

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

**BRION BARTHOLOMEW and** :  
**ELIZABETH BARTHOLOMEW** :  
**AS TRUSTEES OF THE SULYNN** :  
**LIBERTI and DOUGLAS LIBERTI** :  
**IRREVOCABLE GRANTOR TRUST,** : :  
**Plaintiffs** :

**vs.**

**NO. 19-1189**

**ERICA BARTHOLOMEW and** :  
**GEOVONNI BARTHOLOMEW and** :  
**KRISTIN BATEMAN and** :  
**JAVONNA BATEMAN and** :  
**KEITH CAPUTO and MARK SHARAR** :  
**and BRANDI MAYES and all other** :  
**tenants residing at 1510** :  
**GRIMESVILLE ROAD,** :  
**WILLIAMSPORT, LYCOMING** :  
**COUNTY, PENNSYLVANIA,** :  
**Defendants** : **CIVIL ACTION - LAW**

**OPINION**

**I. Relevant Facts**

Plaintiffs initiated this action sounding in ejectment on July 26, 2019 and subsequently filed an Amended Complaint on September 16, 2019. Defendant, Kristin Bateman, filed a timely Answer and New Matter to Plaintiffs' Amended Complaint. The remaining Defendants filed untimely Answers to Plaintiffs' Complaint. The Plaintiff obtained default judgment against Defendants Erica Bartholomew, Mark Sharar, and Brandi Mayes for possession of the real property that is the subject of this case. In her New Matter, Defendant, Kristin Bateman, plead the affirmative defense of agency by estoppel to support that she had rights as a tenant to the property. Plaintiffs served discovery on Defendants, Erica Bartholomew, Geovonni Bartholomew, and Mark Sharar on October 2,

2019, which went unanswered. The Plaintiffs have taken the depositions of Defendant, Kristin Bateman, and Sulynn Liberti. The deposition of Defendant, Erica Bartholomew, was scheduled for November 20, 2019 but Defendant failed to appear. The discovery deadline passed on February 21, 2020.

During her deposition, Ms. Liberti, testified that on January 31, 2018, she and her husband, Douglas, deeded 1510 Grimesville Road, Williamsport (hereinafter referred to as “the subject property”) to Plaintiffs to be held in trust for the benefit of Ms. Liberti’s minor nephew and one of the Defendants to this action, Giovanni Bartholomew, to ensure that he would receive the subject property upon Douglas and Sulynn’s death. *Deposition of Sulynn Liberti at pages 8 and 17.* Ms. Liberti also testified that she knew people were living at the subject property as of October of 2017 and that those people included Mark Sharer, Brandi Meyers, Geovonni Bartholomew, and Erica Bartholomew. *Deposition of Sulynn Liberti at page 13.* She was also aware as of February 2018 that Defendant, Kristin Bateman, and her children were living at the subject property. *Deposition of Sulynn Liberti at page 13.* Ms. Liberti admitted that she approved of Defendant, Erica Bartholomew, having a tenant reside at the subject property with her. She further admitted that the Plaintiffs were aware that Defendant Bartholomew and other tenants, including Kristin Bateman, were living at the subject property. *Deposition of Sulynn Liberti at page 14.* In fact, she testified that, the “understanding from day one and all of our conversations from day one through was Erica and Geo [Geovonni] could live in the house . . . .” *Deposition of Sulynn Liberti at page 23.*

Defendant, Kristin Bateman, testified during her deposition that she lived at the subject property since February 2018 and that she was under the impression that Defendant, Erica Bartholomew, and/or Sulynn and Douglas Liberti owned the subject property. *Deposition of Kristin Bateman at pages 8, 24-25, and 27-28.*

Ms. Bateman produced two leases signed by herself and Erica Bartholomew. The first lease is dated the first week of March 2018 and the second is dated July 15, 2019. The leases indicate that the term of each lease was on a month-to-month basis. The leases refer to Erica Bartholomew as the landlord and Kristin Bateman as the tenant.

Ms. Bateman also produced text messages from Sulynn or Douglas Liberti which state that Erica and Geovonni Bartholomew have the right to be living on the subject property. *Deposition of Kristin Bateman at pages 19-22.* After Ms. Bateman received notice of the present lawsuit in July of 2019, she discontinued giving Ms. Bartholomew any rent money because she became unsure of who owned the subject property. *Deposition of Kristin Bateman at pages 29-30.*

On December 27, 2019, Plaintiffs filed a Consolidated Motion for Summary Judgment pursuant to Pa.R.C.P. 1035.2 and for Sanctions pursuant to Pa.R.C.P. 4019.

## **II. Discussion**

### **A. Motion for Summary Judgment**

Pursuant to the Pennsylvania Rules of Civil Procedure, the court shall enter judgment whenever there is no genuine issue of any material fact as to a

necessary element of the cause of action. Pa.R.C.P. 1035.2(1). “In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.” *Jones v. SEPTA*, 772 A.2d 435, 438 (Pa. 2001). If the right to summary judgment is not clear and free from doubt, then the court cannot grant such judgment. *Marks v. Tasman*, 589 A.2d 205, 206 (Pa. 1991).

