

DAVID A. LENHART and  
DIANNE M. LENHART, his wife

Plaintiffs

vs.

JEFFREY R. POUST,  
Defendant

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA

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: NO. 03-00,234

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: PRELIMINARY OBJECTIONS

*Date: July 2, 2003*

**OPINION and ORDER**

**Facts/ Procedural Background**

Before the Court for determination are the Preliminary Objections of Defendant Jeffrey Poust (“Poust”) filed June 18, 2003 to Plaintiffs’ Second Amended Complaint.

Plaintiffs David and Dianne Lenhart (“Lenharts”) initiated the present suit by filing a complaint on February 12, 2003, in the form of an Action to Quiet Title to a portion of a tract of land they own by deed in the Borough of Picture Rocks, Lycoming County. On February 19, 2003, Lenharts presented this Court an order directing Poust to file an ejectment action within thirty days of entry of the order. The Court signed the Order. A Praecipe to Reinstate Complaint was filed on March 20, 2003 because service was not made within thirty days. Service was finally made on Poust on April 8, 2003.

On April 28, 2003, Poust filed Preliminary Objections and Motion to Strike the Order of Court of February 15, 2003. On May 1, 2003, Lenharts filed an Amended Complaint. Again, Poust filed Preliminary Objections and Motion to Strike the Order of Court of February 15, 2003 on May 19, 2003. Lenharts filed a Second Amended Complaint on June 3, 2003. On

June 12, 2003, Poust filed the Preliminary Objections to the Second Amended Complaint and Motion to Strike the Order of Court of February 15, 2003 that are presently before the Court.

The Second Amended Complaint (hereafter “Complaint”) describes the land in dispute as being Tract 1 of Lenharts’ deed, Deed Book 1892, page 28. A metes and bounds description and copy of the deed is attached as Exhibit “A” to the Complaint. The tract described in the deed is relatively small, 19,423 square feet. It has 8 different courses and distances describing an irregular wedge-shaped lot with sides of overall lengths of approximately 86 feet, 181 feet, 160 feet and 93 feet.

The Complaint, in paragraph 5, asserts Lenharts are in possession of both tracts described in their deed. At paragraph 6, it is alleged that Poust owns adjacent land. Paragraphs 7 and 8 assert that Poust has challenged Lenharts’ possession of Tract 1 by stating to prospective purchasers that Poust possesses “title” to Tract #1.

In paragraph 9 the Complaint states:

A predecessor in title to Plaintiffs’ property granted an oral license to Defendant’s predecessor in title to place a septic tank on Plaintiffs’ property, specifically within the bounds of Tract 1.

The Complaint’s concluding allegations assert that in July 2002 Lenharts revoked Poust’s license to maintain the septic tanks; however, Poust has refused to remove the septic tanks. Complaint, paragraphs 10 and 11. Instead, in July 2002 Poust placed cemented poles in the ground, “within the bounds of Tract 1.” Complaint, paragraph 12.

### **Discussion**

Before addressing the contentions of the parties on the preliminary objections, the Court must first grant Poust’s Motion to Strike Order of Court. The February 12, 2003

order of this Court was issued in error. This Court presumed from the manner in which the Order was presented that it was a routine order in actions of this type, which was being entered after Lenharts had obtained a default judgment. Such is not the case. Therefore, it is appropriate that the order be stricken.

Now as to the preliminary objections. Poust asserts three preliminary objections to the Complaint. The first is that Lenharts cannot maintain a quiet title action based on the facts pleaded. Poust argues that the facts as pleaded do not demonstrate that Lenharts are in possession of the property at issue. Poust contends that the averments that he has a septic tank and cemented poles in the disputed property demonstrate that he, and not the Lenharts, is in possession of the property.

Poust's second preliminary objection is that the Complaint fails to adequately describe the property at issue. Poust contends that the Pa.R.C.P. 1065 requires a specific description of the property at issue. Poust argues that the Complaint is deficient in this respect because the Complaint describes the entire Lenhart tract of land owned by deed reference and does not pin point the specific area of property at issue.

Poust's final preliminary objection is that the Complaint fails to meet the adequate level of specificity required under the Pennsylvania Rules of Civil Procedure. Poust posits that paragraph 9 of the Complaint does not meet the requirement of Pa.R.C.P. 1019, in that it does not name the predecessors in title of each of the parties who are averred to have granted and received a license for the placement of the septic tank on Tract 1. Poust asserts the allegation of paragraph 9 fails to set forth the material facts upon which Lenharts' cause of action is based.

