IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CARRIE L. EVELHAIR and WILLIAM B. EVELHAIR, Jr., husband and wife, Plaintiffs	:	No. 21-01056
	:	CIVIL ACTION – LAW
vs.	:	
LITTLE LEAGUE BASEBALL INCORPORATED, Defendant	:	

OPINION AND ORDER

AND NOW, after argument on February 14, 2022 on Defendant's Preliminary Objections to Plaintiffs' Complaint, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

Plaintiffs Carrie and William Evelhair commenced this action on October 13, 2021 by filing a Complaint. Plaintiffs allege that they are owners of undeveloped property (the "Evelhair Property") that is adjacent to two properties purchased by Defendant Little League Baseball, Inc. on January 17, 2020 ("Defendant's Property"). According to Plaintiffs, the Evelhair Property was, prior to July 2020, solely accessible via a gravel driveway (the "Driveway") leading from U.S. Highway 15 through Defendant's Property; this right-of-way was recorded on the deeds of both the Evelhair Property and Defendant's Property. Plaintiffs allege that, in July of 2020, Defendant "removed the Driveway by regrading the ground and planting grass over the area where the Driveway used to be," thus "destroying its compactness and making vehicular travel difficult."[1]

[1] Complaint ¶¶ 17, 20.

Plaintiffs' Complaint contains a sole count: Count I – Injunctive Relief. Plaintiffs allege that the driveway is "an easement or right-of-way appurtenant to Plaintiffs' dominant estate" and that "[t]he Defendant's removal of the Driveway violates the Plaintiffs' rights of ingress, egress, and regress and interferes with the Plaintiffs' access to the Evelhair Property."[2] Plaintiffs ultimately contend that Defendant's actions "have altered the character of the Driveway without the consent of the Plaintiffs," and seek a number of remedies, including 1) compelling Defendant to restore the Driveway to its previous condition; 2) restraining Defendant from further interference with the Driveway; 3) providing Plaintiffs with compensation for their loss of use of the Driveway and the Evelhair property; 4) awarding punitive damages, exemplary damages, or attorneys' fees; 5) awarding costs; and 6) awarding other relief as the Court deems appropriate.[3]

Defendant filed Preliminary Objections to Plaintiffs' Complaint on November 4, 2021. Defendant's first preliminary objection is in the nature of a demurrer to Count I, premised on multiple grounds.[4] First, Defendant argues that "Injunctive Relief" is not an independent cause of action but a remedy, and therefore Plaintiffs have failed to state a claim upon which relief can be granted. Second, Defendant argues that under Pennsylvania law, Plaintiffs can only state a cognizable claim for alteration of the Driveway if they allege Defendants have rendered the right-of-way impassable or have otherwise substantially interfered with Plaintiffs' ability to access the Evelhair Property. Defendant maintains that the allegations in the Complaint are insufficient to

[2] Complaint, ¶¶ 25 and 28.
[3] Complaint, ¶ 31.
[4] Pa. R.C.P. 1028(a)(4) allows a preliminary objection for "legal insufficiency of a pleading (demurrer)."

satisfy this standard. Defendant's second preliminary objection is in the nature of a "demurrer/motion to strike for lack of specificity."[5] Defendant contends the Complaint fails to allege any cognizable loss, as would justify compensation for loss of use; outrageous behavior or egregious conduct, as would justify punitive damages; or an exception to the "American Rule," as would justify the award of attorneys' fees.[6]

ANALYSIS

A. First Preliminary Objection

1. Standalone Claim for Injunctive Relief

Defendant first argues that the Complaint is legally insufficient for failure to state a claim, inasmuch as a claim for "injunctive relief" is no claim at all under Pennsylvania law. Rather, Defendant contends, "an injunction is an equitable *remedy*, not a cause of action."[7] Plaintiff responds that "cause of action" is not a well-defined term, and can be understood in certain instances to relate to the remedy sought rather than the specific violation averred.[8]

The Court need not address whether there is ever a situation in which a plaintiff may file a standalone count for injunctive relief should that be the sole remedy the plaintiff seeks. Here, Plaintiff brings a single count for "Injunctive Relief"

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[5] Pa. R.C.P. 1028(a)(3) allows a preliminary objection for "insufficient specificity in a pleading."

