Youmans v. Bloomfield Township

Trial Verdict Summary

July 22, 2018

At trial in February 2018, the Plaintiff argued that the Township has overcharged its rate payers in seven ways, through seven types of overcharges that had been inserted into the Township's water and sewer rates.

In the opinion the Court delivered from the bench on July 12, 2018, the Court found in favor of the Plaintiff and the certified Class, in full or in part, as to six of the seven types of overcharges. For some of the overcharges, the Court awarded only prospective relief; it found that Plaintiff's only remedy was for the Township to be more transparent and accountable in the future.

However, for four of the seven types of overcharges, the Court awarded a monetary refund. Plaintiff's counsel believes that the amount of the monetary refund, once finalized by the Court, will be as follows:

Non-Rate Revenues	**$2,935,063.00**
Sewer Only Revenues	**$2,173,282.00**
Service to Township Ordinance	**$3,585,749.13** (minus the cost of municipal water use (estimated by the Township to be approximately $35,000 per year), plus an additional amount for FY 2017-18 when the data becomes available)
Service to Township FY 2017-18	**$577,493.36** (assumption based on FY 2016-17 amount)
Public Fire Protection Service	Currently not known (amount equal to the cost of water passed through hoses for fighting fires)
Total Refund	**$9,271,587.49 (approximate)**

The Court ruled as follows with respect to each of the seven types of overcharges.

1. **Non-Rate Revenues, pp. 67-148**

A. Plaintiff's Argument

Plaintiff argued that the Township had overcharged water and sewer customers by failing to take into account so-called "Non-Rate Revenues" (e.g., late fees) in establishing rates. Essentially, using simple numbers for the purpose of providing an example only, the Township

said it had incurred $100 in costs and must therefore spread $100 over the water and sewer customers through the rates. But the Township neglected to take into account that it had already collected $20 from sources other than the rates, so it really only needed to spread $80 over the water and sewer customers. This resulted in an overcharge in every year of the class period except two.

B. The Court's Ruling

The Court found in favor of the Plaintiff:

> Non-rate revenue and sewer only. Judgment, liability to Plaintiff on both sections. Damages; first, the Court leaves as resolved between the parties that some period of time over which this case pertains non-rate revenue was to Plaintiff's satisfaction explicitly deducted from the numerator or from the rates. Whatever damages, if any, the Court trusts will exclude this portion.
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> * * *
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> The Court accepts Plaintiff's math as correct. [Opinion, pp. 151, 154.]

Plaintiff presented the following number at trial, which the Court expressly adopted in its Opinion: "Non-Rate Revenues" not deducted in Rate Model – **$2,935,063.**

The Court went on to criticize the Township's lack of transparency:

> With some reservation, maybe only symbolic, with the millions of dollars in the black, it may be more genuine to acknowledge that the Defendant's objective was not so much to strive to develop an equation to produce a rate which would yield income to meet expense so much as an objective to build a surplus in the water and sewer fund. If so, is this objective unreasonable? Defendant may either be inept at the task of equating cost with income, or as Defendant contends here, the surplus is itself meeting an expense, which from that perspective is resulting in proportion between rates and costs. But if this is Defendant's possession -- position that it needs extra beyond today's expense, then why the confusion? The Court is loath to say smoke and mirrors because the Court is not claiming anything sinister here, but why the -- why the abstrusity about how non-rate revenue is accounted for in the equation which yields the rates? Then when will Defendant be caught up to tomorrow's expenses, so that it no longer has future expenses to catch up to? When can it be expected a flat line in the water and sewer fund? Surely no one -- no way sensible and et -- eternal increase in the water and sewer fund balance.
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> If the Defendant believes that the millions of dollars in -- in the water and sewer fund is necessary to fund future expenses, then when will these expenses start coming due? They have either not come due in the past eight years or so, or they have, but their consequence has not prevented the water and sewer fund from increasing year in and year out. [Opinion, pp. 81-82.]

