

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

NEW TRIBES MISSIONS, INC. : No. 95-00848  
Plaintiff :  
vs. :  
LOUIS J. SHEDDY, JR. and : CIVIL ACTION - LAW  
BEATRICE M. SHEDDY, his wife, : Plaintiff's Contempt Motion  
Defendants :

OPINION AND ORDER

This matter came before the Court on Plaintiff's Motion to Find the Defendants in Contempt of Court filed on October 24, 2003. The Court finds as follows:

The Plaintiff New Tribes Missions, Inc., and the Defendants Louis J. Sheddy, Jr. and Beatrice M. Sheddy, his wife, own large parcels of land in the Jersey Shore area that boarder each other. The parties have been involved in litigation since 1987 concerning the border of their respective properties.<sup>1</sup> Ultimately, the parties in this case reached a complete settlement of their land dispute that was reflected in a Court Order dated February 4, 1998. At the time of the February 4, 1998 settlement, the parties were each represented by counsel. Plaintiff New Tribes was represented by Carl Barlett, Esquire their current counsel. The Defendants were represented by William Coury, Esquire.

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<sup>1</sup> See case file number 88-01076 wherein Defendants' claim an easement right-of-way and case file number 91-02464 wherein Defendants' claimed ownership of another section Plaintiff's property by adverse possession. The Pennsylvania Superior Court denied Sheddys' request for Allocator on September 4, 1991. See also Plaintiff's Amended Complaint in this action filed September 5, 1995 on Count III requesting counsel fees and costs outlining the multitude of actions filed by the Defendants against the

Basically, the settlement reached by the parties, which is reflected in the Order of February 4, 1998, gave the Sheddys a license for access across the property of New Tribes as identified in a diagram attached to the Order. See Order, Provision 3. Some maintenance rights in regard to the licensed access were also included. See Order, Provision 5. The Order settled all remaining land claims between the parties. It contained provisions for New Tribes to Quit-Claim deed to the Defendants approximately seven (7) acres, shown as a hatched area in the diagram attached to the Order, and for the Sheddys to execute a Quit-Claim deed to New Tribes for the remaining property in the diagram. See Order, Provision 9. The settlement Order indicated that the eastern New Tribes' property line adjoining the Sheddy property was surveyed and marked by Vassallo Engineering and Surveying, Inc., and that a registered surveyor would additionally mark the northern New Tribes' property line adjoining the Sheddy property. See Order, Paragraph 10. The Order gave the Sheddys the right to be present when the northern line was surveyed.

On or about December 17, 1998, the Sheddys, pro se, filed a Motion for a Hearing "to bring action to conclusion," since New Tribes had not followed up the on the agreement of February 4, 1998. In an Order dated December 24, 1998, Judge Clinton Smith treated the motion as petition to enforce judgment and he scheduled a hearing on the matter. See Judge Smith's Order

of December 24, 1998. Judge Smith heard argument on the motion and ordered New Tribes to undertake to have the survey prepared in accordance with the settlement Order of February 4, 1998. See, Order dated April 22, 1999. In this Order, Judge Smith also directed New Tribes to prepare the appropriate deed upon completion of the survey and he ordered both Plaintiff and Defendants to execute the deeds. The Sheddys did not file an appeal to Judge Smith Orders.

Unfortunately, New Tribes did not promptly follow up on Judge Smith's Order of April 22, 1999. The survey work was completed by Vassallo Engineering and Surveying, Inc. in late 1999. However, New Tribes failed to submit the quit-claim deeds to the Sheddys until April 18, 2003, when Attorney Barlett enclosed the deeds in a letter the deeds to the Sheddys.

The Sheddys then retained new counsel, Matthew Ziegler, Esquire, who contacted Attorney Barlett on June 23, 2003 and indicated the Sheddys were concerned with certain access to the property. Attorney Barlett sent a letter dated June 23, 2003 to Attorney Ziegler, indicating he revised the deed from New Tribes to the Sheddys specifically including the licensing agreement that was set forth in the Order of February 4, 1998. In his letter, Attorney Barlett indicated that if the Sheddys still would not sign the deed he would file a Contempt Petition to compel compliance.

The Sheddys did not sign the deed as requested and on

October 24, 2003, New Tribes filed the Contempt Petition currently before the Court.

The Court began hearing testimony regarding the Petition on December 2, 2003. The Court continued the hearing at the request of the Sheddys to April 8, 2004, so the Sheddys could call Mr. Vassallo as a witness.