[6] Pennsylvania generally follows the "American Rule," which states "a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception." *Trizechahn Gateway LLC v. Titus*, 976 A.2d 474, 482-83 (Pa. 2009).

[7] Preliminary Objections, ¶ 12 (emphasis added). Defendant cites two cases for this proposition: *Billig v. Skvarla*, 853 A.2d 1042 (Pa. Super. 2004) and *Norristown Area School Dist. V. A.V.*, 495 A.2d 990 (Pa. Cmwlth. 1985). Both of these cases clearly describe "injunctive relief" as an equitable remedy. Although they do not explicitly say that a cause of action for "injunctive relief" is *per se* inappropriate, they do not contemplate that possibility either.

[8] Plaintiffs cite *Ierpoli v. AC&S Corp.*, 842 A.2d 919 (Pa. 2004).

but asks for an order granting, in addition to injunctive relief, "compensat[ion]… for the loss of use of the [d]riveway," punitive damages, exemplary damages, and attorneys' fees.

Plaintiff cites *Youst v. Keck's Food Service, Inc.* for the proposition that if a party "establish[es] his… clear right to relief… a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law."[9] Monetary damages are a traditional "remedy at law," and prior to Pennsylvania's abolition of the distinction between actions at equity and actions at law a claim filed solely in equity would generally not allow for the award of monetary damages.[10] Notably, in *Youst*, the plaintiffs pled a large number of counts for "trespass," "interference with express easement," "interference with implied easement," "interference with easement by necessity," "private nuisance," "demand for a preliminary injunction," and "demand for a permanent injunction."[11] The trial court in *Youst* ultimately granted the plaintiff's request for a permanent injunction, but it did so after the jury found that defendant had caused a private nuisance on plaintiff's land, and it grounded the permanent injunction in the abatement of that nuisance.[12]

Here, Plaintiffs' cause of action is for "injunctive relief," which has as one of its elements a finding of "a legal wrong for which there is no adequate redress at law." Thus, their prayer for money damages, at the very least, cannot be grounded in a count seeking solely to establish their right to injunctive relief; Plaintiffs must plead

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[9] *Youst v. Keck's Food Service, Inc.*, 94 A.3d 1057, 1078 (Pa. Super. 2014).
[10] *See Martindale Lumber Co. v. Trusch*, 681 A.2d 803 (Pa. Super. 1996).
[11] *Youst*, 94 A.3 at 1061.
[12] *Id*. at 1079.

some independent ground for an award of remedies at law if they intend to seek them. As in *Youst*, a claim for "interference with easement" may be appropriate.

2. Failure to Raise Cognizable Claim

Defendant further argues that Plaintiffs' Complaint fails to raise a cognizable claim because they do not argue that Defendant's actions have substantially interfered with their right-of-way. Defendant contends that "substantial interference" does not include situations in which an owner of land merely renders an easement less convenient, but rather requires that the easement be made "essentially inaccessible or impassable."

Plaintiffs respond that "[w]here a right of easement is common to two parties, neither party, without the consent of the other may 'alter its character in any particular."[13] Plaintiffs argue that the actions of Defendant, namely removing the gravel driveway and planting grass over it, requiring Plaintiffs to drive over grass to reach their property, constitutes an impermissible material alteration to the character of the right-of-way.

a. Case Law

It is well established that "[a]n easement, once acquired, may not be restricted unreasonably by the possessor of the land subject to the easement."[14] In *Taylor v. Heffner*, an easement granted the plaintiff use of a road through a subservient estate's land.[15] The owner of the subservient estate – believing the easement holder had exceeded the easement's scope by engaging in commercial activity – erected a

