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
vs.	:	CIVIL ACTION – LAW
LITTLE LEAGUE BASEBALL INCORPORATED, Defendant	:	

OPINION AND ORDER

AND NOW, this 6th day of December 2022, after argument on Defendant's Preliminary Objections to Plaintiffs' Amended Complaint, the Court issues the following OPINION and ORDER.

BACKGROUND

The procedural history of this case is summarized in detail in this Court's May 12, 2022 Opinion and Order. To summarize, Plaintiffs filed a Complaint on October 13, 2021 alleging that they own property (the "Evelhair Property") accessible only via a gravel right-of-way (the "Driveway") through Defendant's property. Plaintiffs alleged that Defendant interfered with their access to the Evelhair Property by unilaterally removing the Driveway and planting grass over it. Their original Complaint contained a single count for injunctive relief.

Defendant filed two Preliminary Objections to the original Complaint. First, Defendant objected to Plaintiffs' single count for injunctive relief without an underlying cause of action. Second, Defendant contended that Plaintiffs had not stated a claim upon which relief could be granted, as they had only maintained that

Defendant had rendered passage of the Driveway more difficult rather than effectively impossible as is required to succeed on such a claim.

By Order of May 12, 2022, the Court sustained both of these preliminary objections. Without addressing whether a single count of injunctive relief could ever be appropriate, the Court found that the original Complaint's sole count was insufficient to support Plaintiffs' requested remedies, which included various forms of monetary damages. Regarding the standard for stating a claim for interference with an easement, the Court summarized the case law as follows:

> "[T]he primary consideration is... whether the subservient estate's actions 'interfere with the proper and reasonable use' of the easement in an unreasonable manner. Although the cases make clear that unreasonable interference will be a highly fact-bound inquiry, they also suggest that the subservient 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 [such a claim], there is a dearth of case law in which any appellate court has held lesser interference actionable."[1]

The Court further held that Plaintiffs had not satisfactorily stated a claim for punitive damages or attorney's fees. The Court directed Plaintiffs to file an Amended Complaint pleading an independent cause of action that more fully and specifically stated the factual circumstances in support of Defendants' alleged interference with the Driveway. The Court struck references to punitive damages from the Complaint, and directed Plaintiffs to either omit references to attorney's fees from their Amended Complaint or plead sufficient bases for an award of attorneys' fees.

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[1] *Opinion and Order*, May 12, 2022 (citing *Taylor v. Heffner*, 58 A.2d at 454 (Pa. 1948)).

AMENDED COMPLAINT AND PRELIMINARY OBJECTIONS

A. Plaintiffs' Amended Complaint

Plaintiffs filed an Amended Complaint on May 31, 2022. Whereas the factual averments in the Original Complaint primarily addressed the time period beginning with Defendant's alleged alteration of the Driveway in July of 2020, the Amended Complaint includes a more detailed history of the Evelhair Property beginning in 2014. The Amended Complaint indicates that in 2014, Defendant created plans for a new baseball field that would occupy the Evelhair Property and other surrounding properties, and offered to purchase the Evelhair Property from Plaintiffs' predecessor in title. Plaintiffs allege that although their predecessors and Defendant did not agree on a price and the Evelhair Property was not sold, Defendant nonetheless began purchasing the surrounding properties. Among these surrounding properties was the parcel, purchased by Defendant in January of 2020, containing the Driveway.

The Amended Complaint describes Defendant's alleged alterations of the Driveway in more detail than the Original Complaint. These alterations, occurring from July to August 2020, allegedly resulted in:

- The razing of the Driveway's surface, "destroying its compactness and making vehicular travel difficult" when it had previously been "easily visible, well-graded, and easily passable";
- The significant raising of the Driveway's surface by the addition of "150 to 200 tons of topsoil";
- Inaccessibility by passenger vehicles, and an inability for the Evelhairs to reasonably access their property; and

- Increased likelihood that the Driveway "will become further impassable in the future".