The Court again criticized the Township's "abstruse, recondite practice" later in its verdict:

> Next, in case it has not been made abundantly clear in this Court's opinion in these sections for non-rate revenue and sewer only, this is the Court's opinion of what the Defendant, and this time likewise its expert, has to say about the positive balance in the water and sewer fund quote, it is needed, much needed reserves. And this is the Court's opinion: Your abstruse, recondite practice prevents any such adjudication. You may not bait and switch, Defendant. You did not call it reserves at the beginning in projecting; you may not call it that at the end. You profess to the world in your budgets, you called it projected postage, slag, uniform, tools, et cetera, you called 80 percent sewer customers are water customers, you professed that to the world. You do not possess a magic wand at the end of the year and change what is -- what is surplus money for postage, slag, uniform, tools, et cetera, into much needed reserves. You possess no such magic wand to change 80 percent into 70 percent, regardless of your child protecting parent motif to reflect much needed reserves.
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> It is Defendant which creates this – these mysteries; Defendant has impeded the Court, and more importantly, its customer and taxpayers from passing upon the question of whether the Defendant's rates are proportionate to its costs. This impediment, abstrusity, may be of late past practice, estops invocation of the presumptive reasonableness, the thoughtless thoughtfulness presumption of the rates. Short of blind deference to the Defendant, redundancy intended, Defendant's impediment, regardless of -- of intent, hamstrings the Court, and the Defendant's water and sewer customers, taxpayers, public at large, prevents our ears from even being able to hear a claim of disproportion. In a word, if the presumption were to prevail here, the presumption is and evermore shall be in -- unrebuttable. This is not what the law intended. [Opinion, pp. 151-153.]

See also Opinion, p. 74 (“This is the Court speaking: Where, Defendant, can your bosses, your principals, your masters, your non-arm's length customers, your intimates, heck, yourself, your reflection in a mirror, where can they see this [non-rate revenue] computation? You don't suggest, Defendant, that you know more than your superiors, or at least see more, or at least have more available for you to see than your superiors, do your -- do you?”); p. 78 (“It is true, this Court concludes as a matter of fact, this figure, which is projected non-rate revenue, is not located in the equation which the Defend -- Defendant annually refers to in its rate memos as the equation which yields the water and sewer rates. The quote, it is simply, dot, dot, dot, quote, verbiage.”).

2. **Sewer Only Revenues, pp. 51-67**

A. Plaintiff’s Argument

Plaintiff argued that the Township had overcharged water and sewer customers by failing to take into account so-called “Sewer Only Revenues” in establishing rates. Essentially,

Plaintiff contended that the Township set its sewer rates as if only the customers with both water and sanitary sewer service were paying for sanitary sewer service. Plaintiff argued that the Township left out the money it receives from customers who have sanitary sewer service but not water service, which total hundreds of thousands of dollars a year. This is similar to the example stated above in Section 1; the Township tells ratepayers it needs to recover its entire $100 cost through the rates, but neglects to mention that it already received $20 from somewhere else.

B. The Court's Ruling

The Court found in favor of the Plaintiff:

> Non-rate revenue and sewer only. Judgment, liability to Plaintiff on both sections. Damages; first, the Court leaves as resolved between the parties that some period of time over which this case pertains non-rate revenue was to Plaintiff's satisfaction explicitly deducted from the numerator or from the rates. Whatever damages, if any, the Court trusts will exclude this portion.
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> The Court accepts Plaintiff's math as correct. [Opinion, pp. 151, 154.]

Plaintiff presented the following number at trial, which the Court expressly adopted in its Opinion: "Sewer-Only Revenues" not deducted in Rate Model – **$2,173,282.**

The Court explained its decision as follows:

> In fairness to the Defendant, it is not so much which factor in the denominator is altered to yield the truth, what matters is what is the quotient after the computation. This dissection of the denominator is performed by the Court merely to demonstrate the convoluted mess, which even if performed with fidelity to the water and sewer customers, is abstruse, recondite, it is not transparent.
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> One thing is clear, by the plausible arguments both sides present in support of their contention that sewer only revenues are and are not baked into the water and sewer customers' sewer rates, the Defendant's method is unclear. It is hardly verifiable. If there were not an easier, less convoluted, traceable equation to deduct such projected revenues from projected costs, Plaintiff may well be stuck with a trust me, I am your government proclamation. Plaintiff may well fail to overcome the presumptive reasonableness, the thoughtless thoughtfulness.
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> But there sure is a simpler, a transparent way to do this. The Defendant itself identifies the number of sewer only customers as quote, dot, dot, dot, relatively small, dot, dot, dot. [Opinion, pp. 58-59.]

