

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TROY A. MUSSER,	:	No. 00-01585
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
TIMOTHY A. HILL,	:	
SANDRA L. HILL,	:	
Defendants	:	Preliminary Objections

ORDER

AND NOW, this 4th day of December 2001, the Court GRANTS defendants' Preliminary Objections to Count IV of the Third Amended Complaint which alleges Slander of Title.

The Court notes the alleged slander in the Amended Complaint concerns the plaintiff's right-of-way which traverses the defendants' property. The plaintiff in his third Amended Complaint, pleads three (3) incidents as the purported factual basis for the Amended Count. As a backdrop to these incidents, the plaintiff's first Complaint has an Exhibit D which is a writing signed by defendant Timothy Hill on January 31, 2000 in which Mr. Hill acknowledges the plaintiff's right-of-way over his property. Likewise, in Exhibit D, plaintiff Mr. Musser agrees to be responsible for repairs to the right-of-way to the road surface caused by him or any of his agents, including delivery men making deliveries to the Musser property. Since subsection A in the third Amended Complaint concerns events in the third week of January 2000, it is a time before the understanding illustrated by Exhibit D. Thus, the incident could not prove plaintiff's

theory.

The Court also feels the allegations made by the plaintiff in Subsection C of the Amended Complaint does not support his theory of Slander of Title Slander. Slander typically refers to false oral statements Subsection C alleges physical actions of the defendants. While the actions may be inappropriate, logically they would not be a Slander of Title.

The final theory raised by the plaintiff is contained in Subsection(b) which pertains to an incident in October 2000 where the defendants allegedly told a contractor for the plaintiff who was trying to work on the right-of-way that it was unlawful for them to be on the right-of-way and they would be sued if they did not leave. While this may arguable be an interference by the defendant with the contractor's ability to continue their work on the right-of-way, the Court does not believe this conduct would rise to a Slander of Title. It is not alleged that the defendants told the workmen the plaintiff had no right-of-way. Rather, it is clear the dispute centered upon the plaintiff's use of the right-of-way and the changes that the plaintiff could make on the roadway which ran through the defendants' property.¹ Thus, the Court believes that, in asserting a Slander of Title claim, the plaintiff is trying to put "a square peg in a round hole". The theory just does

¹See Foreman v. Cheltenham Bank, 502 A.2d 686, 688 (Pa.Super 1985) ("a person is conditionally privileged to disparage another's property in land... by an assertion of an inconsistent legally protected interest in himself"). The court in Foreman goes on to cite Restatement, Second, Torts, Section 650A comment(b) explaining the meaning of malice required for Slander of Title: "the exception stated in Section 647 deals with the conditional privilege of a rival claimant to disparage another's property by an honest assertion of his own claim, even though he has no reasonable ground for believing his claim to be valid."

not appear to fit the facts of the case.

Accordingly, the Court SUSTAINS the defendants' Preliminary Objection to this Count and DISMISSES Amended Count IV, Slander of Title.

By The Court,

Kenneth D. Brown, J.

cc: John Gummo, Esquire
Marc Drier, Esquire
Gary Weber, Esquire (Lycoming Reporter)