

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

JVT, LLC,	:	
	Plaintiff	NO: 11-00617
	:	
vs.	:	
	:	
BEATRICE BAUSINGER and TROY	:	
BAUSINGER, individually and as	:	
Co-Executors of the ESTATE OF EVELYN	:	CIVIL ACTION
K. POOLE, Deceased	:	
	Defendants	

OPINION

Plaintiff filed a Complaint on April 14, 2011, naming Beatrice Bausinger and Troy Bausinger as Defendants. The subject action is one to quiet the title of a 39.446 acre parcel situate in Loyalsock Township, Lycoming County, purchased by the Plaintiff in 2005. The Complaint alleges that Plaintiff's fee simple absolute title to the premises may be clouded by claims that the Defendants had a right of first refusal to first purchase the premises prior to the Plaintiff's purchase of the property, but that Defendants were never offered nor afforded the opportunity to exercise the right.

The Defendants filed Preliminary Objections on May 13, 2011, essentially alleging that as no deed of distribution had yet been recorded to Beatrice and Troy Bausinger individually, title to the real estate at issue was held by the Estate of Evelyn K. Poole. On May 23, 2011 the Plaintiff filed an Amended Complaint naming as Defendants Beatrice Bausinger and Troy Bausinger, individually and as Co-Executors of the Estate of Evelyn K. Poole, Deceased. The Defendants' Preliminary Objections were subsequently withdrawn.

On June 22, 2011 the Plaintiffs filed a Motion for Judgment on the Pleadings and a Motion to Strike Lis Pendens. Essentially, the Plaintiff asserts that any right of first refusal to first purchase the premises is now time barred by the statute of limitations.

Pa.R.C.P. 1034(a) permits the filing of a motion for judgment on the pleadings once the pleadings are closed, but within such time so as not to unreasonably delay the trial. Motions for judgment on the pleadings are to be granted when the law is clear and trial would be “a fruitless exercise.” Bata v. Central Penn National Bank, 224 A.2d 174, 178 (Pa. 1966).

In Weik v. Estate of Margaret Brown, 794 A.2d 907 (Pa.Super. 2002) the Superior Court granted judgment on the pleadings dismissing an action seeking enforcement of an option agreement. The court based its dismissal on the application of the five-year statute of limitations applicable to breach of contract actions. In dismissing the action, the Superior Court held:

Appellant concedes the applicability of the five-year statute of limitations. However, he argues that since he did not know until the summer of 1996 that Ms. Brown had sold her land, the discovery rule tolled the statute of limitations until that time, giving him until 2001 to file this action. He suggests that the recording of the deed did not trigger any constructive knowledge on is part regarding the transfer giving rise to the breach, arguing that the recording statute applies only when determining who has superior title to a piece of real estate. We are unpersuaded by Appellant’s argument and hold that the recording of the deed gave Appellant constructive notice of the transfer. Thus, the statute of limitations started to run on the date the deed was recorded. Id. at 909.

Although the Defendants argue that the discovery rule should be applied and the statute of limitations tolled based upon the “health and mental capabilities of the decedent at the time of the purchase”, the Court in Weik similarly considered

application of the discovery rule in the context of recorded documents and held that the discovery rule does not operate to toll the statute when dealing with recorded documents.

Moreover, although the Defendants orally alleged fraud during argument, the elements of fraud were clearly not set forth in the Defendants' pleadings. Although the Defendants assert in Paragraph 30 of their New Matter that the Plaintiff knew about this right of first refusal at the time of the conveyance in 2005 they do not allege any attempts by the Plaintiff to conceal or misrepresent. This issue was also addressed by the court in Weik. In Weik, the Superior Court held:

We are unpersuaded by Appellant's claim that Ms. Brown committed fraud or concealment by living on the property several months after she sold it and by failing to place a sign on the property indicating that it was for sale. We agree that fraud or active concealment can operate to toll the statute of limitations...However, 'mere silence in the absence of a duty to speak...cannot suffice to prove fraudulent concealment.'

* * * * *

In this case, Ms. Brown committed no fraud...She merely was silent; her actions did not constitute fraud or concealment in light of the fact that the transaction was recorded the day after it occurred. As there was neither active concealment nor a duty to inform, the statute of limitations was not tolled. Weik, supra, at 911 (citations omitted).

As absolute record notice was created with the recording of the Loudenslager to JVT, LLC deed on January 21, 2005, the statute of limitations for enforcement of any right of first refusal has now passed and lapsed.

ORDER

AND NOW, this 26th day of July, 2011, the Plaintiffs' Motion for Judgment on the Pleadings is hereby GRANTED and the Plaintiff's Motion to Strike Lis Pendens is GRANTED. The Defendants' Motion to Amend New Matter and Counterclaims is DENIED.

BY THE COURT,

Richard A. Gray, J.

cc: Daniel K. Mathers, Esquire
Heather R. Willis, Esquire
Gary Weber, Esquire