The Court further explained:

> These water and sewer customers' sewer sewage contribution is a little less than their water quantity purchased. This means that the water and sewer customers' pie slice of the entire sewer sewage pie is not 80 percent, but something less than say 70 percent. This is Domine: We're trying to keep the rates low; we write 80 percent, even though in truth it's 70 percent. This is the Court: With all due respect, who are you, the child, the subordinate, or the parent, the principal? Don't conceal from your parents on the notion you're trying to protect them. If you are going to deal in assumptions, then deal in assumptions. Don't deal in assumptions if you are going to mix it up with perceived reality. [Opinion, p. 63.]

See also Opinion, p. 65 ("Approximating a percentage of producers of a benign or intentionally inflated approximated quantity of sewer sewage as a means to offset an actually and easily calculable source of revenue is unreasonable."); p. 66 ("The Court opines and adjudges, however, you either are not achieving proportionality because of your methodology, or your methodology is abstruse, and no one can tell whether or not your rates are proportional to costs, save wholesale deference, blind faith to the Defendant. This is not the law.")

3. **Rent, pp. 31-34**

A. Plaintiff's Argument

Plaintiff argued that the Township had overcharged water and sewer customers by including an improper annual charge of $350,000 in the rates purportedly for "rent" of space in the Department of Public Works building for use by the Water and Sewer Division.

B. The Court's Ruling

The Court found that in-kind payment for services between Township departments was permissible, and that the Township was liable to Plaintiff, but the Court awarded no refund on this claim.

The Court did grant Plaintiff prospective relief by ordering that the Township adopt greater transparency in the future with respect to in-kind payments between its general fund and Water and Sewer Fund: "Though no damages awarded, the Court adjudges that if Defendant chooses to trade services, it shall be explicit for all eyes to see. Thus, there is a remedy to the water and sewer customers, but no damages." Opinion, pp. 33-34.

The Court reiterated its decision as follows:

> Rent section. Liability in Plaintiff's favor; damages, no dollars. Remedy, henceforth explicit accounting of any quote, in-kind service exchanges, with explicit valuations, or, of course, instead, actual payment of dollars rather than horse-trading. It would be sensible, but the Court abstains in deference to division of powers, to perform a year-end reconciliation. [Opinion, pp. 148-49.]

4. **Township's Own Water Use, pp. 42-51**

A. Plaintiff's Argument

Plaintiff argued that the Township had overcharged water and sewer customers by failing to pay for its own water "use" as required by Township Ordinance § 38-225 ("The township shall pay for all water **used by it** in accordance with the foregoing schedule of rates. The Township shall pay a flat charge for water used or available through fire hydrants of $10.00 per year, per hydrant, connected to the system. Charges for hydrants shall be paid annually."), which Plaintiff referred to in this action as the "Service to Township Ordinance."

B. The Court's Ruling

The Court divided the Township's water use into three "buckets": (1) tap water actually used by the Township at its facilities and elsewhere; (2) "truly lost water" such as water that leaks from pipes; and (3) construction water used for the operation and maintenance of the water supply system itself.

The Court found that Plaintiff is **not** entitled to a refund for Bucket #1, tap water actually used by the Township, because the Township pays for that water with in-kind services to the Water and Sewer Fund. Opinion, p. 44. The Township previously estimated the value of this type of water as $35,000 per year.

However, the Court found that Plaintiff **is** entitled to a refund for Buckets #2 and #3.

Regarding the "truly lost water" bucket, the Court said: "It is most apt to keep the buckets separated, and insofar as this isolated bucket is concerned, the Court is persuaded by Plaintiff's logic over the Defendant's default position. The cost for this truly lost water bucket per ordinance, per the Court, was destined to be borne on the shoulders of the general fund taxpayers." Opinion, p. 46. "It shall be the duty of the parties to translate this pronouncement into numbers and damages. The parties are charged to crunch the numbers." p. 47.

Regarding the construction water bucket, the Court said:

> Now onto the third bucket, construction water; again, water purchased by the Township which reaches its intended destination, such destination being a use, rather than a geographic location. Similar in consequence and similar, but not identical, in reasoning, the Court finds in Plaintiff's favor here.
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> Plaintiff argues that from the reading of Township ordinances 225 and 226, the cost of this bucket called construction water too is destined to be borne on the shoulders of the general fund taxpayers. The Court -- this Court agrees.
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> * * *

> This section of the Court's opinion regarding the construction water bucket stops at this pronouncement. It shall be the duty of the parties to translate this pronouncement into numbers and damages. The parties are charged to crunch the numbers. [Opinion, pp. 48, 49-50.]

