

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

NEW TRIBES MISSIONS, INC. : No. 95-00848
Plaintiff :
 :
vs. : CRIMINAL DIVISION
 :
LOUIS J. SHEDDY, JR. and :
BEATRICE M SHEDDY, :
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 April 28, 2004 and docketed April 29, 2004. Many of the defendant's issues on appeal are addressed in the Opinion accompanying that Order or in the record, see N.T. at pp.23-25. The Court, however, will supplement the Opinion with additional discussion on the issues regarding the applicability of the statute of limitations and the admissibility of the survey.

The defendants claimed the plaintiff's contempt petition was barred by the statute of limitations found at 42 Pa.C.S.A. §5525(a)(5). The Court found that Section 5525(a)(5) was inapplicable and/or not violated in the case at bar.

Section 5525(a)(5) states:

(a) General rule. Except as provided for in subsection (b), the following actions and proceedings must be commenced within four years:

(5) An action upon a judgment or decree of any court of the United States or of any state.

42 Pa.C.S.A. §5525(a)(5). First, the Court finds that the term "action" refers to the

commencement of a lawsuit. See Pa.R.Civ.P. 1007 (An action may be commenced by filing a writ of summons or a complaint). Second, the Court finds that subsection (5) pertains to the commencement of a suit to enforce a **foreign** judgment when there isn't a statute that provides for enforcement through registration. See Morrissey v. Morrissey, 552 Pa. 81, 85-86, 713 A.2d 614, 616-617 (Pa. 1998)(Under Pennsylvania law, foreign judgments are treated in the first instance as rights of action; therefore, historically, obligees were required to commence a civil action on the existing foreign judgment to obtain a Pennsylvania judgment before enforcement could be had in the Commonwealth). Here, the plaintiff was neither commencing a new action against the defendants nor trying to enforce a foreign judgment. Furthermore, judgment was not entered in this case until the Court entered the Order dated April 24, 2004.¹ Therefore, the Court found the statute of limitations asserted by the defendants inapplicable to the case at bar.

Even if a four-year statute of limitations would apply in this situation, it would not begin to run until the defendant breached the terms of the settlement agreement. In his Order of April 22, 1999, Judge Smith determined that the settlement agreement required the plaintiff and the defendants to execute quitclaim deeds. The evidence, to which both parties agreed, is that in April 2003 the defendants refused to sign the quitclaim deeds. The plaintiff's counsel attempted to resolve the situation amicably, but when the defendants still refused to sign the deeds after the language of the licensing agreement was added, the plaintiff's counsel filed a contempt petition on October 24, 2003, within six months of the defendants' initial refusal to sign the deeds. It reasonably cannot be claimed that the four-

¹ Both the undersigned and Judge Smith stated, perhaps incorrectly, that they were treating the motions filed in 2003 and 1998 like motions to enforce judgment. Since no judgment was entered until April 24, 2004, the Court should have stated it was treating the motions as motions to enforce settlement.

year statute of limitations would have run before the defendants breached the settlement agreement. It should also be noted that the enforcement mechanism of a motion for contempt is specifically included in the Order of April 22, 1999.

The defendants contend the Court erred in admitting the survey into evidence where the petitioner did not call the surveyor to testify. The defendants also assert the Court erred in accepting the opinion expressed in the survey. The survey was not hearsay. Hearsay is an out-of-court statement offered for the truth of the matter asserted. Pa.R.E. 801(c). Here, the survey was not offered for the truth of its contents. Instead, the survey was introduced merely to show that the plaintiff obtained a survey as required by the Orders of February 4, 1998 and April 22, 1999. The defendants stipulated that the plaintiff's counsel prepared the deeds in accordance with the survey. See N.T. at pp. 15-16. The only other evidence presented by the plaintiff regarding the survey was that plaintiff paid Vassallo Surveying Company to perform the survey required by the court orders in 1998 and 1999 (N.T. at pp. 6-7, 13). There was no testimony presented by the plaintiff regarding the contents of the survey.

The authenticity of the survey was not a real issue in this case. Mr. Shetty's own testimony established that Mr. Vassallo came to the property and surveyed it. N.T. at pp. 27-28, 52-53. The defendants also stipulated that the plaintiff's counsel prepared the deeds in accordance with the survey. Their complaint was not with the authenticity of the survey. The defendants opposed the survey because they were not allowed to participate in the survey and they believed it was inaccurate. In the Order of April 22, 1999 Judge Smith permitted the defendants to be present for the survey, but prohibited them from interfering. The defendants never appealed that Order. Furthermore, when questioned about the

inaccuracies or discrepancies, neither Mr. Sheddy nor his attorney were willing or able to provide any specifics other than he believed a parcel of property on the other side of the creek was not surveyed and students picked out a couple of trees to have marked. N.T. at 19-20, 27, 28, 33, 38. In fact, the Court believes the record as a whole establishes that Mr. Sheddy's real issue was not with the survey, but that he believed he never agreed to the settlement contained in the Order dated February 4, 1998 and docketed February 17, 1998. N.T. at pp.29-31, 36-37, 43-44, 48-49, 54. The defendants also never appealed this Order.

DATE: _____

By The Court,

Kenneth D. Brown, P. J.

cc: Carl Barlett, Esquire (counsel for plaintiff)
Matthew Ziegler, Esquire (counsel for defendants)
Work File
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)