

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

EVANGELINE KOUTROULELIS,
VASILIA HRONAS, and CHRISTOPHER M.
CHARYSOVERGIA,

Plaintiffs,
vs.

MICHEAL J. CHELENTIS a/k/a
MICHAEL J. CHENLENTIS,

Defendant.

: NO. 17 - 0883
:
:
:
:
:
: CIVIL ACTION
:
:
:
:
:
:
: *Motion for Judgment*
: *on the Pleadings*

OPINION AND ORDER

Presently before the Court is Plaintiffs Evangeline Koutroulelis (“Plaintiff Koutroulelis”), Vasilias Hronas (“Plaintiff Hronas”), and Christopher Charysovergia’s (“Plaintiff Charysovergia”) (collectively “Plaintiffs”) *Motion for Judgment on the Pleadings* (“Plaintiffs’ Motion”). After briefing was completed, a hearing was held on November 2, 2018. The Court reserved decision. This is the Court’s Opinion and Order on Plaintiffs’ Motion.

Facts & Procedure

The present dispute concerns title to real property located at 280 Woodland Avenue, Williamsport, PA 17701 (the “Property”).¹ On June 12, 2017, Plaintiffs filed a Complaint against Defendant Micheal Chelentis (“Defendant”) seeking a declaration that they are the sole and rightful owners of the Property, and an order directing the

¹ Plaintiff’s Complaint, ¶5. Plaintiffs’ supportive exhibits are attached to the Complaint; however, the order appears to have been disturbed.

Lycoming County Office of Recorder of Deeds to invalidate and nullify Defendant's May 10, 1993 deed and May 5, 1995 deed.² Plaintiffs aver the following in their Complaint:

- 1) On September 4, 1991, George M. Hiras as Power of Attorney ("POA") for Hariklia Hiras, also known as Helen Hiras ("Ms. Hiras"), now deceased, is appointed.³
- 2) Unbeknownst to Plaintiff Koutroulelis, by Deed dated May 10, 1993, Mary Chelentis (hereinafter "Ms. Chelentis"), alleging to be POA for Ms. Hiras, deeded the property to herself.⁴
- 3) By deed dated May 20, 1993, Ms. Hiras conveys title of the Property to Plaintiff Koutroulelis' brothers: Michael Hiras, Harry Hiras, and George Hiras ("the brothers").⁵
- 4) On May 25, 1993, the brothers' May 20, 1993 Deed is recorded.⁶
- 5) On June 14, 1993, Ms. Chelentis' May 10, 1993 Deed is recorded.⁷
- 6) On November 23, 1993, Ms. Chelentis' POA is recorded.⁸
- 7) By deed dated May 5, 1995, Ms. Chelentis conveys her interest to her son, Defendant.⁹ This deed was recorded the same day.¹⁰

² *Id.*

³ *Id.*, ¶19.

⁴ *Id.*, ¶¶15-16, Ex. H (5/10/93 deed). Plaintiffs aver that Ms. Chelentis' Power of Attorney ("POA") was dated May 10, 1993, but was not recorded until November 1993. *Id.*, ¶¶16, 18. Plaintiffs further allege that her POA was called into question by statements in George M. Hiras' POA, which explained that Ms. Hiras' dementia had advanced to such a stage in May of 1993 that "she would not have understood the document or anything that she would have been asked to sign in that time frame." *Id.*, ¶17, Ex. I.

⁵ *Id.*, ¶18, Ex. D. This deed was executed by George M. Hiras as POA; the POA was also recorded on May 20, 1993. *Id.*, ¶19.

⁶ *Id.*, ¶18.

⁷ *Id.*, ¶15.

⁸ *Id.*, ¶16.

⁹ *Id.*, ¶19, Ex. F.

¹⁰ *Id.* Plaintiffs aver that the actual conveyance from Ms. Chelentis to the Defendant did not occur until sometime after March 13, 1996. *Id.*, ¶20, Ex. C.