[13] Plaintiffs' Brief , p.7 (*citing Weiss v. Greenberg*, 101 Pa. Super. 24 (Pa. Super. 1930)).
[14] *Palmer v. Soloe*, 601 A.2d 1250, 1252 (Pa. Super. 1992) (citing *Taylor v. Heffner*, 58 A.2d 450 (Pa. 1948)).
[15] *Taylor*, 58 A.2d at 451.

locked steel gate across the road to prevent the easement holder from hauling coal; the easement holder sued to enjoin the use of the gate for this purpose.[16] The Supreme Court of Pennsylvania first answered in the affirmative the threshold questions of whether a valid easement existed and whether the easement holder's use of the road was within the scope of the easement.[17] Regarding the ultimate fate of the lock and gate, the Court stated:

> "[The subservient estate's] right to use the premises must be exercised in a manner consistent with the existing easement. They may use it as they choose but may not interfere with the proper and reasonable use by appellants of their dominant right. The erection of the fence and gates… cannot be restrained. That right cannot, however, be exercised as here where it is sought to completely deny the right of the user. In the circumstances of this case, we hold that the erection of the gates which are kept locked or closed during the time when [the easement holder is] using the road, does constitute an unreasonable interference with the easement. [The subservient estate owner's] contention that a key was given to [the easement holder's] predecessors in title we deem immaterial in view of the complete denial of any rights… as regards the use of the road in question."[18]

In *Palmer v. Soloe*, the plaintiffs, owners of a dominant estate, had "an easement by prescription consisting of a gravel roadway ranging in width from fifteen to twenty feet" that passed through the defendants' property and provided access to the road.[19] In an attempt to address flooding issues, the defendants "relocated the easement on their property by moving and reconstructing the gravel road a distance of approximately twenty feet to the north… [and] also filled in the pre-existing gravel road and then planted grass and shrubs over it."[20] The trial court found that,

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[16] *Id*. at 451-52.
[17] *Id*. at 452-53.
[18] *Id*. at 454.
[19] *Palmer*, 601 A.2d at 1251.
[20] *Id*.

although passable, the new road was more difficult to navigate due to a sharper turn and provided vehicles attempting to exit onto the road with a worse view of traffic.[21]

The trial court granted the plaintiffs' action "seeking the return of the easement to its original location," and the Superior court affirmed.[22] The Court explained that that "[a]n easement, once acquired, may not be restricted unreasonably by the possessor of the land subject to the easement," and "[w]hat constitutes unreasonable interference on the part of the possessor of the land subject to the easement will depend upon consideration of the advantage to him of his desired use of the easement and the disadvantage to the owner of the easement."[23] The Superior Court construed the defendants' actions as "completely den[ying] [the plaintiffs] access over the easement" as originally located, and held that, "[w]hile [the defendants] tried to make accommodation by opening another right-of-way, it is clear that the relocation nonetheless interfered materially with appellees' use of their easement."[24]

Under *Taylor*, *Palmer*, and other Pennsylvania cases addressing this issue, the primary consideration is not the extent to which the subservient estate alters the character of the easement in the abstract, but whether the subservient estate's actions "interfere with the proper and reasonable *use*" of the easement in an unreasonable matter.[25] Although the cases make clear that unreasonable interference will be a highly fact-bound inquiry, they also suggest that the subservient

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[21] *Id*.
[22] *Id*. at 1252-53.
[23] *Id*.
[24] *Id*. at 1253.
[25] *Taylor*, 58 A.2d at 454 (emphasis added).

estate must entirely, or at least largely, prevent the dominant estate's use of the easement. Although the Court does not believe that a *complete* denial of access is necessary to prevail on a claim under Pennsylvania law, there is a dearth of case law in which any appellate court has held lesser interference actionable.

