

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PAMELA KOCH t/d/b/a STARVING, MARVIN TACK STORE, Plaintiff	:	DOCKET NO. 16-0199
	:	
	:	
vs.	:	CIVIL ACTION
	:	
	:	
DEBORAH ANONIE, Defendant	:	POST-TRIAL RELIEF - DENIAL

OPINION AND ORDER

Plaintiff asserts that the Court’s findings of fact are unsupported and the application of the law is in error.¹ This Court respectfully submits that the findings of fact are supported by competent evidence and that it did not err in the application of the law.

As to the Court’s findings, when reviewing the findings, “the evidence is viewed in the light most favorable to the victorious party below and all evidence and proper inferences favorable to that party must be taken as true and unfavorable inferences rejected.” Piston v. Hughes, 62 A.3d 440, 443 (Pa. Super. 2013), *quoting* Shaffer v. O’Toole, 2009 PA Super 6, 964 A.2d 420, 422-23 (Pa. Super. 2009) (internal quotation omitted). Viewing the evidence in the light most favorable to the Defendant, and weighing the credibility of the witnesses, the Court’s findings are supported by competent evidence. The Court found that Plaintiff enjoyed a windfall, that the area of the encroachment was essentially useless to Plaintiff, causing her no harm, and that removal would cause irreparable harm to Defendant.²

As to the application of the law, the court considered the equities of the whole case and "de minimis" rule when it determined that removal of the encroachment did no good for plaintiff

¹ Specifically, Plaintiff challenges findings of fact numbered 10, 11, 13, 15, 18 and 21. Plaintiff challenges conclusions of law numbered 22 - 28.

² In the midst of highly contested litigation about parking spaces, Plaintiff unexpectedly learned from a survey that the Defendant’s motel encroached on Plaintiff’s land at 9.3’, 11.9’, and 9.9’ adjacent to a drop-off at the edge of Plaintiff’s property. Despite the topography rendering the area useless, and despite an already established means of access, Plaintiff sought to require removal of part of the motel.

and worked a hardship on defendant. *See, e.g., Glinn v. Silver*, 64 Pa.Super. 383 (1916); *Yeakel v. Driscoll*, 321 Pa. Super. 238, 467 A.2d 1342 (1983). The Court notes that the present matter is before the Court as an action in equity for specific performance. There was no evidence that Plaintiff's tax burden changed as a result of the survey and encroachment. Nonetheless this verdict does not does not preclude an action in trespass for damages related to any tax burden or the encroachment.

The Court also concluded that Plaintiff purchased the land subject to the encroachment as an implied easement from prior use. *See, e.g., Bucciarelli v. DeLisa*, 547 Pa. 431, 438-439, 691 A.2d 446, 449 (Pa. 1997)(citation omitted.)

ORDER

AND NOW this 13th day of **December, 2016**, upon consideration of the motion for post-trial relief filed by Plaintiff, following argument held on December 8, 2016, it is ORDERED and DIRECTED that the motion for post-trial relief is DENIED.

BY THE COURT,

December 13, 2016
Date

Richard A. Gray, J.

c: Marc S. Drier, Esq. (for Plaintiff)
Leroy H. Keiler, Esq. (for Defendant)