

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SEDA-COG JOINT RAIL AUTHORITY : No. 02-01499
And PENNSY COMMONS ASSOCIATES, :
Plaintiffs :
 :
vs. : Civil Action
 :
A. BOYD CUMMINGS, a/k/a :
A. B. CUMMINGS, et al, :
Defendants : 1925(a) Opinion

OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this Court's Order dated February 25, 2003 and docketed February 27, 2003. The reasons for the Court's denial of the landowners' preliminary objections are contained in that Order. In addition, the Court notes the following:

1. One who claims title by adverse possession must prove actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the land for twenty-one years. Zeglin v. Gahagen, 812 A.2d 558, 561 n.5 (Pa. 2002); Baylor v. Soska, 540 Pa. 435, 438, 658 A.2d 743, 744 (1995); Flannery v. Stump, 786 A.2d 255, 258 (Pa.Super. 2001). In their preliminary objections, the landowners contend **sixteen** different individuals claim the land in question by adverse possession. Notably, the landowners do not allege their

possession was exclusive. The reason for this glaring omission is that when sixteen individuals are claiming the same property, they cannot exclusively possess it as a matter of law. Furthermore, the allegations of adverse possession by the landowners consist of parking and storage of vehicles and recreational walking on the land in question. See Preliminary Objections, para. 5. Essentially, the land in question was used as a neighborhood parking lot and recreation area. Therefore, the landowners did not have exclusive possession. Parks v. Pennsylvania Railroad Co., 301 Pa. 475, 482-483, 152 A. 682, 684-685 (1930)(use by neighbors as well as claimant precludes adverse possession by claimant).

2. Although the landowners claimed they owned "adjoining" properties to the land in question, it appears from their own preliminary objections that their properties are separated from the land in question by public streets. See Preliminary Objections, paras. 1(d), 7, 35. Therefore, by their own factual allegations, the landowners did not own "adjoining" property as a matter of law and standing could not be conferred to them on this basis.

3. Counsel for the landowners admitted at oral argument that there were no written assignments from the named Defendants to the landowners for the property in question. Instead, the landowners claimed they were assignees as a

matter of law by virtue of the fact they owned "adjoining" tracts. See Preliminary Objections, para. 16. Since it appears the landowners do not own adjoining tracts (see paragraph 2 of this Opinion), they would not be assignees.¹

4. Assuming arguendo that the landowners would have standing, the Court would not have granted their demurrers. The landowners' demurrers addressed the merits of the title claims. As the Court noted in its Order dated February 25, 2003, the Plaintiffs were pursuing this Quiet Title Action under Rule 1061(b)(1). In such an action, the Court does not determine the merits of the title claims. At most, the Court would enter an order compelling the landowners to file an action in ejectment.²

DATE: _____

By The Court,

Kenneth D. Brown, Judge

cc: Ann Pepperman, Esquire
Marc Drier, Esquire
Law Clerk
Gary Weber, Esquire (Lycoming Reporter)
Work File

¹ Based on the landowners' allegations regarding the public streets and the nature of their possession, the Court did not believe these landowners could amend their preliminary objections to establish they were adjoining owners, assignees or adverse possessors.

² Although none of the individuals who filed preliminary objections had standing, the Court entered its Order without prejudice to an individual who could establish standing filing an action in ejectment since that would be the proper action to determine the merits of the title issue.