed invalid. In fact, “[t]he term ‘lack of jurisdiction over the subject matter’ means quite simply that a given court lacks judicial power to decide a particular controversy.” Pollard v. Acer Group, 870 A.2d 429, 433-34 (R.I. 2005) (citing George v. Infantolino, 446 A.2d 757, 759 (R.I. 1982)); see also DeMarco v. Travelers Ins. Co., 102 A.3d 616, 621 (R.I. 2014) (citing Narragansett Elec. Co. v. Saccoccio, 43 A.3d 40, 44 (R.I. 2012)) (“When considering claims for lack of subject-matter jurisdiction, we are ‘refer[ring] only to the court’s power to hear and decide a case . . .”).

In the instant matter, the Amendment’s usurpation of the Superior Court’s subject matter jurisdiction over receivership proceedings involving a fire district leaves several issues before the Court. These issues are: (1) whether the divestment of such subject matter jurisdiction invalidates the Court’s actions, orders, and decisions made prior to the Amendment; (2) whether the Stay, issued prior to the Amendment, is still valid and in effect; and (3) whether the Court has jurisdiction to proceed in the matter before it.⁵

A

Prior Court Actions, Orders and Decisions

The first issue is whether the Amendment has any effect on actions, orders, or decisions of the Court made prior to the Amendment. Simply, the inquiry is whether the Amendment has

⁵ It is important to note that our Supreme Court has held “[t]he question of lack of jurisdiction . . . should be determined at the earliest stage of the proceedings if possible” and “whenever it appears that the court has no jurisdiction the court of its own motion should stop the proceedings.” In re Estate of Speight, 739 A.2d 229, 231 (R.I. 1999).

prospective or retroactive effect. Our Supreme Court has instructed that “the general rule [is] that statutes and their amendments are applied prospectively.” Lawrence v. Anheuser-Busch, Inc., 523 A.2d 864, 869 (R.I. 1987) (citing Emmett v. Town of Coventry, 478 A.2d 571, 572 (R.I. 1984)); see also Norman J. Singer and J.D. Shambie Singer, Statute and Statutory Construction § 41:4 at 415-16 (7th ed. 2009) (“a statutory amendment also cannot be given retroactive effect in the absence of a clear expression of the legislative intent to do so”). In fact, retrospective operation is disfavored by the courts. Singer and Singer, supra, § 41:4 at 400-01. A statute will only be retroactively applied “if it appears by strong, clear language or necessary implication that the Legislature intended the statute or amendment to have a retroactive effect.” Lawrence, 523 A.2d at 869; see also Ret. Bd. of Emps.’ Ret. Sys. of City of Providence v. Corrente, 111 A.3d 301, 309 (R.I. 2015) (“[a]s a general rule a statute is presumed to operate prospectively and not retrospectively, unless it appears by clear, strong language or by necessary implication that the Legislature intended to give the statute retroactive force and effect.”); Wilkinson v. State Crime Lab. Comm’n, 788 A.2d 1129 (R.I. 2002).

Here, the Court will apply the general rule that the Amendment shall only be applied prospectively. See Lawrence, 523 A.2d at 869; Singer & Singer, supra, § 41:4 at 415-16. Upon review of the FSA, there is no indication that the General Assembly intended either the statute or amendment thereto to take retroactive effect. See §§ 45-9-1, et seq.; Lawrence, 523 A.2d at 869; Wilkinson, 788 A.2d at 1129. Therefore, any order by this Court prior to the Amendment was made while this Court had subject matter jurisdiction over CCFD’s receivership proceeding. Essentially, the Amendment acts as a line of demarcation in the timeline of these proceedings.

Therefore, all the Court’s orders and decisions prior to the Amendment were made while the Court had jurisdiction and are thus valid.⁶

B

The Stay

While the Stay was within an order issued prior to the Amendment—thus made when the Court had subject matter jurisdiction—it presents a unique situation as it has an infinite duration extending beyond the Amendment. This means that the Stay extends into a time when the Court has no subject matter jurisdiction over the essence of the Stay (*i.e.*, the appointment of a receiver). While the Stay was valid, as it was made when the Court had jurisdiction over the matter (prior to the FSA), now, as discussed *supra*, the Court does not have jurisdiction over the matter (a receivership proceeding). As a result, the question before the Court is whether the Stay—validly ordered when the Court had competent subject matter jurisdiction—can remain in effect despite a present want of jurisdiction over the Stay’s subject matter.

Our Supreme Court has repeatedly held that “a claim of lack of subject matter jurisdiction may be raised at any time.” *DeMarco*, 102 A.3d at 621 (quoting *Long*, 984 A.2d at 1078); *see also Pollard*, 870 A.2d at 433 (“[i]t is certainly true that a claim of lack of subject matter jurisdiction may be raised at any time). Further, subject matter jurisdiction “cannot be waived or conferred by either party, and can be raised *sua sponte* by the court.” *DeMarco*, 102 A.3d at 621. Implicit in this rule is that the court must have subject matter jurisdiction over a case until final

⁶ This is not to say, however, that a decision of this Court—prior to the Amendment—that prevented a party from proceeding against CCFD, pursuant to the Stay, still prevents that party from proceeding against CCFD. As discussed, *infra*, the Stay is no longer enforceable. As such, even if a party was prohibited, through an order or decision of this Court, from pursuing an action against CCFD prior to the Amendment, that party is no longer prevented from doing so. This holding simply applies to those decisions, orders and actions by this Court in matters not relating to the Stay.

judgment on appeal. If a court lacks jurisdiction over an issue, it shall dismiss the issue, typically without prejudice. Super. R. Civ. P. 12(h) (“whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action”); see also 35B C.J.S. Federal Civil Procedure § 794 (“A case is properly dismissed for lack of subject-matter jurisdiction when the court lacks statutory or constitutional power to adjudicate the case.”).