Essentially, Plaintiffs contend that Defendant's alteration of the Driveway has made its boundaries no longer visible, which is problematic because it is a right-of-way with a precise location specified on the involved properties' deeds. Plaintiffs aver that they "can no longer access the Evelhair Property using their pick-up truck without causing damage to their vehicle," and cannot access their land "by passenger vehicles" at all. Ultimately, they allege that they "can no longer use the Driveway as they had done in the past," and that Defendant intended to devalue – and has succeeded in devaluing – the Evelhair Property in order to pressure Plaintiffs into selling Defendant the Evelhair Property.

The Amended Complaint contains three counts. Count I, Trespass, alleges that Defendant has invaded upon Plaintiffs' property rights by altering the character of Plaintiffs' easement, making the driveway "less convenient and less useful as a way to access the Evelhair Property." Count II, Interference with Use of Easement, avers that the Defendants' removal of the Driveway violates Plaintiffs' rights of ingress and egress and permanently and substantially interferes with their use of the Driveway. Count III, Nuisance, contends that Defendant's intentional and unreasonable destruction of the Driveway invaded Plaintiffs' private use and enjoyment of their easement. Each count seeks the restoration of the Driveway to its previous condition, an injunction against further interference with Plaintiffs' rights, compensatory damages, punitive damages, costs of suit, and all other relief that the Court deems just and appropriate.

B. Defendant's Preliminary Objections

On June 20, 2022, Defendant filed Preliminary Objections to Plaintiffs' Amended Complaint, raising four distinct preliminary objections. The first preliminary objection seeks to strike the portions of the Amended Complaint discussing Defendant's prior interest in and attempts to purchase the Evelhair Property in 2014 as scandalous and impertinent.[2] Defendant argues that the "alleged prior dealings between Defendant and Plaintiffs' predecessors in title... are not material or appropriate" to Plaintiffs' claims. Defendant avers that those allegations relate "not solely to the property accessed by the 'driveway' here at issue" but also to unrelated "property upon which Plaintiffs' primary residence is situated," which is not relevant to the claims at hand. Defendant also argues that allegations that its actions affected or were intended to affect the value of the Evelhair Property are scandalous and impertinent because "[t]here is no allegation that the Evelhair Property has been or is for sale." At argument, Defendant added that these claims are also scandalous and impertinent inasmuch as they deal with Defendant's alleged offers to buy property neighboring the Evelhair Property that is not at issue in this case.

Defendant's second preliminary objection alleges both insufficient specificity and a failure to state a claim.[3] Defendant claims that Plaintiff has failed to allege a

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[2] Pa. R.C.P. 1028(a)(2) permits preliminary objections on the ground of "inclusion of scandalous or impertinent matter...." An allegation is scandalous or impertinent when it is "immaterial and inappropriate to the proof of the cause of action," especially in a way designed to cast the adverse party in a negative light. *See Breslin v. Mountain View Nursing Home, Inc.*, 171 A.3d 818, 829 (Pa. Super. 2017).

[3] Pa. R.C.P. 1028(a)(3) permits preliminary objections on the ground of "insufficient specificity in a pleading...." Pa. R.C.P. 1028(a)(4) permits preliminary objections on the ground of "legal insufficiency of a pleading (demurrer)...."

cognizable loss generally, and has not pled any facts that would support an award of punitive damages or attorney's fees. At argument, Defendant specifically contended that Plaintiffs have not pled facts supporting an exception to the American Rule.[4]

Defendant's third preliminary objection is a demurrer to Count I, Trespass. This preliminary objection essentially reiterates Defendant's arguments from its preliminary objections to Plaintiffs' original Complaint, contending that Plaintiffs' supplementation of their allegations is insufficient to plead that Defendant has substantially interfered with Plaintiffs' use of the Driveway. Specifically, Defendant contends that Plaintiffs still have not alleged that the Driveway is "essentially inaccessible or impassable" as is required to sustain such a claim.