The Court reiterated its rulings as follows:

> To recap, truly lost water bucket and construction water buckets, the Court finds, because of obfuscation, intentional or not, misinterpretation of Township ordinance or not, has been paid for by the water and sewer customers over the time frame Plaintiff prosecutes, and they should not have been charged to them, but to the general fund. That, or if the Defendant contends it did pay through in-kind services, is rejected by the Court, if only because the proof of that is obfuscated and unnecessarily so.
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> Thus, the Court concludes the Defendant has not in any form reimbursed water and sewer, nor paid for these buckets itself.
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> Though also obfuscated, in this Court's opinion, the Court is more persuaded that municipal tap water, the first bucket, has been paid for by the Defendant effectively through horse-trading or in-kind services; hence, no damages to the Plaintiff for this bucket. [Opinion, p. 50.]

The refund numbers Plaintiff presented at trial did not distinguish between the three "buckets" of water. However, the "truly lost water" bucket made up the vast majority of Plaintiff's claimed refund. In order to fulfill the Court's instruction to "crunch the numbers", Plaintiff need only determine the cost of the water the Township actually uses in its facilities and subtract that amount from the total refund numbers Plaintiff presented at trial. The Township has estimated that the value of the water used by the Township's facilities is approximately $35,000 per year.

Plaintiff presented its total refund numbers as follows:

To determine the amount of the Water Overcharge associated with the Township's violation of the Service to Township Ordinance, one must undertake the following calculation for each fiscal year in the Class Period: (1) Multiply the total revenue requirement included in the water consumption rates by the percentage of the Township's total water purchases that the Township determined would be consumed by metered water customers, then (2) subtract the amount calculated in part (1) from the total revenue requirement included in the water consumption rates.

FY 2010-2011

For FY 2010-11, the Water Overcharge calculation is as follows:

(1) Total water cost in water rates -- $10,193,813.00 (Exhibit B.8 at p. BFT00102)

Multiplied by percentage of water consumed by metered water customers -- .94 (Exhibit B.8 at BFT 00097)

(2) Equals amount that should have been included in the Rates -- $9,582,184.22

Total Water Overcharge (1) minus (2) -- **$611,628.78**

FY 2011-2012

For FY 2011-12, the Water Overcharge calculation is as follows:

(1) Total water cost in water rates -- $8,485,000 (Exhibit B.9 at p. BFT00089)

Multiplied by percentage of water consumed by metered water customers -- .94 (Exhibit B.9 at BFT 00092)

(2) Equals amount that should have been included in the Rates -- $7,975,900

Total Water Overcharge (1) minus (2) -- **$509,100.00**

FY 2012-2013

For FY 2012-13, the Water Overcharge calculation is as follows:

(1) Total water cost in water rates -- $8,287,500 (Exhibit B.10 at p. BFT00078)

Multiplied by percentage of water consumed by metered water customers -- .95 (Exhibit B.10 at BFT 00078)

(2) Equals amount that should have been included in the Rates -- $7,873,125

Total Water Overcharge (1) minus (2) -- **$414,375.00**

FY 2013-2014

For FY 2013-14, the Water Overcharge calculation is as follows:

(1) Total water cost in water rates -- $9,503,700 (Exhibit B.11 at p. BFT00058)

Multiplied by percentage of water consumed by metered water customers -- .95 (BFT 00066) (Exhibit B.18)

(2) Equals amount that should have been included in the Rates -- $9,028,515

Total Water Overcharge (1) minus (2) -- **$475,185.00**

FY 2014-2015

For FY 2014-15, the Water Overcharge calculation is as follows:

(1) Total water cost in water rates -- $9,977,047 (Exhibit B.12 at p. BFT00041)

Multiplied by percentage of water consumed by metered water customers -- .95 (BFT 00048) (Exhibit B.19)

(2) Equals amount that should have been included in the Rates -- $9,478,194.65

Total Water Overcharge (1) minus (2) -- **$498,852.35**

FY 2015-2016

For FY 2015-16, the Water Overcharge calculation is as follows:

