

deed (the "Beers-Reagle Deed"). Id. at ¶ 4, Ex. A. The Deed was recorded on September 5, 1985. Id. at ¶ 16.

The land transferred in the Beers-Reagle Deed was originally acquired by the Beers in a deed dated October 13, 1944, between Henry A. Male and Elmyra Male (the "Males") and the Beers (the "Male-Beers Deed"). Id. at Ex. The Male-Beer Deed states that both tracts of land were conveyed by deed dated April 6, 1931, between Herbert J. Hartzog, receiver of the Bangor and Nazareth Transit Complaint, and the Males (the "Hartzog-Male Deed"). Id. at Ex. B. The Beers-Reagle, Male-Beers and Hartzog-Male deeds are attached as exhibits to Plaintiff's Complaint. See id. at Ex. A, B, C.

Also attached to Plaintiff's Complaint is a survey map prepared by George A. Collura, a professional land surveyor, which depicts the locations of the two tracts of land described in the Beers-Reagle Deed (the "Survey Map"). See id. at Ex. D-1, D-2, D-3. The Survey Map sets forth Plaintiff's property in relation to the neighboring properties owned by the Falcones and Percy D. Reimer and Bobbie B. Reimer (the "Reimers"). Id. The Survey Map depicts the first tract of land ("Tract One") as running along the easterly border of the Reimers' property and ending just north of the Falcones' property. See id. at ¶¶ 7-8, Ex. D-1, D-2, D-3. The second tract of land ("Tract Two") is depicted as a narrow piece of land that runs between the northerly border of the Falcones' property and the southerly border of the Reimers' property. See id.

The Falcones lease their property to a business trading as Fueling Fine, a used car lot. Id. at ¶ 9. Plaintiff contends that Fueling Fine occupies a significant portion of Tract Two despite Plaintiff's requests and demands that Fueling Fine not occupy Tract Two. Id. at ¶ 10. Plaintiff represents that the Falcones refuse to acknowledge Plaintiff's ownership of Tract Two. Id. at ¶ 14. The Reimers' property is also utilized by a business. See id. at ¶ 11. Without objection by Plaintiff, the Reimers paved and use a portion of Tract Two for vehicles utilizing the business located on the Reimers' property. Id. Plaintiff maintains that the Falcones and Reimers are currently in litigation in matters including a quiet title action indexed at C-48-CV-2014-2078 and C-48-CV-2013-7081 and that these matters concern Plaintiff's property. Id. at ¶¶ 12-13.

Plaintiff commenced this action by filing a Writ of Summons on January 22, 2016. On May 2, 2016, Plaintiff filed its Complaint. The Falcones filed Preliminary Objections to Plaintiff's Complaint on May 31, 2016, and their Brief in Support of Preliminary Objections on June 20, 2016. On June 21, 2016, Plaintiff filed its Reply to Preliminary Objections. Plaintiff's Brief in Reply to Preliminary Objections was filed on July 20, 2016.

This matter was placed on the August 30, 2016, Argument List. The parties presented argument before the undersigned. At Argument, the Falcones discussed details regarding the litigation between the Falcones and Reimers and represented that said litigation ended in a settlement between

Defendants. In a letter dated August 31, 2016, and addressed to the undersigned and Plaintiff's counsel, Joel M. Scheer, Esquire, Yvonne Falcone Gundry, Esquire, counsel for the Falcons, provided additional details regarding the litigation between the Falcons and Reimers and attached the Complaint from the case docketed at C-48-CV-2014-2078. Attorney Scheer responded by a letter dated September 2, 2016, clarifying the representations set forth in Attorney Gundry's letter and asserting that any prior litigation between Defendants, which did not include Plaintiff as a party, should have no impact on Plaintiff's property rights. Attorneys Gundry and Scheer each sent one additional letter to this Court. In her second letter, Attorney Gundry repeated much of the legal arguments set forth in her Brief in Support of Preliminary Objections. Attorney Scheer's response urged this Court to consider the Falcons' Preliminary Objections based upon the pleadings and not upon the contents of Attorney Gundry's letters and any prior litigation between Defendants. This Court agrees and proceeds with its discussion regarding the Falcons' Preliminary Objections.

