

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

NELSON L. FORSBURG and DEBRA  
S. FORSBURG, Husband and Wife,  
*Plaintiffs*

CIVIL ACTION NO. 17 - 955

v.

DAVID W. GEER, SR.,  
*Defendant*

**ORDER AMENDING OPINION**

**AND NOW**, this 21<sup>st</sup> day of **March, 2018**, it has come to the Court's attention that the opinion in this matter contained errors when referencing the parcel numbers. It is ORDERED and DIRECTED that the opinion is hereby AMENDED and corrected to reflect and be consistent with the fact that the property conveyed to Mr. Geer is known as tax parcel No. 24-268-168A and the parcel retained and owned by the Forsburgs is known as tax parcel No. 24-268-168B, which contains the septic tank. By further reference, this correction is consistent with P5 (attached) and the pertinent deeds at issue. The reasoning of the Court remains the same. It is further ORDERED and DIRECTED that the Verdict, dated and entered March 13, 2018, remains in full force and effect.

For clarity purposes, the Findings of Fact and Conclusions of Law are restated as amended as follows.

**AMENDED FINDINGS OF FACT**

1. Since May 4, 1991, Plaintiffs Mr. and Mrs. Forsburg owned property that included what is now known as tax parcels No. 24-268-168A and No. 24-268-168B ("Parcel A" and "Parcel B" respectively).
2. On or about May 9, 2013, the Lewis Twp. Supervisors issued a permit for the installation of the sewage disposal system for a septic system located on Parcel B.
3. A mobile home located on Parcel A was hooked up to the septic system on Parcel B.

FILED  
LYCOMING COUNTY  
2018 MAR 21 PM 3:19  
CLERK OF COURT

4. The mobile home was used by Mr. Forsburg's mother and later used as a rental unit.
5. On October 5, 2015, the Forsburgs conveyed Parcel A to their daughter Desiree Geer and her then husband, Defendant David Geer and retained ownership of Parcel B.
6. The Deed conveying Parcel A to the Geers contained the following provision:

UNDER AND SUBJECT to any and all other conditions, restrictions, covenants, rights-of-way, easements, etc., as heretofore contained in the prior chain of title.
7. There is no septic system on Parcel A.
8. There was no agreement, written or otherwise, that Mr. Geer's dwelling or use of the septic system ran with the land of Parcel A or burdened Parcel B.
9. There is no mention of use of a septic system in the chain of title.
10. After Parcel A was conveyed to the Geers, the Geers constructed the residence with the assistance of the Forsburgs.
11. Once constructed, the residence was hooked up to the septic system located on Parcel B.
12. The Geers divorced and Parcel A was deeded to Mr. Geer.
13. Mr. Geer and his daughter, the Forsburg's granddaughter, reside in the residence located on Parcel A.
14. The Forsburgs have requested that Mr. Geer construct a septic system on Parcel A and cease using the septic system located on Parcel B.
15. The Forsburgs cannot build another septic system on Parcel B or hook another residence up to the septic system currently located on Parcel B while it is being used by the residence located on Parcel A.
16. Due to Mr. Geer's use of the septic system on Parcel B, the Forsburgs cannot use the septic system located on Parcel B and therefore cannot build a second residence on Parcel B which limits the sale options for Parcel B.
17. Mr. Geer's use of the septic system includes the use of piping and/or drainage of sewage

flowing from Mr. Geer's property onto the Forsburgs' property.

18. Mr. Geer has never done any maintenance or repairs to the septic system.

19. Mr. Forsburg's testimony was fully credible.

#### **AMENDED CONCLUSIONS OF LAW**

1. The Forsburgs met their burden of proof of showing that they have a right to exclusive possession of the septic system on Parcel B and the right to eject Mr. Geer from use of the septic system on Parcel B.
2. There is no agreement regarding Mr. Geer's continued use of the septic system.
3. There is no written agreement regarding Mr. Geer's use of the septic system.
4. Use of the septic system is not a condition in the chain of title that subjects Parcel B to service Parcel A with a septic system.
5. The doctrines of unclean hands or bad faith do not weigh in favor of precluding relief to the Forsburgs.
6. Equity weighs in favor of the Forsburgs.