- 8) By deed dated February 12, 1996, Plaintiff Koutroulelis was conveyed title to the Property.¹¹ This deed was conveyed to her by a settlement agreement whereby the settling parties agreed that she would receive title to the Property in exchange for the care of her mother who had originally owned the Property.¹² In accordance with the settlement agreement, Plaintiff Koutroulelis executed a quit claim deed which noted that the Property would be returned to her brothers in the event she did not honor her obligations under the agreement.¹³
- 9) On March 13, 1996, Plaintiff Koutroulelis' February 12, 1996 Deed is recorded.¹⁴
- 10) By deed dated March 11, 1998, Plaintiffs Hronas and Charysovergia, as well as Ignatios John Koutroulelis, were conveyed title to the Property as joint tenants with rights of survivorship subject to a life estate in Plaintiff Koutroulelis; the deed was recorded the same day.¹⁵

Plaintiff Koutroulelis claims that she has, with the consent of the other Plaintiffs, been attempting to sell her interest in the Property, but the cloud on her title created by the deeds of Ms. Chelentis is preventing such a sale.¹⁶ Indeed, she claims that she has already lost a "potential sale" because of this cloud.¹⁷ Plaintiffs claim that because Pennsylvania is a race-notice jurisdiction, the recording of George M. Hiras' POA on

¹¹ *Id.*, ¶7, Ex. B.

¹² *Id.*, ¶11, Ex. E.

¹³ *Id.*, ¶12, Ex. B. Plaintiffs allege that the prior quit claim deed was returned to Plaintiff Koutroulelis marked void. *Id.*, Ex. G.

¹⁴ Plaintiff's Compliant, ¶7, Ex. C.

¹⁵ *Id.*, ¶6, Ex. A. Plaintiffs Hronas and Charysovergia's rights under the deed are based on the passing of Ignatious John Koutroulelis. *Id.*, ¶6.

¹⁶ *Id.*, ¶¶21-22.

¹⁷ *Id.*, ¶23.

May 20, 1993 and the brothers' recording of their May 20, 1993 deed on May 25, 1993 control. Therefore, the chain of title resulting from the May 20, 1993 deed favor Plaintiffs' claims in the present case.¹⁸

On November 3, 2017, Defendant filed an *Answer* denying Plaintiffs' substantive allegations.¹⁹ In his response to paragraph nine (9), Defendant denies Plaintiffs' claims regarding the May 20, 1993 deed.²⁰ Defendant asserts that he denied the allegations because George Hiras' POA was invalid due to it not possessing "sufficient language to empower Mr. George Hiras to make a gift of real estate to a limited class of donees such as himself and his two brothers."²¹ In the same response, Defendant also claims that Ms. Hiras was "suffering from dementia as early as late 1980s; thereby calling into question any execution of a [POA] in 1991."²² In paragraph seventeen (17) of his *Answer*, Defendant admits that Ms. Chelentis' POA was signed on May 10, 1993, notarized on May 18, 1993, and recorded on November 23, 1993.²³ However, in the same paragraph, he denies Plaintiffs' remaining assertions, claiming that Ms. Kiras was suffering from dementia at that time.²⁴ In his response to paragraph twenty-four (24) in Plaintiffs' *Complaint*, Defendant also claims that George Hiras' POA was invalid "because the language in the [POA] from Hariklia M. Harris a/k/a Helen M. Hiras to George M. Hiars on September 4, 1991 did not contain sufficiently specific language to show Ms. Helen M. Hiras' intent to empower Goerge M. Hiras to make a gift of real

¹⁸ Alternatively, Plaintiff Koutrouielis alleges she has resided at the Property continuously since February 12, 1993, paying all costs associated with upkeep and taxes, and, thus, has title by adverse possession. *Id.*, ¶¶ 14, 28.

¹⁹ See generally Defendant's *Answer*.

²⁰ Defendant's *Answer*, ¶ 9.

