

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

NELLIE M. BERNINGER, :  
Plaintiff :  
vs. : NO. 03-00957  
 :  
ROBERT F. PIERCE SR. and : CIVIL ACTION  
RENEE K. PIERCE, his wife, and :  
LA CHIC TOTAL IMAGE SALON, INC: :  
And GWEN E. BOWER and JEFF :  
BOWER :  
Defendants :

ORDER

AND NOW, this \_\_\_\_ day of June 2004, upon consideration of the preliminary objections filed by Defendants, it is ORDERED and DIRECTED as follows:

1. The Court DENIES the preliminary objection claiming a cause of action in equity and a cause of action at law cannot be joined together. Although Rule 1508 seemed to prohibit such a joinder as did the cases of Du Puy's Estate, 373 Pa. 423, 96 A.2d 318 (1953) and City of Philadelphia v. Pennrose Management Co., 142 Pa. Commw. 627, 635, 598 A.2d 105, 109-110 (1991), there also are cases to the contrary, such as White v. Young, 409 Pa. 562, 566, 186 A.2d 919, 921 (1963) and Sutton v. Miller, 405 Pa.Super. 213, 217 n.1, 592 A.2d 83, 85 n.1 (1991). Therefore, it is not clear and free from doubt that these causes of action cannot be joined. Moreover, even if it were clear, the Pennsylvania Supreme Court rescinded Rule 1508 and its prohibition against such a

joinder in an Order of December 16, 2003, which becomes effective July 1, 2004. Although the effective date for this rescission has not yet been reached, it would not make sense to grant this preliminary objection when such a joinder would clearly be permissible next week.

2. The Court GRANTS the remaining preliminary objections, but gives Plaintiff twenty (20) days to file an amended complaint.

The Court does not believe the factual allegations (as opposed to the conclusions) in the complaint are sufficient to justify punitive damages.

The Court also does not believe the complaint sets forth a basis for attorney fees. Although Plaintiff's counsel asserted attorney fees are recoverable in a quiet title action, such an assertion does not help Plaintiff in this case because the attorney fees were claimed in the trespass count, not the count for quiet title.

The complaint also shall be amended to specify the approximate dates of the incidents giving rise to Plaintiff's quiet title and trespass actions, each party's involvement and the damages that occurred. For example, Plaintiff requests relief for "all actual damages" and "all consequential damages," but does not state what these damages are or were, when they started, when they stopped or whether they continue to the present. Defendants cannot be expected to answer such

vague and conclusory allegations. Similarly, Plaintiff fails to indicate how any of the individual defendants were involved in or responsible for the debris from the repaving operation at La Chic Total Image Salon.

By The Court,

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Kenneth D. Brown, P.J.

cc: Matthew Ziegler, Esquire  
Richard Gahr, Esquire  
J. Michael Wiley, Esquire  
Work File  
Gary Weber, Esquire (Lycoming Reporter)