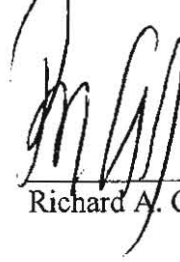
#### **AMENDED DISCUSSION**

In an action for ejectment, the party must establish the right to immediate exclusive possession. Doman v. Brogan, 405 Pa. Super. 254, 263, 592 A.2d 104, 108 (Pa.Super. 1991). As a matter of equity, an ejectment action is subject to the maxim "that those seeking equity must come with clean hands." Shapiro v. Shapiro, 415 Pa. 503, 507, 204 A.2d 266, 268 (Pa. 1964). The doctrine requires that those seeking equitable relief "shall have acted fairly and without fraud or deceit as to the controversy in issue[.]" Id., (quotation omitted). Application of the doctrine is within the discretion of the Court. Id.

In this case, a fair preponderance of the evidence supports the finding and legal conclusion that the Forsburgs have established the right to immediate exclusive possession of the

septic system on Parcel B, including any feeder lines to and from the system. Nothing in the chain of title suggests that Parcel B is burdened with allowing the residence constructed on Parcel A to use of the septic system located on Parcel B.<sup>1</sup> As to Mr. Geer's contention that the Forsburgs come to the Court with unclean hands or bad faith, this Court does not agree. There was no evidence of any deceit, fraud, or misrepresentation on the part of the Forsburgs. Nor was there any evidence of reliance on the part of Mr. Geer. While the Forsburgs objected to Mr. Geer's use of the septic system after the parcel was deeded exclusively to him, there was no evidence that the parties ever agreed that Parcel A would use the septic tank forever. Moreover, use of the septic system causes hardship to the Forsburgs in significantly limiting the use of Parcel B.

BY THE COURT,



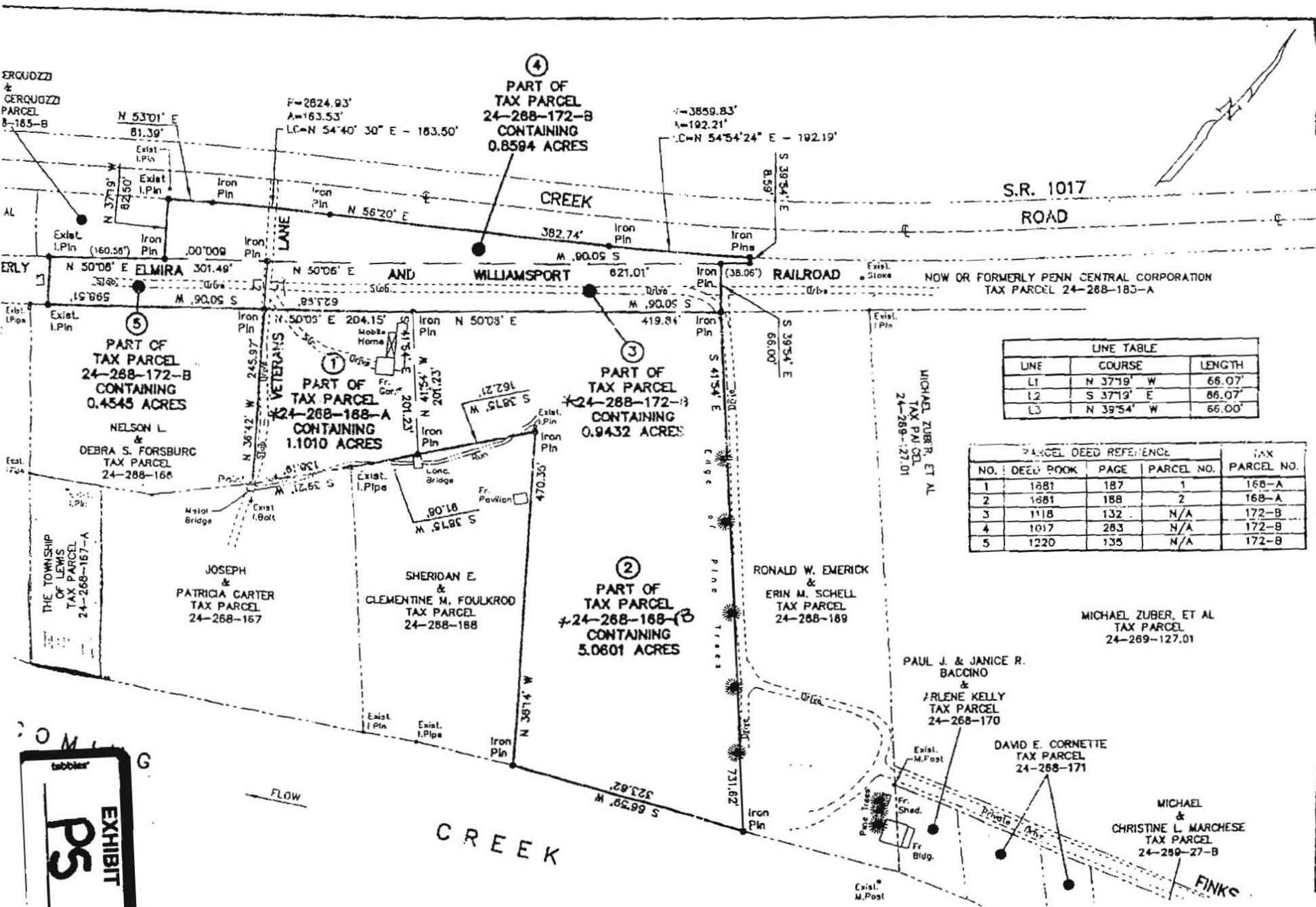
Richard A. Gray, J.