The case cited by Plaintiffs, *Weiss v. Greenberg*, does not compel a different result. In *Weiss*, two property owners shared the use of a driveway easement; one of the owners erected a garage on the common easement.[26] The Superior Court stated that "[i]f the right of easement is common to both parties neither, without the consent of the other, has the right to alter its character in any particular."[27] The holding of *Weiss*, however, does not undermine the principles of *Taylor*, *Palmer*, and subsequent cases for at least three reasons.

First, as *Taylor* was decided by the Supreme Court of Pennsylvania in 1948, any contradictory portions of *Weiss* – which was decided by the Superior Court in 1930 – would be abrogated. Second, the *Weiss* opinion sheds no light on what constitutes an alteration of an easement's "character." In *Weiss*, the easement was "obstructed" when a structure was built upon it; the Court does not read *Weiss* to literally mean that *any* change to the features of an easement, perhaps causing minor inconvenience or annoyance, is actionable. Finally, *Weiss* involved the rights of two dominant estates that shared equally in the use of an easement. Conversely, in *Taylor*, the Supreme Court of Pennsylvania held that a subservient estate "may use [the premises] as they choose but may not interfere with the proper and reasonable use" of the "dominant right." Thus, in *Taylor*, "[t]he erection of the fence

[26] *Weiss v. Greenberg*, 101 Pa. Super. 24, 26 (Pa. Super. 1930).
[27] *Id*. at 29-30.

and gates… [could not] be restrained," though the fence could not be used to "completely deny the right of the user." It is unsurprising that two parties who share an easement over a third party's land may have a different legal relationship than that between an easement holder and a party who owns the land subject to the easement. As such, *Weiss* is of limited applicability to this dispute.

b. Complaint

Plaintiffs' Complaint does not contain allegations sufficient to constitute "unreasonable interference" with their use of the easement under Pennsylvania law. Although the Complaint alleges that Defendants have "altered the character of the Driveway,"[28] and that their actions have "caused and will continue to cause Plaintiffs irreparable injury in that Plaintiffs are unable to access the Evelhair Property *in accordance with their rights*,"[29] on the face of the Complaint the nature of Plaintiffs' claim is grounded in Defendants' alterations to the Driveway in the abstract, rather than alleged interference with Plaintiffs' *use* of the Driveway.

At argument and in their brief, however, Plaintiffs clarified that they intend to make a number of specific factual allegations in support of their claims that are not explicit in their Complaint: that they do in fact use the right-of-way and have been unable to use it since the alteration; that the boundaries of the right-of-way are no longer visible or well-defined, which Plaintiffs fear may expose them to a claim of adverse possession in the future; and that by removing the gravel and replacing it with grass, Defendant has greatly increased the chances that the right-of-way may become impassable in the future. These specific factual descriptions of the manner

[28] Complaint, ¶31.
[29] Complaint, ¶32 (emphasis added).

in which Defendants' actions have interfered with Plaintiffs' use of the Driveway – or may interfere with that use in the future – may support a claim of unreasonable interference. To do so, however, they must be affirmatively pled in the Complaint. Therefore, the Court will sustain Defendant's first preliminary objection, and give Plaintiffs the opportunity to amend their Complaint to more fully and specifically state the factual circumstances of Defendant's alleged interference with their use of the Driveway in the past, present, and future.

B. Second Preliminary Objection

Defendant's second preliminary objection is in the mixed nature of a demurrer and an allegation of lack of specificity; Defendant contends that the Complaint does not sufficiently state a cause of action because "Plaintiffs fail to allege any use of the right-of-way and further, fail to allege that they have suffered any cognizable loss in this matter."[30] Defendant further contends the Complaint contains no facts upon which punitive damages or attorneys' fees can be awarded.

1. Allegations Concerning Use of Right of Way

Defendant's first argument in their second preliminary objection substantially overlaps with the second argument in their first preliminary objections. For the reasons discussed above, the Court will sustain this portion of Defendant's second preliminary objection, and give Plaintiffs the opportunity to amend their Complaint to more fully and specifically state the factual circumstances of Defendant's alleged interference with their use of the Driveway.

