

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

ROBERT S. PURSELL and CAROL H.	:	
PURSELL, his wife,	:	
Plaintiffs	:	NO: 09-01596
	:	
vs.	:	
	:	
	:	
KATHY L. DURRWACHTER,	:	CIVIL ACTION
Defendant	:	

FINDINGS AND CONCLUSIONS

FINDINGS

The Plaintiffs and the Defendant own adjoining parcels of real estate in Loyalsock Township, Lycoming County. On July 7, 2009 the Plaintiffs filed a Complaint alleging Trespass and Breach of Contract.¹ On May 5, 2010 the Defendant filed an Answer with New Matter and Counterclaim. Defendant's Counterclaim alleges Breach of Contract. Following a non-jury trial in this matter, the Court finds as follows:

1. The parties have had an ongoing neighbor dispute for approximately eight (8) years.
2. On October 1, 2008, in an effort to resolve their disputes, the parties executed an Agreement with Respect to Property (hereinafter "the Agreement").
3. The Agreement required the parties to provide each other with written notice of any perceived breaches of the Agreement by certified mail.

¹ Although Count I is not captioned "Trespass," Plaintiffs' counsel contends that it was intended as such, and a Stipulation signed by counsel for the parties indicates that the Plaintiffs will be deemed to have included in their pleadings a separate count for Trespass.

4. The Agreement allowed the party receiving notice a ten (10) day period in which to cure any default.
5. The Agreement provided that both parties would maintain their premises in such a way that growth would not touch each other's property or the property line.
6. The Agreement provided that neither party would access the property of the other without express permission.
7. The Agreement provided that neither party would maintain any bird feeders that would cause debris to enter on the other's property.
8. The Agreement provided that neither party would shovel snow in such a way that it would sit or pile against the fence of the other.
9. The Agreement provided that neither of the parties would operate their outdoor lighting in such a way that it was aimed at or in the house or windows of the other.
10. The Agreement provided that the Defendant would remove the "No Trespassing" signs from her property.
11. When a party's breach of contract constitutes a material failure of performance, a nonbreaching party is discharged from all liability. Oak Ridge Construction Co. v. Tolley, 504 A.2d 1343 (Pa.Super. 1985).
12. Moreover, where contractual promises are mutual and dependent, the failure of one party to perform authorizes the other party to rescind the contract. Francis Gerard Janson, P.C. v. Frost, 618 A.2d 1003 (Pa.Super. 1993).
13. In the present action, both parties have materially breached one or more of the above-referenced provisions of their agreement on multiple occasions.

14. Defendant trespassed on Plaintiffs' land by willfully causing birdseed, shrubbery and debris to enter upon Plaintiffs' land.
15. Plaintiffs have failed to prove monetary damage.
16. Plaintiffs have failed to prove fence damage was caused by Defendant's conduct.
17. Defendant has failed to prove monetary damage from Plaintiffs cutting off vines and moving birdhouses.

CONCLUSIONS

1. Defendant has trespassed on Plaintiffs' land.
2. The contract between the parties has been breached and is unenforceable.
3. Plaintiffs' outdoor lighting does not constitute a trespass on Defendant's land.

ORDER

AND NOW, this 26th day of May, 2010, verdict is rendered:

1. In favor of the Defendant as to Count II of Plaintiffs' Complaint.
2. In favor of Plaintiffs on Defendant's Counterclaim.
3. In favor of Plaintiffs against Defendant on Count I in trespass.
4. No monetary award in favor of either party.

The Court further Orders the following:

1. Any birdfeeders on the Defendant's property in the area of the Plaintiffs' property line shall be limited to three (3) in number and placed not closer than ten (10) feet from the property line to prevent seed scattering onto the Plaintiffs' land.

2. The Defendant is granted thirty (30) days in which to trim all shrubbery and plants so that they are no less than twelve (12) inches from the Plaintiffs' property line. The initial trimming shall be performed by an insured third party, selected by the Defendant. The cost for this initial trimming shall be borne by the Defendant. The Plaintiffs shall allow said third party to enter their property for the purpose of the trimming. The Defendant shall continue to maintain her shrubbery, plants, trees, etc. so that they do not come within six (6) inches of the Plaintiffs' property line.
3. Both parties shall clean up the debris and extraneous items located in the area between the two fences. This shall be performed within ten (10) days of this Order, and in the future, each party shall be responsible for maintaining their portion of the property up to the property line. Each party shall allow the other party access for this ten day period, to the extent necessary, in order to perform this clean up.
4. The Agreement dated October 1, 2008 is declared null and void.

BY THE COURT,

Richard A. Gray, J.

cc: J. David Smith, Esquire
Christian D. Frey, Esquire
Gary Weber, Esquire