The only witness called on April 8, 2004 was the Defendant, Louis J. Sheddy, Jr.

Mr. Sheddy's testimony was difficult to follow. Basically, Mr. Sheddy seems to claim he never agreed to the settlement reflected in February 4, 1998 Order and that his former attorney, Mr. Coury failed to return his calls and follow up on his opposition to the Order back in 1998. Mr. Sheddy also complains he had no input in the Vassallo survey in 1999. Although he acknowledges he was aware and present in 1999 when Mr. Vassallo conducted the survey. Mr. Sheddy also complained that he never agreed to the boundary line as determined and ordered by Judge Kieser in the previous litigation.<sup>2</sup> It would seem Mr. Sheddy would also have some complaints about the Vassallo survey in 1999.<sup>3</sup>

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<sup>2</sup> The Court believes Mr. Sheddy is complaining about the prior litigation in case number 91-02464.

<sup>3</sup> Mr. Sheddy, through his attorney, Mr. Ziegler, attempted to subpoena Mr. Vassallo for a deposition on March 25, 2004. At the hearing before this Court on April 5, 2004, Mr. Ziegler presented to this Court a letter from Mr. Vassallo's Attorney Scott T. Williams, saying Mr. Vassallo would not appear for the deposition because the subpoena was not properly served. See Defendant's Exhibit A. Attorney Williams also indicated that Mr. Vassallo would not render expert opinions unless he is retained as an expert witness. Apparently, upon receiving this letter Attorney Ziegler gave up

The Court believes that Mr. Sheddy has waived his right to contest the settlement reflected in the Court Order of February 4, 1998. It does not make sense nor is it consistent with judicial economy to now let Mr. Sheddy litigate a land dispute case filed eight years ago (in 1995) that was apparently settled in February 1998. Even assuming arguendo that despite representation by privately retained counsel in 1998, Mr. Sheddy did not consent to the February 4, 1998 settlement Order, he waived his right to contest this Order by his own actions and/or omissions.

In 1999, Mr. Sheddy filed a pro se Motion to resolve this matter, which was heard by President Judge Clinton W. Smith. Judge Smith treated the Sheddys' filing as a Petition to Enforce Judgment pertaining to the February 4, 1998 Order. In response to that filing, Judge Smith rendered an Order on April 22, 1999 that in essence adopted the February 1998 Order and gave the parties instructions on how to comply with the Order. Specifically, in Provision 2 Judge Smith required Plaintiff, upon completion of the survey, to prepare the appropriate deeds in accordance with the Order of February 4, 1998 and directed both parties to execute the deeds. Mr. Sheddy did not object to or appeal Judge Smith's Order. He clearly cannot come back at this time, some five (5) years later, and ignore this Order and completely reopen this old litigation to once again dispute his boundaries with New Tribes.

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his efforts to have Mr. Vassalo testify.

Thus, the Court finds the Sheddys are estopped from contesting the validity of the February 4, 1998 Order and the April 22, 1999 Order.

As Judge Smith did in 1999, the Court will treat New Tribe's Contempt Motion as a Petition to enforce the original judgment or prior settlement of this case. In light of the complexities of the history in this case and New Tribe's delay in preparing the appropriate deeds, the Court will not treat this matter as a contempt.

However, in order for this case to finally reach the completion of the long ago established settlement, the following Order is entered:

**ORDER**

AND NOW, this \_\_\_\_ day of April 2004, after completion of the hearing held on April 8, 2004, it is hereby ORDERED and DIRECTED that judgments are to be entered in favor of the Plaintiff New Tribes Missions, Inc., and the Defendants Louis J. Sheddy, Jr. and Beatrice M. Sheddy, his wife, shall sign the quit-claim deed submitted by New Tribes as instructed in the Order of April 22, 1999. If the Defendants fail or refuse to sign the quit-claim deed within thirty (30) days of the date of this Order, the Court DIRECTS the Prothonotary to sign the same on Defendants' behalf and to record the deed as properly executed.

Plaintiffs shall then sign and record the quit-claim deed in favor of the Sheddys in accordance with the Order of February 4, 1998.

The Court will not award attorney fees because it has not treated this matter as contempt.

By The Court,

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Kenneth D. Brown, P.J.

cc: Matthew Ziegler, Esquire  
Carl Barlett, Esquire  
William Burd, Prothonotary  
Work File