II. Discussion

A court may properly grant preliminary objections when the pleadings are legally insufficient for one or more of the reasons enumerated in Rule 1028 of the Pennsylvania Rules of Civil Procedure. In ruling on preliminary objections, "we will consider as true all well-pleaded facts and inferences reasonably deducible therefrom, but not conclusions of law, argumentative

allegations or opinions.” Erie Cty. League of Women Voters v. Com., Dep't of Env'tl. Res., 525 A.2d 1290, 1291 (Pa. Commw. 1987). In considering a preliminary objection that seeks the dismissal of a cause of action, a court must only sustain such a preliminary objection “in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief.” Feingold v. Hendrzak, 15 A.3d 937, 941 (Pa. Super. 2011).

A demurrer tests the legal sufficiency of the evidence. Pa.R.C.P. 1028(a)(4). A preliminary objection in the nature of a demurrer “is deemed to admit all well-pleaded facts and all inferences reasonably deduced therefrom.” Penn Title Ins. Co. v. Deshler, 661 A.2d 481, 482–83 (Pa. Commw. Ct. 1995). “In determining whether to sustain a demurrer, the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion.” Id. at 483. Further, “[i]f any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.” Feingold, 15 A.3d at 941.

A. Demurrer as to Plaintiff’s Ejectment Count

The Falcones first preliminary objection is in the nature of a demurrer. The Falcones demurrer is rooted in the argument that Plaintiff does not hold legal title and/or interest in the land the Beers-Reagle Deed purportedly conveyed, and accordingly, Plaintiff’s cause of action in ejectment is legally

insufficient. That is, an ejectment action requires that a plaintiff has title in the property at issue, and because Plaintiff does not have title in the property at issue, Plaintiff's ejectment claim must be dismissed. In support of their demurrer, the Falcones provide an interpretation of the Beers-Reagle Deed and a detailed history of other conveyances and the parties' use of the parcels at issue. See Br. Defs. Falcone 5-9.

Such arguments are improper at the preliminary objection stage. As previously stated, in considering a preliminary objection, we must accept "as true all well-pleaded facts and inferences reasonably deducible therefrom." Plaintiff's Complaint contains, in relevant part, copies of the Beers-Reagle, Male-Beers, and Hartzog-Male Deeds and averments of Plaintiff's continuous use of the property at issue. See Compl. ¶¶ 16, Ex. A, B, C. To accept the Falcones' argument and sustain the Falcones' demurrer would be premature at this stage, and thus, we overrule the Falcones' demurrer as to Plaintiff's ejectment claim.

B. Failure to Conform to Rule of Law or Court as to Plaintiff's Description of Land and Abstract of Title

The Falcones' second preliminary objection asserts that Plaintiff's Complaint fails to sufficiently describe the land and abstract of the title at issue, as required by Pennsylvania Rule of Civil Procedure 1054. Rule 1054 requires that in an ejectment action:

- (a) The plaintiff shall describe the land in the complaint.

(b) A party shall set forth in the complaint or answer an abstract of the title upon which the party relies at least from the common source of the adverse titles of the parties.

Pa.R.C.P. 1054. An abstract of title is “simply a compilation in an abridged form of the record of the vendor’s title; it is a summary of the most important parts of the deeds and other instruments comprising the evidences of title, arranged in chronological order, and intended to show the original source and incidents of title.” Busin v. Whiting, 535 A.2d 1078, 1080 (Pa. Super. 1987), rev’d on other grounds, 570 A.2d 508 (Pa.1989) (quoting 77 AM. JUR. 2D Vendor and Purchaser § 259 (2016)).

Here, Plaintiff describes the land at issue in the Complaint, referring to the land as Tract One and Tract Two. Plaintiff describes each tract of land in simple terms, using cardinal directions relative to the locations of Defendants’ properties. See Compl. ¶¶ 7-8. Further, attached to Plaintiff’s Complaint is the Beers-Reagle Deed, which contains the metes and bounds of Tracts One and Two, and the Survey Map, which contains a detailed diagram of all parties’ property lines as determined by Collura. Id. at Ex. A, D-1, D-2, D-3.

Plaintiff’s Complaint also contains the Male-Beers and Hartzog-Male Deeds, the Falcones deed, dated February 16, 1989, and the deed dated April 24, 2002, which conveyed to Plaintiff an additional parcel of land from Dominic Grillo (the “Grillo-Reagle Deed”). Id. at Ex. F. The parcel of land

conveyed in by Grillo-Reagle Deed runs along the easterly border of the Falcones' property. Id.