[30] Preliminary Objections, ¶ 30.

2. Punitive Damages and Attorneys' Fees

Plaintiffs contend that they have specifically averred a fact that if proved would support the grant of punitive damages. Paragraph 35 of the Complaint reads:

> "It is believed and therefore averred that Defendant engaged in the conduct described herein for the purpose of devaluing the Evelhair Property in order that Defendant may attempt to acquire the Evelhair Property from the Plaintiffs at less than its fair market value as that fair market value existed prior to the Defendant's wrongful conduct."

Paragraph 36 reads:

> "Defendant's actions as described herein were oppressive and malicious and undertaken for the purpose of injuring the Plaintiffs and with willful and conscious disregard of the Plaintiffs' rights. Plaintiffs are therefore entitled to punitive and exemplary damages in an amount sufficient to deter the Defendant and other[s] like it from engaging in such conduct."

Plaintiffs argue that whether these averments are true is a "factual issue for resolution by the finder of fact; not a determination appropriately made on preliminary objections."[31] Plaintiffs did not respond, at argument or in their brief, to Defendant's contention that nothing in the Complaint supports an award of attorneys' fees.

Pennsylvania is a fact-pleading state, and a pleading must include "[t]he material facts on which a cause of action or defense is based… stated in a concise and summary form."[32] However, "in pleading its case, the complaint need not cite evidence but only those facts necessary for the defendant to prepare a defense."[33]

Here, Paragraphs 35 and 36 constitute something less than a "material fact" – they merely state a belief, unsupported in the Complaint by any extrinsic fact. As

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[31] Plaintiffs' Brief, p. 8.
[32] Pa. R.C.P. 1019(a).
[33] *Unified Sportsmen of Pennsylvania v. Pennsylvania Game Com'n (PCG)*, 950 A.2d 1120, 1134 (Pa. Cmwlth. 2008).

such, Plaintiffs' averments concerning punitive damages are speculative, and fall below Pennsylvania's fact pleading requirements. Therefore, the Court will sustain Defendant's second preliminary objection with regard to punitive damages, and strike Paragraphs 35 and 36 from the Complaint. Should discovery in this case reveal facts and evidence in support of Plaintiffs' belief concerning Defendant's motive or otherwise justifying an award of punitive damages, Plaintiffs may move to amend their Complaint to reinstate their claim for punitive damages.

Additionally, the Court agrees with Defendant that Plaintiffs have not pled any "express statutory authorization, a clear agreement of the parties, or some other established exception" which would support an award of attorneys' fees despite the general application of the "American Rule."[34] Plaintiffs shall either remove references to an award of attorneys' fees from the complaint or amend their Complaint to include specific facts supporting an award of attorneys' fees.

ORDER

For the foregoing reasons, the Court hereby ORDERS as follows:

- Defendant's first preliminary objection is SUSTAINED. Plaintiffs' various requests for relief may not be supported by a sole count for injunctive relief. Furthermore, Plaintiffs have not pled a sufficient factual basis to support their cause of action. Plaintiffs shall have twenty (20) days from the date of this Order to amend their Complaint to 1) plead an independent cause of action, and 2) more fully and specifically plead the factual circumstances of

[34] *See Trizechahn Gateway LLC,* 976 A.2d at 482-83.

Defendant's alleged interference with their use of the Driveway in the past, present, and future.

- Defendant's second preliminary objection is SUSTAINED. Paragraphs 35 and 36 and all references to punitive damages are stricken from the Complaint. Plaintiffs shall have twenty (20) days from the date of this Order to amend their Complaint to either 1) remove references to attorneys' fees, or 2) plead sufficient bases for an award of attorneys' fees.

IT IS SO ORDERED this 11th day of May 2022.

By the Court,

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Eric R. Linhardt, Judge

ERL/jcr
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