Defendant's fourth preliminary objection is a demurrer to Count II, Interference with Use of Easement. Defendant notes that Plaintiffs have said that they can access the Evelhair Property with their pick-up truck; though Plaintiffs say this causes damage to their vehicle, Defendant contends this statement without any specificity regarding this damage is insufficient to establish substantial interference or impassability. At argument, Defendant elaborated on its third and fourth preliminary objections, specifically contending that the Plaintiffs' ability to access the Evelhair Property by driving over grass, rather than gravel, is the precise sort of alteration that is not "substantial interference" with the right of way, because Plaintiffs' access has not been blocked or made impossible.

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[4] The "American Rule" 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).

C. Plaintiffs' Answer to Defendant's Preliminary Objections

Plaintiffs respond to Defendant's first preliminary objection by arguing that the factual averments concerning Defendant's attempts to purchase the Evelhair Property in 2014 are relevant to their "demands for punitive damages and attorneys' fees for the Defendant's wanton disregard of the Plaintiffs' rights." Specifically, Plaintiffs argue that their Amended Complaint fairly and specifically pleads their contention that Defendant chose not to purchase the Evelhair Property at its asking price but instead to intentionally lower its value to both Plaintiffs and the real estate market at large in order to pressure Plaintiffs into selling the Evelhair Property to Defendants at a suppressed price. Plaintiffs further indicate that Defendant is "mistaken" that any of the statements in the Amended Complaint relate to the property that Plaintiffs' residence is on.

Plaintiffs respond to Defendant's second preliminary objection by essentially indicating that the allegations in the Amended Complaint are sufficient to state a legally cognizable claim with quantifiable damages, as well as allegations that could support an award of punitive damages. At argument, Plaintiffs clarified that their claim for attorney's fees is based entirely on their claim for punitive damages and not on any statutory authorization.

Plaintiffs respond to Defendant's third preliminary objection by highlighting their allegations that Defendant significantly raised the Driveway by placing 150 to 200 tons of topsoil, and that the Driveway is thus inaccessible to "passenger vehicles" and "without causing damage to [Plaintiffs'] pick-up truck." Plaintiffs note that in deciding a demurrer, the Court must "accept as true all well-pleaded, materal,

and relevant facts alleged in the complaint and every inference that is fairly deducible from those facts,"[5] and argue that under this standard the allegations in the Amended Complaint – when read in conjunction – are sufficient to plead substantial interference with Plaintiffs' easement.

Plaintiffs generally deny Defendant's fourth preliminary objection, which is based on grounds similar to the third preliminary objection. At argument, Plaintiffs addressed Defendant's third and fourth preliminary objections by first citing this Court's explanation that a "complete denial of access" is not necessary to prevail on a substantial interference claim. Plaintiffs noted that in *Palmer*, a case discussed in this Court's May 12, 2022 Opinion and Order, the Superior Court of Pennsylvania found that a subservient estate had substantially interfered with a gravel roadway easement when they planted grass over the roadway and *constructed another one* twenty feet away.[6] It would be beyond strange, Plaintiffs argued, for the planting of grass on an existing easement to constitute a substantial interference when the subservient estate constructs a new road, but an insubstantial interference when the subservient estate does *less* to facilitate access. Plaintiffs ultimately emphasized that they have pled that they cannot access the Evelhair Property by typical automobile without sustaining damage, and asserted the fact that Defendant essentially removed the Driveway, which is specified as to both location and character on the relevant deed, is sufficient to constitute substantial interference.

[5] Plaintiffs cite *Raynor v. D'Annunzio*, 243 A.3d 41, 52 (Pa. 2020).
[6] *See Palmer v. Soloe*, 601 A.2d 1250 (Pa. Super. 1992).