²¹ *Id.*

²² *Id.*

²³ *Id.*, ¶ 17.

²⁴ *Id.*

estate to limited class of donees, namely George M. Hiras, Michael M. Hiras and Harry M. Hiras.²⁵ Defendant also reiterated in response to paragraph twenty-four (24) that Ms. Hiras' granting of the POA was invalid due to her "suffering from dementia."²⁶ Defendant also raised the claim of Ms. Hiras' alleged dementia in his response to paragraph thirty (30) in Plaintiffs' Complaint. Defendant did not raise any affirmative defenses under the heading of "New Matter."

On July 3, 2018, Plaintiffs filed the instant *Motion for Judgment on the Pleadings*, arguing that judgment on the pleadings is appropriate as the chain of title resulting from the May 20, 1993 Deed controls because it was recorded first.²⁷ Likewise, Ms. Chelentis' May 10, 1993 Deed is invalid because she failed to record the deed until June 14, 1993, and her POA was not recorded until November 23, 1993.²⁸ Therefore, Plaintiffs argue that they are entitled to all rights, title, and interest in the Property.²⁹

On October 26, 2018, Defendant filed his *Reply to Plaintiffs' Motion for Judgment on the Pleadings*, as well as his *Brief In Support*. Defendant disputes that entry of judgment on the pleadings is proper.³⁰ Defendant argues that such action is premature because he properly pled in his Answer "on several occasions" that Ms. Hiras lacked the capacity to execute a power of attorney in 1991.³¹

²⁵ *Id.*, ¶24.

²⁶ *Id.*

²⁷ Plaintiffs' Motion for Judgment on the Pleadings, ¶¶5-12. On October 19, 2018, Plaintiffs filed their *Brief in Support* of their motion.

²⁸ *Id.*, ¶¶14-15.

²⁹ *Id.*, ¶33.

³⁰ Defendant's Brief in Support of Reply to Plaintiffs' Motion for Judgment on the Pleadings at 3 (Oct. 26, 2018).

³¹ *Id.* at 3-4. Defendant relies on *Wilhelm v. Wilhelm* to support this proposition. *Id.* at 4 (citing *Wilhelm v. Wilhelm*, 657 A.2d 34 (Pa. Super. Ct. 1995)). Plaintiffs filed a *Reply* to Defendant's Brief, arguing that *Wilhelm* is not applicable. Plaintiffs' Reply to Defendant's Brief in Opposition to Plaintiffs' Motion for Judgment on the Pleadings at 1-4 (Nov. 1, 2018). *Wilhelm* is not analogous as the procedural posture involved a petition for a preliminary injunction and a fact-finding hearing by the trial court. See *Wilhelm v.*

Discussion

Pennsylvania is a "race-notice" jurisdiction.³² Pennsylvania law provides:

All deeds, conveyances, contracts, and other instruments of writing wherein it shall be the intention of the parties executing the same to grant, bargain, sell, and convey any lands, tenements, or hereditaments situate in this Commonwealth, upon being acknowledged by the parties executing the same or proved in the manner provided by the laws of this Commonwealth, shall be recorded in the office for the recording of deeds in the county where such lands, tenements, and hereditaments are situate. Every such deed, conveyance, contract, or other instrument of writing which shall not be acknowledged or proved and recorded, as aforesaid, shall be adjudged fraudulent and void as to any subsequent bona fide purchaser or mortgagee or holder of any judgment, duly entered in the prothonotary's office of the county in which the lands, tenements, or hereditaments are situate, without actual or constructive notice unless such deed, conveyance, contract, or instrument of writing shall be recorded, as aforesaid, before the recording of the deed or conveyance or the entry of the judgment under which such subsequent purchaser, mortgagee, or judgment creditor shall claim. Nothing contained in this act shall be construed to repeal or modify any law providing for the lien of purchase money mortgages.³³

