IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CHRISTOPHER D. DOWNS and KIMBERLY R. DOWNS, Plaintiffs	:	NO. 13 - 00,689
	:	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 May 13, 2013, and preliminary objections to those preliminary objections, filed by Plaintiffs on June 14, 2013. Argument was heard June 18, 2013, at which time both counsel requested the opportunity to file a brief. Defendants' brief was filed July 1, 2013; Plaintiffs' brief was filed July 9, 2013.

In their Complaint, Plaintiffs assert 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 than had been anticipated by all parties. Plaintiffs seek reformation of the deeds based on an alleged mutual mistake. In their preliminary objections, Defendants contend Plaintiffs lack standing to seek reformation as they are not a party to Defendants' deed, Plaintiffs have failed to join an indispensable party (Transcontinental), the suit is barred by the statute of limitations, and Plaintiffs are barred from bringing the suit by unclean hands and laches. Defendants also object to Plaintiff's request for "any such other relief the Court deems just and appropriate." In their preliminary objections, Plaintiffs contend the defense of statute of limitations must be brought as New Matter. As the court finds standing in Plaintiffs to be lacking in the suit's present form, only that issue will be addressed.

Defendants are correct that "[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). Further, "the term privity,

in cases involving reformation of instruments, denotes a "successive relationship to the same right in the same property". Id. Here, Plaintiffs are undeniably not parties to the deed between Transcontinental and Defendants, nor are they in a successive relationship with either of them.

Plaintiffs argue that since they are in privity with Transcontinental (through their own deed with the company) and since Transcontinental is in privity with Defendants (through Defendants' deed with the company), Plaintiffs are somehow in privity with Defendants. While this might be true were the concept of privity subject to the transitive theory of algebra, it is not. As Lachner states, privity requires a successive relationship. There, Swanson conveyed to Howells part of his property (retaining the rest). Swanson then built a house on what he thought he had retained, but which in actuality infringed onto Howell's property (half the house overlapped the boundary line). Howells then conveyed their property to Lachners. No one realized half the house was on Lachners' property until they had a survey performed after the purchase. They then brought an action in ejectment against Swanson, who asserted a defense of mutual mistake. Based on that defense, the trial court entered judgment in favor of Swanson, but the Superior Court reversed. The Court stated "Swanson was not a party to the deed between the Lachners and the Howells, nor was he a privy to either party to the deed, for he did not stand in a "successive relationship" to either. It follows that he could plead as a defense mutual mistake only as to the deed between himself and the Howells, and not as to the deed between the Howells and the Lachners." Id. In the instant case, while Plaintiffs are in privity with Transcontinental, they are not in privity with Defendants.

Plaintiffs' reference to Krieger v. Rizzo, 161 A. 483 (Pa. Super. 1932), while helpful, also does not support their request. In Krieger, a similar dispute arose when a common grantor transferred adjoining lots and the deeds did not convey what everyone intended, but instead established a boundary which was more in favor of one grantee than the other. The court allowed reformation based on mutual mistake but the important distinction between Krieger and the instant case is that in Krieger, *both* the slighted grantee and the common grantor were plaintiffs. The Court did not discuss the issue of standing and indeed there would have been no need to as clearly the common grantor had standing to seek reformation of the deed between himself and the defendant. Thus, this court cannot allow Plaintiffs to pursue their case as it

stands on the basis of Kreiger. The case does suggest, however, and for this reason the court finds it helpful, that Plaintiffs could pursue their claim if they joined Transcontinental as a plaintiff (involuntarily under Pa.R.C.P. 2227, if necessary). Indeed, the following excerpt from Lachner suggests exactly that:

> It is therefore evident from the record that everybody was mistaken. Swanson erred either by retaining too little land in the conveyance to the Howells in 1963 or when he built his house in 1971. The Howells erred in their conveyance to the Lachners. The Lachners erred when they signed a deed granting them land that they could not have thought they were buying. To view the evidence otherwise would be to say that the Howells intended to sell half of Mrs. Howell's brother's house -- an odd intention, and contradicted by Mrs. Howell's testimony at trial; and that the Lachners intended to buy half of the house -- a conclusion belied both by common sense (half a house?) and by the Lachners' actions about the time of purchase.
>
> We recognize, therefore, that the lower court's order might be regarded as achieving rough justice. That is not, however, a sufficient reason to affirm the order. As has been discussed, to affirm would ignore the principles of law that control an action for reformation of an instrument. In addition, however, while to affirm might seem fair to Swanson, for it would not split the ownership of his house, it would be unfair to the Lachners, who had reason to believe that the property they were buying from the Howells had a frontage of 198 feet. *It would appear that the only way in which a result fair to everyone would be possible would be if the Howells were parties -- by intervention, for example. Then the lower court would have been able to reform both Swanson's deed to the Howells, and the Howells' deed to the Lachners.* As an appellate court, however, we have no power to keep the action open by remanding with an instruction to the Howells to intervene. We must confine ourselves to the issues defined by the record before us.

Lachner, *supra*, at 925 (emphasis added).

Therefore, Defendants' objection to standing will be sustained, and the Complaint will be dismissed, without prejudice to Plaintiffs' right to re-file with Transcontinental as a plaintiff.

ORDER

AND NOW, this 19th day of July 2013, for the foregoing reasons, Defendants' preliminary objection to standing is sustained and Plaintiffs' Complaint is dismissed, without prejudice to re-file with Transcontinental Gas Pipe Line Company as a plaintiff. Plaintiff's preliminary objections are dismissed as moot.[1]

BY THE COURT,

Dudley N. Anderson, Judge

cc: Michael Zicolello, Esq.
Joseph Musto, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

[1] The court notes that Plaintiffs are correct, however. *See* Pa.R.C.P. 1030(a)("[A]ll affirmative defenses including but not limited to the defenses of … statute of limitations … shall be pleaded in a responsive pleading under the heading "New Matter"." Although not raised by Plaintiffs, laches is also to be included in New Matter rather than in preliminary objections.