

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JAYNE HORNER, EMIL P. HORNER, JR.	:	NO. 06 - 00,893
and MARY L. HORNER,	:	NO. 01 – 01,475
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
LOYALSOCK TOWNSHIP SCHOOL DISTRICT,	:	
Defendant	:	

OPINION AND ORDER

Before the court is Defendant’s Motion for Interpleader, filed November 16, 2011. The motion was originally summarily denied by Order of November 18, 2011, but reconsideration was granted by Order of December 5, 2011, and argument on the motion was held January 31, 2012.

This condemnation action began in 2001. In 2003, Dan Biersdorf entered his appearance on behalf of Plaintiffs and continued to represent Plaintiffs through mid-December 2008, when he withdrew his appearance at Plaintiffs’ request. The litigation continued through 2011 and, by Order entered simultaneously with the instant Order, has finally concluded. The termination of this litigation involves the payment by Defendant to Plaintiffs of \$115,040.73 delay damages. Rather than make this payment to Plaintiffs, Defendant has filed the instant motion for interpleader, seeking to pay that sum into court, on the grounds that Mr. Biersdorf has indicated to Defendant his belief that Defendant would be liable for his attorney’s fees if it pays the money to Plaintiffs.¹

¹ Mr. Biersdorf filed an “Attorney Lien Notice” on October 15, 2009, which states: “Notice is hereby given, pursuant to PA 4.145, that the law firm of Biersdorf & Associates, P.C., (“Lien Claimant”) hereby claims and intends to hold a lien for compensation for legal services in the amount of Seventy Three Thousand Nine Hundred Eighty Seven and 86/100 dollars (\$73,987.86) upon the proceeds of the action. The amount listed above is the balance owing for professional services on the above-referenced matter. This claim by Biersdorf & Associates is against all Plaintiffs, pursuant to the attached agreement and all applicable law.” Apparently, Mr. Biersdorf is basing his belief on said notice.

Defendant seeks to interplead Mr. Biersdorf and have the court adjudicate Mr. Biersdorf's attorney's fees claim against Plaintiffs and discharge Defendant from any liability to Mr. Biersdorf.

Interpleader is governed by Pa.R.C.P. 2301 *et seq.* and any petition for interpleader must comply with Rule 2303, which requires the following allegation: "that a claimant not a party of record has made or is expected to make a demand on the defendant as a result of which the defendant is or may be exposed to double or multiple liability to the plaintiff and to such claimant as to all or any part of the claim asserted by the plaintiff." Further, not only must the allegation be made, it must also prove to be true. As was noted by the Pennsylvania Supreme Court in Butler Fair and Agricultural Association v. Butler School District, 132 A.2d 214, 222 (Pa. 1957), the exposure to double or multiple liability requirement of Rule 2303 is a "prerequisite" to interpleader.

In the instant case there is a claimant, Mr. Biersdorf, who is not a party of record, and he has made a demand on Defendant. It must also be said, however, that "the defendant is or may be exposed to double or multiple liability to the plaintiff and to such claimant *as to all or any part of the claim asserted by the plaintiff.*" Since an examination of the claim shows that such is not the case,² the court believes interpleader is not appropriate in this matter.

Plaintiffs' claim against Defendant is for just compensation for the taking of their property. Mr. Biersdorf's claim against Defendant is for attorney's fees owed allegedly owed by Plaintiffs. Thus, Mr. Biersdorf's claim is not "all or part of the claim asserted by the plaintiff" as Mr. Biersdorf is not claiming any of the

² The court has chosen to accept as valid, for purposes of argument on the instant motion, that Mr. Biersdorf's Attorney's Lien Notice has a basis in law, although the court has not been provided with any authority for that proposition, nor has it been able to discover any after diligent research.

“just compensation” per se, but only payment over to him of the monies to be paid to Plaintiffs. A similar situation was presented in Butler Fair, *supra*. There, the Court rejected the interpleader request because when it examined the claim of the party sought to be interpleaded, it found “that what they seek is to have the fund represented by the amount of the award *when paid* by the District impressed with a trust for them ...; it is not and cannot be the theory of their claim that the monies should not be paid to the Association but rather that the monies *when paid* should be declared held by the Association as a trustee exmaleficio for them ...” Id. at 223 (italics in original). The Court thus found that the District was “not put in danger of double or multiple liability and therefore the proceedings lack that essential element.” Id.

Here, Mr. Biersdorf cannot be arguing that Plaintiffs should not be paid the just compensation (indeed, as their counsel throughout a portion of the litigation, he argued that they *should* be paid the just compensation), he is simply seeking, by way of the “Attorney’s Lien Notice” to put some sort of hold on the monies *when paid*. As in Butler Fair, this fact takes the matter out of the realm of interpleader.

The court wishes to note that there is a second reason for denying the petition: Rule 2306(a)(1) provides that the court may deny a petition for interpleader if the defendant has unreasonably delayed in filing the petition. As noted above, Mr. Biersdorf filed the “Attorney Lien Notice” on October 15, 2009. Thus, at that time, Defendant was put on notice of the claim which forms the basis for its petition for interpleader and could have filed the petition at any time. Twenty-five months elapsed, however, and a September 15, 2011, Order from the Commonwealth Court has finally put all issues to rest: the matter was remanded

for a mathematical calculation. Were it not for the fact that counsel for the parties informed the court this final issue had been resolved,³ a final order would have been issued at least one month prior to the filing of the petition. Indeed, the instant petition was initially summarily denied on the basis that the matter was no longer pending as the court believed the proceedings had been concluded. To now seek to begin what amounts to a separate lawsuit over attorney's fees by attaching it to the very end of this extremely protracted condemnation litigation, definitely qualifies, in the court's opinion, as "unreasonable delay".

ORDER

AND NOW, this 2nd day of February 2012, for the foregoing reasons, the Petition for Interpleader is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Norman Lubin, Esq.
Randall Sees, Esq.
Gary Weber, Esq.

³ Upon remand from the Commonwealth Court, the court contacted counsel to set up a conference for the purpose of attempting to resolve the calculation of delay damages as the court had previously been told that the calculations were not in dispute, only the appropriate date, and that date had been set by Commonwealth Court. The court was at that time informed that the matter had been resolved and no further proceedings were required. The court, unwisely as it turns out, left it to counsel to submit a final order for its approval.