In response, Lenharts argue that the Complaint is not deficient and the claim should proceed as pleaded. First, Lenharts argue that they can maintain a quiet title action. Lenharts offer two bases for this contention. The first is that a quiet title action brought under Pa.R.C.P. 1061(b)(1) can be maintained without pleading facts to demonstrate possession of the property. The second is that even if they are required to plead facts to demonstrate possession, they have pleaded sufficient facts. Lenharts assert that the Complaint avers they own Tract 1 based on the duly recorded deed, that they are currently in possession and control of Tract 1, and that they were exercising dominion over the property by attempting to sell it and by revoking Poust's license to place the septic tank on Tract 1.

Lenharts contend that contrary to Poust's second objection the description of the property in controversy is sufficiently specific. Lenharts have pleaded the property in dispute is Tract 1. They point out that a metes and bounds description of the property is included in Tract 1 of their attached deed. Lenharts then argue the subject property is further described by reference in the averments as the area where the septic tank and cemented poles are located. Therefore, Lenharts argue that the Complaint, taken as a whole, adequately narrows down the description and is sufficiently specific.

As to Poust's final preliminary objection, which asserts that the reference to unnamed predecessors entering into licensing agreement is deficient, Lenharts contend that the complaint sets forth the material facts necessary to plead a quiet title action with the requisite specificity. In a quiet title action, Lenharts contend that it is unnecessary to plead the name of a predecessor in title who granted the oral license concerning the septic tank. Lenharts contend

therefore that the failure to give a specific name does not constitute a failure to set forth the material facts in a concise and summary form.

There are three issues before the Court. The first is whether Lenharts can bring an action to quiet title under Pa.R.C.P. 1061(b)(1) when they aver in the Complaint that Poust is challenging Lenharts' possession of the property by maintaining a septic tank and cemented poles on the claimed property of Lenharts. The second is whether Lenharts adequately describe the property in dispute when the Complaint describes the property according to the metes and bounds of their deed description, although the alleged intrusions on the property by Poust is limited to only a portion of that tract. The third is whether Lenharts have pleaded the necessary material facts when they do not specifically name or otherwise identify the predecessors in title of the parties who entered into a licensing agreement allowing septic tanks to be placed on the disputed property.

The Court concludes that Lenharts cannot bring a quiet title cause of action under Pa.R.C.P. 1061(b)(1) based on the facts as pleaded. An ejectment action would have been the proper form for this case and shall be the form if the complaint is amended. The Court therefore has analyzed the remaining specificity issues concerning the description of the land in controversy and the predecessors in title referenced in paragraph 9 as if the case *sub judice* was an ejectment action. Under this analysis, the Court concludes that the description of the property in contention contained within the Complaint is sufficiently specific. Finally, the Court holds that Lenharts are required to specifically plead the names of the predecessors in title referenced as entering into a licensing agreement.

### **Quiet Title Claim**

In order to bring a quiet title action under Pa.R.C.P. 1061(b)(1), a plaintiff must be in possession of the disputed property. *Siskos v. Britz*, 790 A.2d 1000, 1007 (Pa. 2002); *Sutton v. Miller*, 592 A.2d 83, 88-89 (Pa. Super. 1991). Possession is a jurisdictional prerequisite for a quiet title action filed under Pa.R.C.P. 1061(b)(1). *Siskos*, 790 A.2d at 1007. “Permitting an out-of-possession plaintiff to maintain an action to quiet title is impermissible because it constitutes an enlargement of the plaintiff’s substantive rights as defined by statute, and thus exceeds the court’s jurisdiction to proceed.” *Plauchak v. Boling*, 653 A.2d 671, 674 (Pa. Super. 1995). Also, “[i]t is procedurally improper to simultaneously commence both an action in ejectment and an action to quiet title regarding the same parcel of real estate.” *Ibid*.

A court is required to determine which party possessed the property before determining the proper form of the action. *Moore v. Duran*, 687 A.2d 822, 827 (Pa. Super. 1996). “There is no precise definition of what constitutes possession of real property; the determination of possession is dependant upon the facts of each case, and to a large extent upon the character of the land in question.” *Ibid*. Generally, actual possession of land means dominion over the property, but it is not the equivalent of occupancy. *Ibid*. “Actual possession of property may be established in connection with the maintenance of a residence, by cultivation of the land, by inclosure [sic] of the land, or by making improvements to the land and paying property taxes.” *Ibid*.

In the case *sub judice*, Lenharts are required to plead that they are in possession of the disputed property in order to bring a quiet title action under Pa.R.C.P. 1061(b)(1). The Lenharts’ possession of the disputed property is a jurisdictional prerequisite that must be

satisfied before the Court may act on the quiet title action and compel the adverse party to institute an ejectment action. If the Lenharts fail to plead that they are in possession of the disputed property, then they cannot maintain the quiet title action under Pa.R.C.P. 1061(b)(1).