“Ejectment is an action filed by a plaintiff who does not possess the land but has the right to possess it, against a defendant who has actual possession.” *Wells Fargo Bank, N.A. v. Long*, 934 A.2d 76, 78 (Pa. Super. 2007), *citing Soffer b. Beech*, 409 A.2d 337, 340 n. 6 (Pa. 1979). An ejectment action can only succeed “if the plaintiff is out of possession, **and if he has a present right to immediate possession**” at the time of commencing his action. *Brennan v. Shore Brothers, Inc.*, 110 A.2d 401, 402-03 (Pa. 1955) (emphasis added). An ejectment action also fails if the plaintiff is not a bona fide purchaser. *Becker v. Wishard*, 202 A.3d 718, 722 (Pa. Super. 2019).

First, Plaintiffs are not bona fide purchasers. “In order to qualify as a bona fide purchaser for value, an innocent purchaser must take with ‘neither actual nor constructive knowledge of claims of a third party . . . .’” *Volunteer Fire Co. of New Buffalo v. Hilltop Oil Co.*, 602 A.2d 1348, 1353–54 (Pa. Super. 1992), *citing Lund v. Heinrich*, 189 A.2d 581, 584 (Pa. 1963). Plaintiffs had actual knowledge of the fact that Kristin Bateman was living at the subject property. The following exchange took place at Ms. Sulynn’s deposition:

Q: Okay. And did you at any time discuss with Brion and Elizabeth [the Plaintiffs] anything about Erica having a tenant?

A: Yes.

Q: Okay. Can you give me an approximate date of when that was too?

A: It was when - - when we did - - when we did the deed.

*Deposition of Sulynn Liberti at page 14.*

Plaintiffs also had at least constructive knowledge that the remainder of the Defendants were living at the subject property. Constructive knowledge means “what [the Plaintiffs’] could have learned by inquiry of the person in possession . . . .” *Volunteer Fire Co.*, 602 A.2d at 1353–54. Ms. Liberti testified that, in October of 2017, she was aware that Mark Sharar, Brandi Meyers, Erica Bartholomew, and Geovonni Bartholomew were living at the subject property. There is no evidence produced one way or another as to whether Ms. Liberti directly made the Plaintiffs aware that these other Defendants were residing at the subject property. However, the Plaintiffs could have inquired as to whether there were other residents when they discovered Ms. Bateman was residing there. Further, there is testimony establishing that the purpose of the trust is to protect Geovonni’s interest in the property and so that Erica Bartholomew and her son could continue living there. The Plaintiffs either were or should have been aware of this fact.

Second, a jury could reasonably find that Defendant, Kristin Bateman, has sufficiently established the affirmative defense of agency by estoppel. “Agency by estoppel contains the elements that the principal intentionally or carelessly caused a third party to believe an agency relationship existed, or knowing that the third party held such a belief, did not take reasonable steps to clarify the facts . . . . Additionally, there must be justifiable reliance by the third party.” *Walton v.*

*Johnson*, 66 A.3d 782, 788 (Pa. Super. 2013). See also Restatement (Second) of Agency, Section 8(B).

Ms. Bateman testified that she believed either Ms. Bartholomew or Sulynn and Douglas Liberti owned the subject property at all relevant times, until she received notice of this lawsuit. She signed not one, but two leases under the impression that Erica Bartholomew was her landlord and the property owner. Ms. Bateman further testifies that Mr. and Mrs. Liberti knew she and her children were living at the subject property and Ms. Liberti testified that she even gave Erica Bartholomew permission to have a tenant before the property was deeded to Plaintiffs.

Finally, despite what the trust document states, it was the intent of the parties that the trust be held for Geovonni Bartholomew's benefit. Ms. Liberti testified that, regarding the trust, her checking account says "Sulynn and Doug Liberti, Geovonni Bartholomew irrevocable trust . . . . The understanding from day one and all of our conversations from day one through was Erica [Bartholomew] and Geo [Geovonni Bartholemew] could live in the house . . . ." *Deposition of Sulynn Libert at page 20 and 23.*

In short, Defendant Bateman has produced sufficient evidence to show that a genuine issue of material fact remains as to whether Plaintiffs had a present right to immediate possession of the subject property at the time of the filing of this cause of action. Defendant Bateman has sufficiently raised the possibility that she has rights as a tenant to the real property. Although Plaintiffs' have assumed all rights from Defendant, Erica Bartholomew, to the real property, including those held as landlord to Defendant Bateman, an issue of fact remains

as to whether or not the Plaintiffs' have the right to immediate possession of the real property. The Plaintiffs' have not proven that they have taken steps to terminate potential tenant rights of Defendant Bateman. Therefore, summary judgment must be denied.

**B. Motion for Sanctions**

We next turn to Plaintiffs' Motion for Sanctions against Defendants Erica Bartholomew, Geovonni Bartholomew, and Mark Sharar in the form of summary judgment in ejectment. Since Plaintiffs have already obtained default judgment against these Defendants, the Plaintiffs' Motion for Sanctions is denied as moot.

**ORDER**

**AND NOW**, this 2<sup>nd</sup> day of **March, 2020**, upon consideration of Plaintiff's Consolidated Motion for Summary Judgment and Sanctions and the Responses and Briefs thereto, it is hereby Ordered that Plaintiffs' Motion for Summary Judgment and Sanctions is **DENIED**.

BY THE COURT,

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Hon. Ryan M. Tira, Judge

RMT/ads

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