Here, the Court, sua sponte, takes notice of the subject matter jurisdiction issue presented in the case at bar. The Court finds that the Stay is valid as it was ordered by the Court when it had subject matter jurisdiction over CCFD’s receivership proceedings. As such, the subsequent Amendment did not invalidate the Stay because the Court had jurisdiction to take such action at that time. However, following the Amendment, this Court has no jurisdiction over the subject matter of the Stay because the Stay was part of an order appointing a third-party fiduciary under the receivership laws, and this Court is now prohibited from applying receivership laws to fire districts. As the Court currently has no subject matter jurisdiction over the Stay, it cannot enforce the Stay, making it—for all intents and purposes—invalid. Accordingly, the Court has no jurisdiction over the essence of the Stay and dismisses the Appointment Order in its entirety.⁷

C

Moving Forward

The Court is cognizant of several issues moving forward in the instant litigation. First, because the Court has no subject matter jurisdiction over receivership proceedings involving fire

⁷ While the Court may not have jurisdiction over any receivership matter, “[i]t is clearly established that a trial court has jurisdiction to determine its own jurisdiction.” Smith v. Johns-Manville Corp., 489 A.2d 336, 338 (R.I. 1985) (citing U.S. v. United Mine Workers of Am., 330 U.S. 258, 292 n.57 (1947)). As a result, the Court has jurisdiction to dismiss something over which it lacks jurisdiction.

districts, and there is an explicit legislative intent to prevent the application of receivership laws to fire districts, the Court may only adjudicate the matter under alternative jurisdictional statutes. The FSA does not strip the Court of jurisdiction to hear all matters involving fire districts; it merely prevents this Court from applying state receivership laws to a fire district. Therefore, the Court may still adjudge the case through its exclusive equitable jurisdiction under § 8-2-13, or by its jurisdiction over actions at law with an amount in controversy over \$10,000 pursuant to § 8-2-14. In doing so, receivership laws will not be applied, and motions brought pursuant to receivership statutes will not be entertained. Thus, for the balance of this litigation, which will proceed in equity and at law, the receivership laws will not be applied.

Second, there are numerous motions that were pending at the time of the Amendment. As discussed supra, the Court has no jurisdiction to rule on any motions based under, or pertaining to, the State's receivership laws; however, it does have jurisdiction to hear motions based in equity or in actions at law. Because it is not within the Court's purview to infer whether a party to a suit wishes to proceed in equity or at law, this Court ORDERS all parties with motions pending before it, in the matter of Girard Bouchard v. Central Coventry Fire District, to come forth and show cause as to how their motion (1) is independent from and does not implicate receivership laws; and (2) whether jurisdiction over their claimed cause of action is founded in § 8-2-13⁸ or § 8-2-14.⁹ This show cause hearing is scheduled for January 15, 2016 at 9:30 a.m.

⁸ The Court notes that “[w]hile the Superior Court’s jurisdiction over matters of equity is broad, a litigant must seek or be entitled to some form of recognized equitable relief in order to invoke this jurisdiction.” Corrente, 111 A.3d at 306.

⁹ The Court notes that the original petition filed in this matter was one for the appointment of a receiver. While it can be argued that all actions prior to the Amendment originate from the Receivership Petition, the Court finds it administratively prudent to keep the matter consolidated and have the parties show cause as to the jurisdictional statute under which they are asserting

III

The Motion for Determination

The current Motion before the Court by Centerville requests that this Court determine whether or not the Stay is still in effect, and if so, that the Court grant Centerville relief from the Stay to allow it to set-off the funds CCFD has on deposit with Centerville in an attempt to partially satisfy the Loan. As the Stay is no longer in effect, CCFD is not restrained from entering into an agreement with Centerville, the Town, Kent County Water Authority, or any other creditor, in conformance with law.

IV

Conclusion

For the aforementioned reasons, the Court finds that it has jurisdiction over the instant matter under §§ 8-2-13 and 8-2-14. In so holding, the Court will not apply any receivership laws or entertain any motions brought pursuant to same. Parties who had motions pending before this Court prior to the Amendment are ORDERED to show cause as to why their motion (1) does not implicate receivership laws; and (2) whether jurisdiction over their motion is founded in §§ 8-2-13 or 8-2-14.

relief. Doing so prevents the Court from dismissing the action in its entirety and requiring the parties to re-file numerous, different actions.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **Bouchard v. Central Coventry Fire District**

CASE NO: **KB-2012-1150**

COURT: **Kent County Superior Court**

DATE DECISION FILED: **November 25, 2015**

JUSTICE/MAGISTRATE: **Stern, J.**

ATTORNEYS:

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