Despite their conclusory allegation by Lenharts that they possess Tract 1, it is clear from the Complaint Lenharts are not in possession of the disputed property. If the disputed property consists of the area where the septic tank and concrete poles belonging to Poust are located, as Lenharts have asserted and argued, then Lenharts are not in possession of that property. Poust has made improvements to the land consisting of the septic tank and cemented poles. According to Lenharts' Complaint, the cementing in of poles was done by Poust after they had "revoked" his license. Clearly then the allegations concede that Poust has treated and used that piece of the property as if it were his own or at least that he is authorized to use the land. By placing and maintaining the improvements upon the land Poust has and is exercising dominion over it. Thus, Poust is in possession of the disputed property.

Consequently, Lenharts cannot maintain a quiet title action under Pa.R.C.P. 1061(b)(1). It would be impermissible to allow Lenharts to proceed with the quiet title action, since to do so would enlarge their statutory rights. The fact that Lenharts are not in possession of the disputed property also deprives the Court of jurisdiction to proceed on the quiet title action. It is clear the dispute consists of Lenharts' desire to remove the septic tanks and poles now that Lenharts have terminated the alleged license. This is a classic fact pattern for an ejectment action, as Lenharts want to terminate Poust's possessory interests that have intruded upon Lenharts' land. Under the facts as pleaded, it would be more appropriate for Lenharts to proceed on an ejectment action rather than a quiet title action.

### **Description of the Property in Controversy**

In both a quiet title and ejectment action, plaintiff is required to describe the land (property in dispute) in the complaint. Pa.R.C.P. 1054(a); Pa.R.C.P. 1065. The description must sufficiently describe the limits of the land in controversy. *Grace Bldg. Co., Inc. v. Parchinski*, 467 A.2d 94, 97 (Pa. Cmwlth. 1983). The description of the property must have some “definite and certain limits.” See, *Seitz v. Pennsylvania R. Co.*, 116 A. 57 (Pa. 1922).

The description of the property in controversy must be specific enough to allow for its identification and sufficient enough to separate it from other properties. See, *Grace*, 467 A.2d at 96-7 (The description of the property in the complaint was inadequate when no description of the disputed property was made and the only description was of the entire tax parcel.); *Flynn v. Rodkey*, 159 A.2d 265, 267 (Pa. Super. 1960) (Description of land in controversy that used metes and bounds with calls to iron pins in a stipulation was sufficiently specific.); *Kazanjian v. Cohen*, 103 A.2d 491, 494 (Pa. Super. 1954) (Property description in an ejectment proceeding concerning rental property was adequate when the description identified the lot number of the property). An adequate description of the property in controversy can be accomplished by using (1) metes and bounds, (2) reference to adjoining property, or (3) landmarks. *Flynn*, 159 A.2d at 267. Furthermore, a trial court must be able to describe the property in a verdict with a sufficiently specific description of the property. *Grace*, 467 A.2d at 97.

The description of the property in controversy in the Complaint is sufficiently specific to sustain the Complaint. Paragraph 3 of the Complaint avers that Lenharts are record



titleholders of the real property described in the deed that is attached as Exhibit “A.” Paragraph 4 states that Lenharts’ property includes two parcels, Tract 1 and Tract 2. Paragraph 6 avers that Poust is the adjacent landowner of the property described in the deed attached as Exhibit “B.” Paragraphs 11 and 12 aver that Poust has maintained a septic tank and placed cemented poles within the bounds of Tract 1. Reading the Complaint as a whole, the property in controversy is designated as the area where the septic tanks and cemented poles are located on Tract 1.

Although the disputed land area is obviously not all of the parcel described as Tract 1 in Poust’s deed, Deed Book 1982, Page 280, nevertheless, it is sufficiently specific for two reasons.

First, Poust can ascertain from the metes and bounds description that his septic tanks and poles are or are not located within the boundaries of Tract 1. Therefore, for pleading purposes, Poust can responsively plead that he is or is not intruding upon the land by virtue of the septic tanks and poles. Secondly, Lenharts seek to terminate Poust’s exercise of dominion and ownership of the septic tanks and poles on any part of Tract 1 where they may be located. Therefore, a court order ejecting Poust from Tract 1 would serve to sufficiently direct Poust as to the removal of the septic tank and poles by using the given metes and bounds description. A more exact description is not needed at this point in the litigation.