In support of their preliminary objection, the Falcones again present a detailed interpretation of the deeds at issue, rely on matters outside the parameters of the pleadings, and question the validity of Plaintiff's interest in the land at issue. The Falcones also refer to an apparent settlement agreement between Defendants that was entered in a separate suit on May 10, 2016, a week after Plaintiff's Complaint was filed, and other deeds that were not included in Plaintiff's Complaint. As previously discussed, in considering the Falcone's Preliminary Objections, *we must accept all of Plaintiff's well-pleaded facts and the reasonable inferences deducible therefrom.* The Falcones' arguments demand a level of specificity not required by Rule 1054 or at this stage of the proceedings. For example, at trial, the Falcones can introduce other deeds or documentation that undermine Plaintiff's claims of interest in the land at issue, but at this stage of the present litigation, we find Plaintiff's averments and the exhibits attached to Plaintiff's Complaint sufficiently conform to Rule 1054. Thus, we overrule the Falcones' preliminary objection as to the description of the land at issue and the abstract of title presented in Plaintiff's Complaint.

C. Demurrer as to Plaintiff's Trespass Count

The Falcones' third preliminary objection is in the nature of a demurrer. It challenges Plaintiff's trespass cause of action and follows the

same logic considered in our analyses of the Falcone's first two preliminary objections. That is, the Falcones contest Plaintiff's factual averments and specifically maintain that Plaintiff's trespass cause of action is legally insufficient because Defendants "cannot be subject to a cause of action for trespass for land legally titled in their names." Br. Defs. Falcone 13. The Falcones also rely on a settlement agreement reached between Defendants, in a separate suit, on May 10, 2016, one week after the present litigation was commenced.

Whether Defendants legally own the land at issue in Plaintiff's trespass action is a factual issue that is not before this Court. This Court must accept the well-pleaded facts as presented by Plaintiff, and the Falcones' argument simply contests said facts. As discussed above, Plaintiff sufficiently stated its legal interest in the property, and to consider whether the Falcones, in fact, have better title would be to make an inappropriate factual finding using information not contained in the pleadings. Accordingly, we overrule the Falcone's demurrer as to Plaintiff's trespass cause of action.

D. Failure to Conform to Law or Rule of Court as to Plaintiff's Claim of Costs of Lawsuit

In arguing their fourth preliminary objection, which challenges Plaintiff's request of "costs of suit," the Falcones specifically argue against a request for counsel fees. Yet again, the Falcones draw support by contesting the facts as presented in Plaintiff's Complaint, arguing that "Defendants own the land in question and they cannot be subject to damages in trespass or

costs of a suit filed by Plaintiff.” Br. Defs. Falcone 15. It should be apparent from our above analyses that this type of factually based argument is inappropriate at the preliminary objection stage.

In its Brief in Reply, Plaintiff represents that there is “no specific claim for recovery of counsel fees in this action” and specifies that “the claim for ‘costs of suit’, [sic] the inclusion of same only would refer to recoverable costs, such as filing fees, which generally flow from a successful verdict.” Pl.’s Br. Reply 10. The Falcones appear to only challenge the costs of suit as they pertain to requested counsel fees. Giving deference to Plaintiff’s representations regarding the meaning of “costs of suit,” we overrule the Falcones’ fourth preliminary objection.

E. Demurrer as to Plaintiff’s Count in Equity

The Falcones’ fifth preliminary objection is in the nature of a demurrer and challenges Plaintiff’s third count, which is entitled, “Count III – In Equity.” Plaintiff’s Count III seeks reformation of its deed based upon the application of the theory of “boundary by acquiescence.”

The theory of boundary by acquiescence traces its doctrinal roots to the theory of adverse possession and is typically employed where there is a mistake as to the location of property lines. See Zeglin v. Gahagen, 812 A.2d 558, 561-62 (Pa. 2002). The establishment of a boundary by acquiescence requires a finding that (1) each party has claimed and

occupied the land on his side of the line as his own; and (2) such occupation was continued for the statutory period of twenty-one years. Id. at 561.