Pennsylvania law further provides,

The legal effect of the recording of such agreements shall be to give constructive notice to subsequent purchasers, mortgagees, and/or judgment creditors of the parties to said agreements of the fact of the granting of such rights or privileges and/or of the execution of said releases, and the rights of the subsequent purchasers, mortgagees, and/or judgment creditors of the parties to said agreements shall be limited thereby with the same force and effect as if said subsequent purchasers, mortgagees, and/or judgment creditors had actually joined in the execution of the agreement or agreements aforesaid.³⁴

Regarding the standard of review for a motion for judgment on the pleadings, the

Pennsylvania Superior Court has stated:

Wilhelm, 657 A.2d 34, 36 (Pa. Super. Ct. 1995). The current adjudication does not allow for such fact finding by this Court.

³² *US Bank Nat'l Ass'n v. PNC Bank N.A.*, 2015 WL 5771823, at *3 (E.D. Pa. Oct. 2, 2015).

³³ 21 P.S. § 351; accord *Poffenberger v. Goldstein*, 776 A.2d 1037, 1042 (Pa. Commw. Ct. 2001).

³⁴ 21 P.S. § 357; accord *In re Best*, 417 B.R. 259, 282 (Bankr. E.D. Pa. 2009).

Pennsylvania Rule of Civil Procedure 1034(a) states that “[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for judgment on the pleadings.” “The motion for judgment on the pleadings is in effect a demurrer and, in considering the motion, the court should be guided by the same principles as would be applicable if it were disposing of a preliminary objection in the nature of a demurrer.” Judgment on the pleadings may be entered where there are no disputed issues of fact and the moving-party is entitled to judgment as a matter of law.

In determining if there is a dispute as to facts, the court must confine its consideration to the pleadings and relevant documents. The court must accept as true all well pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against whom the motion is filed. All averments of fact properly pleaded in the adverse party's pleadings, and every reasonable inference that the Court can draw therefrom, must be taken as true, or as admitted, *unless their falsity is apparent from the record*. “Averments of fact which are material and relevant are accepted as true even though denied.”³⁵

Based on the current procedural posture, the Court finds that Defendant has failed to *properly* plead the incapacity of Ms. Hiras. Pennsylvania Rule of Civil Procedure 1030 requires that affirmative defenses be pled in a responsive pleading under the heading of “New Matter.”³⁶ If the affirmative defense is not raised as New Matter, then it is waived.³⁷ While Rule 1030 does not enumerate incapacity as an affirmative defense, the list is not exhaustive—new matter has been described as “anything other than a denial, setoff, or counterclaim.”³⁸ Here, Defendant included the allegation of incapacity with a few denials in his Answer. Defendant failed to raise any affirmative defenses under the heading of “New Matter,” or allege sufficient facts to support his claim that Ms. Hiras' dementia

³⁵ *Pocono Summit Realty, LLC v. Ahmad Amer, LLC*, 52 A.3d 261, 267 (Pa. Super. Ct. 2012) (internal citations omitted).

³⁶ Pa.R.C.P. No. 1030(a).


³⁷ Pa.R.C.P. No. 1032; see also *Iorfida v. Mary Robert Realty Co.*, 539 A.2d 383, 386 (Pa. Super. Ct. 1988).

³⁸ *Iorfida*, 539 A.2d at 386.

resulted in her incapacity. Hence, Plaintiffs were not allowed the opportunity to respond properly through the pleading process. If Defendant had pled sufficient information as New Matter, then the current motion would likely be premature. However, as there is no properly pled dispute regarding the recording priority in this matter, Plaintiffs are entitled to judgment on the pleadings. Therefore, Plaintiffs' Motion is **GRANTED**.

IT IS SO ORDERED this 26th day of November 2018.

BY THE COURT,



Eric R. Linhardt, Judge

cc: J. Michael Wiley, Esq.
835 West Fourth Street
Williamsport, PA 17701
Gregory A. Stapp, Esq.
153 West Fourth Street, Ste. 6
Williamsport, PA 17701
Gary Weber, Esq. (Lycoming Reporter)