

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CHRISTOPHER D. DOWNS, KIMBERLY R. DOWNS,	:	NO. 13 - 00,519
and TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC,:	:	
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
WILLIAM F. FLYNN and BABETTE A. FLYNN,	:	
Defendants	:	Preliminary Objections

**OPINION AND ORDER**

Before the court are preliminary objections filed by Defendants on August 22, 2013. Argument was heard November 6, 2013.

In their original Complaint, Plaintiffs Christopher and Kimberly Downs asserted that they own land which adjoins land of Defendants, that Transcontinental Gas Pipe Line Company proposed to and did sell to each of them certain land which ran along the back of their respective lots, that it was everyone’s intention that the boundary lines of the newly-acquired land follow the boundary lines of the existing lots, and that in transferring the property Transcontinental mistakenly gave more land to Defendants and less land to Plaintiffs Downs than had been anticipated by all parties. Plaintiffs Downs sought reformation of the deeds based on an alleged mutual mistake. In their original preliminary objections, Defendants contended, inter alia, that Plaintiffs Downs lacked standing to seek reformation as they are not a party to Defendants’ deed. The court agreed with Defendants since “[r]eformation of an instrument may be had by the parties to the instrument and by those standing in privity with them, but not by persons not parties or privies.” Lachner v. Swanson, 380 A.2d 922, 925 (Pa. Super. 1977). Therefore, Plaintiffs were required to file an Amended Complaint with Transcontinental as a plaintiff.

In the instant preliminary objections to that Amended Complaint, Defendants contend that Plaintiffs Downs have failed to state a claim upon which relief can be granted for two reasons, that the prayer for relief is defective, and that Plaintiffs Downs’ Amended Complaint

is a sham as they simply added Transcontinental in the caption without adding any substance to the complaint. Each of these issues will be addressed in turn.

With respect to the first contention that Plaintiffs have failed to state a claim, Defendants contend specifically that the deeds attached to the Amended Complaint show that there was no mutual mistake, that the deeds conveyed what was depicted on the subdivision plan. While the deeds do accurately describe the add-on lots as shown on the subdivision plan, Defendants' argument misses the mark. The mutual mistake alleged is *not* that there was a difference between the drawing of the add-on lots on the subdivision plan and the legal descriptions in the deeds, but, rather, that the subdivision plan itself was incorrect in showing the original boundary line of the parties and thus the new boundary line of the add-on lots. As Plaintiffs Downs' deed clearly shows that Plaintiffs Downs' original lot had a southern boundary line of 130 feet,<sup>1</sup> and the subdivision plan depicts that line as being only 100 feet, and as the deeds were drawn up in conformance with the subdivision plan, Plaintiffs Downs have alleged a mutual mistake sufficient to support their claim for reformation. Defendants' further argument that Plaintiffs Downs should have known that their boundary line was 130 feet and thus it was their own mistake, is of no moment. Actually, the same could be said for Defendants – they should have known that their boundary line was 30 feet less than as shown. The court is aware of no rule of law which allows the party who will benefit from the mistake to ignore the error but requires the party who will be harmed to speak up. Thus, this objection will be overruled.

Defendants' second contention that Plaintiffs have failed to state a claim is based on their argument that the relief requested, reformation of the deeds, is unlawful as "it is unlawful to convey real estate other than in compliance with an approved and recorded Subdivision Plan." This argument is specious: the court may order the filing of an Amended Subdivision Plan in conjunction with the reformation of the deeds. This objection will therefore also be overruled.

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<sup>1</sup> The property is in the form of two parcels, one of which has a southern boundary line of 30 feet, and one of which has a southern boundary line of 100 feet. It appears to the court that the boundary of the add-on lots was drawn 30 feet to the west of where it was allegedly intended to be, rather than 100 feet to the west, as alleged in Paragraph 14 of the Amended Complaint.

Next, Defendants object to Plaintiffs' prayer for "any such other relief the Court deems just and appropriate." As this is an action in equity, the court fails to see why Plaintiffs cannot ask the court to provide the relief deemed appropriate. Indeed, as just stated above, the court may need to direct the filing of an Amended Subdivision Plan in conjunction with any reformation ordered. Thus, this objection will also be overruled.

Finally, Defendants contend that Plaintiffs Downs' Amended Complaint is a sham as they simply added Transcontinental in the caption without adding any substance to the complaint. Specifically Defendants argue that Plaintiffs Downs "expressed no claim against Transcontinental" and "requested no relief from Transcontinental". Since Transcontinental was joined as a plaintiff, however, Plaintiffs Downs are not expected to make a claim against them or request relief from them. Further, Transcontinental is included in the allegations that "[i]t was the intention of *all parties* involved ... that the common boundary line ... for the[] add-on lots would follow ... the[] existing common boundary line", and that reformation is required "[a]s a result of the mutual mistake of *all parties* involved". The court thus does not find the Amended Complaint to be a sham. The prayer for relief should have included a request for relief by Transcontinental, however, as reformation of Defendants' deed could be made only at the request of Transcontinental. This objection will therefore be sustained to that extent.

### **ORDER**

AND NOW, this 22<sup>nd</sup> day of November 2013, for the foregoing reasons, Defendants' preliminary objections are overruled, provided, however, that within twenty (20) days of this date, Plaintiffs shall file an Amended Complaint which amends the Wherefore clause to include Transcontinental in the request for relief.

BY THE COURT,

Kenneth D. Brown, Senior Judge

cc: Michael Zicoello, Esq.  
Joseph Musto, Esq.  
Gary Weber, Esq.