Plaintiff avers, in relevant part, that along the western border of its parcel acquired in 2002 through the Grillo-Reagle Deed (the "Grillo-Reagle Parcel") is a concrete walkway, and to the west of that walkway is a four-foot strip of grass. Compl. ¶ 22. To the northwest rear of the Grillo-Reagle Parcel is a concrete block garage, and the concrete walkway and strip of grass continue along the western front of said garage. Id. To the west of the grass strip begins a gravel-covered surface, and Plaintiff purports that the beginning of this gravel surface marks the Falcones' easterly property line. Id. at ¶ 23.

Plaintiff avers that it has exclusively maintained and used the grass area and concrete walkway since acquiring the Grillo-Reagle Parcel in 2002. Id. at ¶ 24. Prior to purchasing the Grillo-Reagle Parcel in 2002, Plaintiff owned the parcel immediately north of said parcel. Id. at ¶ 25. Plaintiff further avers that from 1985 until purchasing the Grillo-Reagle Parcel in 2002, it observed the previous owner of the Grillo-Reagle Parcel maintaining the same grass area and concrete walkway. Id. at ¶ 25. Accordingly, Plaintiff avers that "[f]or a period in excess of twenty-one years, Plaintiff and Defendants, and their predecessors in title, have acquiesced to a boundary line which was separate and distinct from [sic] the boundary line set forth in the Deeds describing the parties' real estate." Id. at ¶ 30.

The Falcones contend that Plaintiff's Count III fails to state a cause of action, stating that Count III does not, for example, seek Defendants' land on the basis of adverse possession, quiet title, or in ejectment. We agree. Plaintiff clearly asserts equitable relief based upon the theory of boundary by acquiescence. Further, the Falcones assert that Plaintiff's descriptive of the alleged boundary line is insufficient. The Falcones contend that Plaintiff "makes a claim to Defendant Falcones' sidewalk area in one paragraph of the complaint and then he seems to allege a boundary of the encroaching garage, and then later Plaintiff seems to make a claim for all of the land west of the sidewalk to the Defendants Falcones' macadam." Br. Defs. Falcone 17. The Falcones confuse Plaintiff's description, as understood by this Court, and once again, inject factual averments into their argument. Plaintiff contends that its property's westerly boundary contains the concrete walkway, grass strip, and concrete garage, and that the Falcones' easterly boundary is located where the gravel area meets the grass strip. Plaintiff's averments are sufficient to survive the Falcones' fifth preliminary objection, and accordingly, we overrule the Falcones' demurrer as to Plaintiff's claim in equity.

F. Misjoinder as to Plaintiff's Count III - In Equity

Alternatively, the Falcones assert that Plaintiff's Count III should be stricken from Plaintiff's Complaint as a misjoinder of a cause of action, as

per Rule 1028(a)(5) of the Pennsylvania Rules of Civil Procedure. The Pennsylvania Rules of Civil Procedure provide, in relevant part:

A plaintiff may join as defendants persons against whom the plaintiff asserts any right to relief jointly, severally, separately or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact affecting the liabilities of all such persons will arise in the action.

Pa.R.C.P. 2229(b). In addressing Rule 2229, our Superior Court explained that Rule 2229 “gives a plaintiff the option of joining two or more persons as defendants if (1) the liabilities of the defendants arise from a common factual background, and (2) a common question of law or fact affecting the liabilities of the defendants will arise in the action.” Richner v. McCance, 13 A.3d 950, 959 (Pa. Super. 2011).

Here, Plaintiff’s Count III is limited to the Falcones’ and Plaintiff’s purported property lines. In its Brief in Reply, Plaintiff admits that Count III does not regard the Reimers’ property lines. See Pl.’s Br. Reply 12. Accordingly, the Falcones argue that because Count III does not concern the Reimers’ property and involves a parcel separate from Plaintiff’s other claims, Count III must be dismissed. However, Rule 2229 is not so limiting.

Our focus must be whether Plaintiff’s counts arise from a common factual background and involve a common question of law or fact affecting the liability of the defendants. Plaintiff’s first two counts involve the northerly border of the Falcones’ property, while Count III involves the Falcones’ easterly border. The resolution of each of Plaintiff’s counts will

undoubtedly require overlapping facts and questions of law. Furthermore, the question of the Falcones' easterly border could clearly have repercussions as to the northerly border of the Falcones' property. Lastly, the Reimers do not raise the issue of misjoinder. Based upon the foregoing, we overrule the Falcones' final preliminary objection.

BY THE COURT:

/s/ Samuel P. Murray
SAMUEL P. MURRAY, J.