**Specifically Naming the Predecessors**

Pennsylvania is a fact-pleading state. *Santiago v. Pennsylvania Nat'l Mut. Casualty Ins. Co.*, 613 A.2d 1235, 1239 (Pa. Super 1992); *Miketic v. Baron*, 675 A.2d 324, 330 (Pa. Super. 1986). The complaint must set forth the material facts upon which a cause of action is based in a concise and summary form. Pa.R.C.P. 1019(a). The complaint must apprise defendant of the claim being asserted and summarize the material facts needed to support that claim. *Cardenas v. Schober*, 783 A.2d 317, 325 (Pa. Super. 2001); *Alpha Tau Omega Fraternity v. Univ. of Pennsylvania*, 464 A.2d 1349, 1351 (Pa. Super. 1993). In examining the complaint, the focus is not upon one particular paragraph in isolation. *Yacoub v. Lehigh Valley Med. Associates, P.C.*, 805 A.2d 579, 589 (Pa. Super. 2001). The paragraph at issue must be read in conjunction with the complaint as a whole to determine if there is the requisite level of specificity. *Ibid.*

An ejectment action is a possessory action, and the plaintiff can only succeed on that action if he is out of possession and has the right to immediate possession. *Siskos*, 790 A.2d at 1006. A plaintiff can carry the burden of proving the right to exclusive possession through proof of paramount title. *Roberts v. Estate of Pursley*, 700 A.2d 475, 480 (Pa. Super. 1997). The ability of the plaintiff to recover in an ejectment action is dependent on the strength of his title and not the weakness or deficiency of the defendant's title. *Doman v. Brogan*, 592 A.2d 104, 108 (Pa. Super. 1991). The plaintiff has the burden of proving a *prima facie* title sufficient to base a right of recovery upon and need not go farther than making out a *prima facie* case. *Hallman v. Turns*, 482 A.2d 1284, 1287 (Pa. Super. 1984). The proof of this *prima facie* title is sufficient until a better title is shown in the defendant. *Ibid.* Although Plaintiffs

have title it may be that a defendant has a valid license to use the land in dispute for a particular purpose or has an easement or has gained adverse possession of disputed lands.

Lenharts have pleaded that they own the property described in the deed as Tract 1. They have also pleaded their title was impaired by a license. Tract 1 is where a license was once assertedly given permitting a Poust predecessor to use the disputed property. For Poust to respond he must be able to make some reasonable investigation about the terms of the license and to do so must be advised in the complaint as to the circumstances regarding its creation. Lenharts must plead the names of the predecessors and others in title concerning their assertion that a license to place a septic tank on Tract 1 was given. Their pleading may also include when the license was created, its terms, and whether it was oral or written. In other words, Lenharts must state some facts in support of their bold assertion that a license was given, in order to allow Poust to present a legitimate well-founded response.

Whether a license or some other authorization was granted for placement of the septic tank is a significant issue to Poust, especially considering the possibility of an adverse possession claim. Certainly, establishing that there was or was not a license would be material to the issue of title. Lenharts are only required to establish a *prima facie* case as to their title, not Poust's. By acknowledging their title is or was affected by a license they must plead sufficient facts of the license to establish that their title is no longer affected thereby; that is, that it has been terminated or that they have the right to terminate it. Therefore, at a minimum, factual pleading as to the license must include the names of the predecessors in title or necessary facts about the license being created. If the names of the license creators cannot be

pleaded, a reasonable explanation should be given and other facts pleaded to allow Poust the opportunity to investigate and respond.

**Conclusion**

The Court will grant in part and deny in part Poust's preliminary objections. Lenharts cannot maintain a quiet title action under the facts as pleaded. A plaintiff must be in possession of the disputed property to bring a quiet title action under Pa.R.C.P. 1061(b)(1). Lenharts do not plead they are in possession of the disputed property since they plead Poust has improved the property and exercises dominion over it with the septic tank and cemented poles. Lenharts must plead the name of the predecessors in title who may have granted the license for the septic tank or otherwise plead facts establishing their basis for believing a license was previously established which they now have the right to terminate. The description of the disputed property is sufficient as it clearly states the area Lenharts seek to remove from Poust's control so as to allow a responsive pleading and to be the basis of a court order in an ejectment action.

**ORDER**

It is hereby ORDERED that the Motion of Defendant Jeffrey Poust filed June 18, 2003 to Strike Order of Court is granted.

The February 19, 2003 Order of this Court is stricken.

It is also hereby ORDERED that Preliminary Objections of Defendant Jeffrey Poust filed June 18, 2003 are granted in part and denied in part.

The Preliminary Objections are granted insofar as Plaintiffs cannot maintain a quiet title action since they are not in possession of the disputed property.

The Preliminary Objections are granted insofar as Plaintiffs are required to plead the names of the predecessors in title concerning the license.

The Preliminary Objections are denied as to the description of the property in controversy.

Plaintiffs shall have twenty (20) days to file an amended complaint.

BY THE COURT:

William S. Kieser, Judge

cc: Jeffrey R. Poust, Esquire  
Garth D. Everett, Esquire  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)