ANALYSIS

A. First Preliminary Objection

The Court struck claims for punitive damages from the Original Complaint because it contained no material facts to support them, but only a bald assertion upon belief that Defendant was attempting to lower the value of the Evelhair Property and interfere with Plaintiffs' access, to pressure them to sell at a lower price. The Amended Complaint contains the following averments of fact which Plaintiffs contend are sufficient to support their claim for punitive damages:

- In 2014, Defendant made a plan for an additional structure that would require the purchase of multiple properties, including the Evelhair Property;
- That year, Defendant approached Evelhair's predecessors in interest about purchasing the Evelhair Property, with both sides proposing a price but not agreeing;
- Defendant took steps consistent with its building plan, even though that plan would not be possible without the eventual purchase of the Evelhair Property;
- Defendant took steps to make the Evelhair Property harder to physically reach, thereby 1) lowering its market value and 2) rendering it less useful to the Evelhairs.

Plaintiffs contend that if they prove these facts at trial, a jury could find that Defendant's conduct in destroying the Driveway was a willful and wanton violation of Plaintiff's rights, done with a nefarious purpose. Defendant contends that this portion of the pleading deals with many properties, of which the Evelhair Property is only one, and is thus scandalous and impertinent, especially in light of the fact that the Amended Complaint contains no allegation that the Evelhair Property is up for sale to anyone.

The Court agrees with Plaintiffs that the facts they have provided are material to and supportive of their allegations concerning the purpose of Defendant's actions. In other words, the allegations are material and appropriate to Plaintiffs' claim, and therefore not scandalous or impertinent. The Court stresses that the survival of claims at the preliminary objection stage in no way suggests that a plaintiff has proved or will be able to prove those claims; thus, after the parties have a chance to engage in discovery, the defendant may raise the issue again in a motion for summary judgment. Here, the Court's conclusion is merely that Plaintiffs have replaced statements of mere belief with factual allegations that can be shown true or false, and that those factual allegations are sufficiently material to their claims that Plaintiffs are entitled to explore them going forward.

For these reasons, the Court will overrule Defendant's first preliminary objection to Plaintiffs' Amended Complaint.

B. Second Preliminary Objection

Defendant's second preliminary objection maintains that Plaintiffs have still not properly pled specific grounds for the award of attorney's fees. Plaintiffs respond by grounding their claim for attorney's fees in their request for punitive damages. Though Plaintiffs disclaim reliance on any statutory authorization of attorney's fees they do not elaborate further.

Under the American Rule, each party is responsible for its own attorney's fees unless a specific provision of law allows those fees to be assessed against the other party.[7] In limited circumstances, a factfinder may award attorney's fees as a

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

component of punitive damages rather than a separate item of damages. Such circumstances generally occur, however, when a party frivolously or maliciously initiates a claim, or engages in dilatory tactics that prolong proceedings and cause their opponent to incur more attorney's fees in bad faith. Explicit statutory provisions of the Judicial Code contemplate such scenarios.[8]

Plaintiffs assert that the alleged willful and wanton conduct of Defendant supports a claim for attorney's fees as part of their punitive damages claim even though there is no allegation that they have incurred greater attorney's fees, or otherwise expended further resources, than they would have had Defendant merely negligently disregarded Plaintiffs' rights. In the absence of such a link, there is no justification for an explicit award of attorney's fees as opposed to the award of punitive damages, a portion of which Plaintiffs could apply to legal costs, for Defendant's underlying conduct. Plaintiffs have not provided support for the proposition that a claim for attorney's fees is proper in every case involving a claim for punitive damages.

For these reasons, the Court will sustain Defendant's second preliminary objection to Plaintiffs' Amended Complaint.

C. Third and Fourth Preliminary Objections

Defendant's third and fourth preliminary objections each assert that the factual allegations in the Amended Complaint remain insufficient to support a claim for substantial interference with Plaintiffs' easement, the Driveway. Plaintiffs

[8] 42 Pa. C.S.A. § 2503(6)(7) entitle a court to award attorney's fees as a sanction for "dilatory, obdurate or vexatious conduct during the pendency of a matter" or the violation of any rule which prescribes such an award.

contend that the additional facts they have pled – regarding both the nature of Defendant's alterations and the efforts required to access the Evelhair Property – are sufficient to state claims for trespass and interference with the use of their easement.

