

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KENNETH L. HESS and LEON C. RIDER and	:	
RICHARD D. ELINE,	:	DOCKET NO. 08-02809
Plaintiffs	:	CIVIL ACTION – LAW
	:	
vs.	:	
	:	
DANIEL J. JORDAN, II and JAMES B. REED and	:	
MARY L. REED, his wife,	:	
Defendants	:	

**OPINION AND ORDER**  
**Issued Pursuant to Pa.R.A.P. 1925(a)**

Plaintiffs and Defendants own adjoining parcels of real property. Plaintiffs commenced this action against Defendants by complaint filed on December 10, 2008. The complaint sought Quiet Title (Count I) to a strip of land between the parties' parcels and Ejectment (Count II) of Defendants from this area. This Court held a non-jury trial on July 9 and July 19, 2011. By order dated July 26, 2011, this Court found in favor of the Plaintiffs on both counts of the complaint. On August 5, 2011, Defendants moved for Post Trial Relief. By order dated January 19, 2012, this Court granted in part and denied in part Defendants' motion. Specifically, this Court amended its July 26, 2011 Order to strike Count I of Plaintiff's complaint. On January 27, 2012, Defendants appealed that order; Plaintiffs filed a cross appeal on February 3, 2012.<sup>1</sup>

For the purposes of this appeal, this Court relies upon its original July 26, 2011 Opinion and Order and its amended January 19, 2012 Opinion and Order, and respectfully requests our Superior Court to affirm these orders. However, Plaintiffs raised an issue in their Statement of Errors Complained of on Appeal that this Court did not address in those orders. Particularly, Plaintiffs argued that Defendants' claim under the doctrine of consentable line was waived by

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<sup>1</sup> It is noted that this Court rejected Defendants' consentable boundary line claim.

Defendants' failure to raise this claim in their pleadings and during trial. This Court will supplement its orders to address this issue.

The Rules of Civil Procedure govern the waiver issue raised by Plaintiffs. Pa. R.C.P.

1020(d) provides that:

[i]f a transaction or occurrence gives rise to more than one cause of action heretofore asserted in assumpsit and trespass, against the same person, including causes of action in the alternative, they shall be joined in separate counts in the action against any such person. Failure to join a cause of action as required by this subdivision shall be deemed a waiver of that cause of action as against all parties to the action.

Pa. R.C.P. 1020. In *Colombari v. Port Auth.*, 951 A.2d 409 (Pa. Cmwlth. Ct. 2008), our

Commonwealth Court addressed the purpose of Pa. R.C.P. 1020(d). Particularly, that Court reasoned that:

[t]he primary purpose of this rule is to ensure that causes of action arising out of the same occurrence will be tried together and that judicial resources will not be wasted resolving the dispute in two separate actions. Where a plaintiff pleads several causes of action arising out of one occurrence in a single count rather than in separate counts, the error is merely technical, and, thus, where there is no showing of prejudice to the opposing party, a court should permit an amendment to the complaint rather than dismiss it. A party may amend a pleading at any time by leave of court, and the amended pleading may set forth a new cause of action; an amendment even may be made to conform a pleading to the evidence offered or admitted. Pa. R.C.P. No. 1033.

*Id.* at 414 (citations omitted). An appellate court will review a trial court's grant of a leave to amend under an abuse of discretion standard. *Geiman v. Bd. of Assessment and Revision of Taxes*, 195 A.2d 352, 355 (Pa. 1963); *Horowitz v. Universal Underwriters Ins. Co.*, 580 A.2d 395, 398 (Pa. Super. Ct. 1990).

In *Colombari*, Defendant appealed the trial court's determination that consequential damages were caused by a light rail transit project. *Id.* Defendant contended that Plaintiffs waived their consequential damages claim because they failed to raise a claim for consequential damages in their pleading, pursuant to Pa. R.C.P. 1020(d). *Id.* Defendant argued that the trial

court erred in both allowing Plaintiffs to pursue consequential damages and in granting this claim. *Id.* Our Commonwealth Court upheld the trial court's actions because Plaintiff's error was technical and there was no showing of prejudice to Defendant. *Id.* at 415. The appellate court held that when the trial court allowed Plaintiffs to pursue their consequential damages claim, the court in effect granted Plaintiffs leave to amend their petition and that this grant did not constitute an abuse of discretion by the trial court. *Id.*

Similarly, in this case, this Court did not commit an abuse of discretion when it allowed Defendants to present evidence and argue the doctrine of consentable line. Plaintiffs sought quiet title in Count I of their complaint. "The doctrine of consentable line is a rule of repose for the purpose of quieting title and discouraging confusing and vexatious litigation." *Plott v. Cole*, 547 A.2d 1216, 1220 (Pa. Super. Ct. 1988). This Court did not abuse its discretion when it allowed Defendants to pursue the doctrine of consentable line because the doctrine is a rule intended to assist in quieting title and because Plaintiffs sought to quiet title in Count I of the complaint.

This Court respectfully requests its orders dated July 26, 2011, and January 19, 2012, be upheld.

BY THE COURT,

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Date

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Richard A. Gray, J.

cc: Benjamin E. Landon, Esquire  
William P. Carlucci, Esquire  
Gary L. Weber, Esquire