March 21, 2018

Date

c: ~~Robert A. Hoffa, Esquire~~  
Brian W. Ulmer, Esquire  
23 North Derr Drive, Suite 3, Lewisburg, PA 17837

<sup>1</sup> The language in the deed that Parcel A is taken: "UNDER AND SUBJECT to any and all other conditions, restrictions, covenants, rights-of-way, easements, etc., as heretofore contained in the prior chain of title" supports this result.



④  
PART OF  
TAX PARCEL  
24-288-172-B  
CONTAINING  
0.8594 ACRES

⑤  
PART OF  
TAX PARCEL  
24-288-172-B  
CONTAINING  
0.4545 ACRES

①  
PART OF  
TAX PARCEL  
24-288-188-A  
CONTAINING  
1.1010 ACRES

③  
PART OF  
TAX PARCEL  
24-288-172-B  
CONTAINING  
0.9432 ACRES

②  
PART OF  
TAX PARCEL  
24-288-188-B  
CONTAINING  
5.0601 ACRES

S.R. 1017  
ROAD

RAILROAD

NOW OR FORMERLY PENN CENTRAL CORPORATION  
TAX PARCEL 24-288-185-A

LINE TABLE		
LINE	COURSE	LENGTH
L1	N 37°19' W	66.07'
L2	S 37°19' E	66.07'
L3	N 39°54' W	66.00'

PARCEL DEED REFERENCE			
NO.	DEED BOOK	PAGE	PARCEL NO.
1	1681	187	1
2	1681	188	2
3	1118	132	N/A
4	1017	283	N/A
5	1220	135	N/A

MICHAEL ZUBER, ET AL  
TAX PARCEL  
24-288-127-01

MICHAEL ZUBER, ET AL  
TAX PARCEL  
24-289-127-01

RONALD W. EMERICK  
&  
ERIN M. SCHELL  
TAX PARCEL  
24-288-189

PAUL J. & JANICE R.  
BACCINO  
&  
ARLENE KELLY  
TAX PARCEL  
24-288-170

DAVID E. CORNETTE  
TAX PARCEL  
24-288-171

MICHAEL  
&  
CHRISTINE L. MARCHESE  
TAX PARCEL  
24-289-27-B

FINKS

