IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

G. CHOICE FUNERAL CHAPEL, INC.	:	
Plaintiff	:	
	:	
v.	:	NO. 98-01,753
	:	
JOSEPH L. WALKER and SARAH A. WALKER,	:	
Defendants	:	

OPINION and ORDER

This opinion addresses the motion for post-trial relief filed by the plaintiff, who complains that this court made numerous errors in rendering a decision in this non-jury trial. Because the allegations have no merit, this court will deny the motion and stand by its decision.

In general, our comprehensive opinion issued on 5 April 1999 thoroughly explains our rulings and needs no bolstering. We will, however, address one issue raised by the defendants, as we feel it alone is worthy of discussion.

Responsibilty for Property Destruction

One of the crucial issues in the case was the identity of the party who trashed the Walkers' apartment buildings. Although Choice officials led the Walkers to believe their corporation would be renting the apartment buildings, Choice asserted late in the litigation process that the Tower of Power was the actual renter and disavowed responsibility for the property destruction. This issue first arose minutes before trial, when Choice made a motion

in limine requesting the court to exclude evidence relating to property damage because that damage was done by the Tower of Power. Since the Walkers had no opportunity to prepare a response to the motion, and since the court was disinclined to postpone trial at that late date, the court reserved a ruling on the legal merits of the motion. Pending that decision, the evidence was admitted.

The court addressed that legal issue in the section of our opinion entitled "Will the Real Lessee Please Stand Up!" where we discussed Choice's "transparent effort to cheat the Walkers through an organizational shell game," and went on to reject that attempt by applying three different legal principles. Choice now objects to these legal principles not because they are based on unsound reasoning or were wrongly applied, but merely because Choice claims the court had no right to consider them.

A. Application of Pa.R.Civ.P. 1029(e)(1)

The court first pointed to Pa.R.Civ.P. 1029(e)(1), which states that unless a party specifically denies averments relating to the identity of the wrongdoer, the averments are admitted. The court then noted that not only did Choice fail to specifically deny the allegation it took possession of the properties, but Choice also admitted taking possession in its own pleading. The court then held that Choice would not be permitted at this late date to deny taking possession of the properties.

Choice argues that pleadings cannot be considered as evidence unless they are first introduced and admitted into the record. Choice cites the case of David v. Commonwealth,

143 Pa. Commw. 161, 598 A.2d 642 (1991) in support of its stand. The defendants point to the cases of Lacaria v. Hetzel, 373 Pa. 309, 96 A.2d 132 (1953) and Discovich v. Chestnut Ridge Trans. Co., 369 Pa. 228, 85 A.2d 122 (1952), which hardly support their position. All of these cases, however, involve an evaluation of evidence produced at trial. David involved the question of whether a nonsuit was properly entered; Lacaria involved the question of whether there was sufficient evidence to send the case to the jury; and Discovich involved the question of whether there was sufficient evidence to sustain the verdict against one of the defendants.

The question before this court, however, was a *legal question*: should Choice be permitted to deny responsibility for the property damage? The resolution of that question required the application of legal principles, not an evaluation of the evidence produced at trial. The court was entirely justified in applying the rule promulgated by our Supreme Court in resolving that issue. As we pointed out in our opinion, Rule 1029(e)(1) was designed to prevent precisely the type of maneuver Choice was attempting to make.

B. Equitable Estoppel and Piercing the Corporate Veil

The other two bases upon which the court prevented Choice from denying possession of the buildings were equitable estoppel and piercing the corporate veil. Plaintiff does not challenge the court's reasoning on these issues, but merely complains that the court had no right to consider the doctrines because counsel for the Walkers had not advanced either theory.

Certainly counsel for the Walkers performed poorly in this regard, and this court certainly does not intend to excuse his performance. However, we see no reason why the Walkers should suffer simply because their attorney for some reason could not come up with the legal arguments that would win the day for them. Neither can we understand why a court ruling on a legal issue should ignore all the basic principles of law embedded in our legal system simply because they were not raised by an attorney in the case. That would reduce a judge's job to nothing more than determining which attorney has made the better legal argument, rather than determining what the correct result should be.

Our legal system is deeply rooted in the English common law system, which has embraced some less-than-honorable practices over the decades. One such practice was "trial by champion," where each side hired a professional fighter and these "champions" slugged it out to determine the winner of the legal dispute. Often the outcome of such battles depended solely on the comparative wealth of the litigants, for the rich could hire better fighters.

We like to think our system has advanced from those days but unfortunately some vestiges of trial by champion remain. There are far too many instances where a litigant's success depends on how expensive an attorney he can hire, rather than on the merits of his case. This is especially true in jury trials, where skillful lawyers have the opportunity to use their oratorical skills to wow jurors. It should be less true in bench trials because judges are presumably less susceptible to such shows. It should be least of all true when the court is deciding legal issues, for judges are themselves learned in the law and are given the

responsibility of determining what the law is and how it should be applied in the case before them. This court is shocked that counsel for Choice would suggest a judge should suppress his or her own knowledge of the law and turn a blind eye to well established legal doctrines simply because an attorney has failed to advance them. That would turn our legal system into "trial by champion attorney," which is hardly an improvement over trial by champion.

It is undoubtedly counsel's responsibility to raise and argue the doctrines favorable to his or her client, and it certainly makes a judge's job easier when the attorneys fulfill that responsibility. However, when counsel fails to do so a court may certainly rely on its own knowledge of the law, or send its law clerk to the law library. This is not acting as an advocate for either side. It is acting as an advocate for our system of justice, where legal disputes are decided on the merits of the issues, rather than the skill of the attorneys.

O R D E R

AND NOW, this _____ day of August, 1999, the Motion for Post Trial relief filed by the plaintiff is denied.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
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