In its recitation of facts, the original Complaint averred only that Defendant's actions changed the Driveway from one that was "easily visible, well-graded, and easily passable" to one that was not compact and upon which "vehicular travel [was] difficult." In response to this Court's direction to add a more specific factual basis, Plaintiffs supplemented the existing allegation with the following factual averments:

- Plaintiffs and their predecessors in interest accessed the Evelhair Property via the Driveway prior to its alteration;
- The placement of 150 to 200 tons of topsoil raised the surface of the area where the Driveway used to be;
- Plaintiffs can no longer access the Evelhair Property with a normal passenger vehicle at all; and
- Plaintiffs cannot access the Evelhair Property in their pickup truck without damaging the pick-up truck.

The Court finds that the averments of fact in the Amended Complaint are sufficient to support causes of action for interference with the use of Plaintiffs' easement and trespass upon Plaintiffs' property rights in the easement, as they could support a finding that Defendant's actions substantially interfered with Plaintiffs' easement. The courts have found "substantial interference" when the subservient estate completely or nearly-completely interferes with the "proper and reasonable use" of the easement in an unreasonable manner.[9] In *Palmer*, the

[9] *See, e.g., Taylor*, 58 A.2d 450; *Palmer*, 601 A.2d 1250.

Superior Court found that the subservient estate's complete destruction of the existing easement was not excused by the unilateral construction of an alternate route.[10] It follows that a party pleading substantial interference need not allege that it is impossible or nearly impossible to reach their land by any route, such that any impediment short of a wall from one edge of the subservient estate to the other is insufficient. Rather, a party must plead that the owner of the subservient estate has rendered the easement – the specific portion of the subservient estate which that party has obtained the right to traverse by deed or prescription – largely or entirely unpassable.

Plaintiffs have pled as much here. They have averred that the tract which formerly permitted access via a smooth gravel road is now raised, such that they can only access the Evelhair Property by using a particular vehicle and accepting that the vehicle will be damaged. The case law establishes that mere inconvenience (such as the need to open a fence every time an easement is passed) will not suffice to establish substantial interference; however, this principle cannot be stretched so thin as to put the burden on the owner of the dominant estate to purchase a specialized vehicle or accept property damage as the cost of accessing the property.

Defendant faults Plaintiff for a lack of specificity regarding the alleged damage to the pick-up truck that results from traversing the easement. Such a lack of specificity would be impermissible in a claim primarily seeking compensation for that property damage, as the failure to specify the type and extent of harm would interfere with the defendant's ability to answer the claims. Here, however, specifics

[10] *Palmer*, 601 A.2d at 1252.

regarding the alleged damage to the pick-up truck go not to the nature of Plaintiffs' claims but to their strength. That lack of specificity does not hinder Defendant's ability to respond to Plaintiffs' claims.

For these reasons, the Court will overrule Defendant's third and fourth preliminary objections to Plaintiffs' Amended Complaint.

ORDER

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

- Defendant's first, third and fourth preliminary objections to Plaintiffs' Amended Complaint are OVERRULED.

- Defendant's second preliminary objection to Plaintiffs' Amended Complaint is SUSTAINED. All requests for attorney's fees are hereby STRICKEN from Plaintiffs' Amended Complaint.

Defendant shall file an Answer to Plaintiff's First Amended Complaint by December 30, 2022.

IT IS SO ORDERED.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/jcr
cc: Thomas C. Marshall, Esq. and Brandon R. Griest, Esq.
Ronald L. Finck, Esq.
3401 N. Front Street, P.O. Box 5950, Harrisburg, PA 17110-0950
Gary Weber, Esq. (Lycoming Reporter)