(3) Total water cost in water rates -- $9,982,302.00 (Exhibit B.13 at p. BFT00027)

Multiplied by percentage of water consumed by metered water customers -- .95 (BFT 00025) (Exhibit B.20)

(4) Equals amount that should have been included in the Rates -- $9,483,186.90

Total Water Overcharge (1) minus (2) -- **$499,115.10**

FY 2016-17

For FY 2016-17, the Water Overcharge calculation is as follows:

(1) Total water cost in water rates -- $8,249,898.50 (Exhibit B.14 at p. BFT00008)

Multiplied by percentage of water consumed by metered water customers -- .93

(2) Equals amount that should have been included in the Rates -- $7,672,405.14

Total Water Overcharge (1) minus (2) -- **$577,493.36**

Assuming the Water Overcharge for FY 2017-18 is the same as for FY 2016-17, the total refund required is: **$4,183,241.** Plaintiff lacks data for FY 2017-18, and was therefore unable to present a concrete refund number at trial. The total refund Plaintiff was able to describe in concrete terms, covering FY 2011 through FY 2017, was **$3,585,749.13.** Plaintiff expects that the Court will order a refund of the FY 2017-18 overcharges when concrete data becomes available.

5. **OPEB Charge, pp. 19-31**

A. Plaintiff's Argument

Plaintiff argued that the Township had overcharged water and sewer customers by including a charge to finance future health insurance benefits for retired employees of the Water and Sewer Fund (the "OPEB Charge").

B. The Court's Ruling

The Court found that the Township was liable to Plaintiff but that Plaintiff was not entitled to any refund. However, the Court awarded Plaintiff prospective relief and ordered the Township to explicitly account for all amounts set aside for OPEB in the future:

> OPEB, judgment, liability in Plaintiff's favor; damages, no dollars. Remedy, henceforth, explicit accounting for all OPEB dollars. Any dollar in unrestricted cash or cash equivalent accounts which the Defendant would characterize as an OPEB dollar, must be transferred into trust, or that dollar shall lose any identity as OPEB, and shall instead be what it necessarily is, a surplus. Defendant may propose, upon return to court, a specified time that dollar may reside in unrestricted cash account before its true nature as a surplus dollar emerges. It would be sensible, but the Court abstains in deference to division of powers, to perform a year-end reconciliation. [Opinion, p. 148.]

6. **County Drain Charge, pp. 4-19**

A. Plaintiff's Argument

Plaintiff argued that the Township had overcharged water and sewer customers by including an annual "County Drain Charge" in the rates.

B. The Court's Ruling

The Court entered a judgment of no cause of action on this claim. Opinion, p. 148 ("Storm water drain, judgment, no cause of action.").

7. **Public Fire Protection Service, pp. 34-42**

A. Plaintiff's Argument

Plaintiff argued that the Township had overcharged water and sewer customers by including the cost of public fire protection services in the water rates. Plaintiff argued that the entire cost of the extra capacity the water system requires in order to fight fires ought to be borne by the Township's general fund, and paid for by taxation, not paid for through the water rates.

B. The Court's Ruling

The Court rejected Plaintiff's argument in part, and found that the Township could continue to include the cost of extra capacity in its water rates, but that it must pay the cost of the water actually used to fight fires from the general fund, and must refund the cost of such water it collected during the class period. *See* Opinion, pp. 34-42.

The Court held as follows:

Public fire protection, judgment, no cause of action in part, liability in Plaintiff's favor in part. Damages, MCL 123.141(3), Plaintiff prevails in a dollar amount equal to the cost of water in fire hoses over the relevant time frame paid by the general fund. The parties are to calculate, approximate, or stipulate to this figure and report back. The Court has mused over the intersection of the parties here; the parties may address this if they choose, or ignore it. Remedy, henceforth, explicit accounting of water in fire hoses to be paid for by the general fund, with explicit attention paid to the intersect -- strike that -- strike that.

If the Defendant chooses in-kind service exchanges, an explicit accounting of same, with explicit valuations. Or, of course, instead actual payment of dollars rather than horse-trading. It would be sensible, but this Court abstains in deference to the division of powers to perform a year-end reconciliation, or year-end reconciliations. [Opinion, p. 149.]