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Jun 04 2018 10:34AM
Nathan Renkes

NOTICE TO PLEAD:

To Plaintiff: You are hereby notified to file a written response to the enclosed Preliminary Objections within twenty (20) days from service hereof or a judgment may be entered against you.

/s/ Andrew W. Bonekemper
Andrew W. Bonekemper, Esquire

FOX ROTHSCHILD LLP

BY: Andrew W. Bonekemper/Mark W. Fitzgerald
IDENTIFICATION NOS. 84313/93635
10 Sentry Parkway, Suite 200
P.O. Box 3001
Blue Bell, PA 19422-3001
Telephone: (610) 397-6500
abonekemper@foxrothschild.com
mfitzgerald@foxrothschild.com

ATTORNEYS FOR DEFENDANT

HEMPFIELD CITIZENS FOR SAFE
SCHOOLS, INC.,
Plaintiff,

v.

HEMPFIELD SCHOOL DISTRICT,
Defendant.

IN THE COURT OF COMMON PLEAS
LANCASTER COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW

NO. CI-18-03331

DEFENDANT'S PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT

Defendant, Hempfield School District ("School District" or "Defendant"), by and through its attorneys, Fox Rothschild LLP, hereby files these Preliminary Objections to the Complaint of Plaintiff, Hempfield Citizens for Safe Schools, Inc. ("HCSS" or "Plaintiff"), and avers as follows:

1. Plaintiff filed its Complaint on or about May 7, 2018, and Defendant accepted service of the Complaint on May 15, 2018.

2. The Complaint alleges that the School District leases portions of Landisville Middle School property (“LMS property”) to Verizon¹ (“LMS Lease”) and portions of Rohrerstown Elementary School property (“RES property”) to Verizon (“RES Lease”) for the erection of cell phone towers. (Compl. ¶¶ 8, 16.)

3. The Complaint vaguely alleges that the LMS property and RES property “ha[ve] been dedicated for public purposes.” *Id.* at ¶¶ 7, 14.

4. Plaintiff alleges that “[t]he District has violated its duty as trustee of the LMS property and the RES property by permitting the lease of such properties for [Verizon’s] benefit.” *Id.* at ¶ 35.

5. In addition, the Complaint alleges that “[t]he District’s use of the RES property is restricted by the covenants in its chain of title” and that “[t]he District has ignored such covenants in entering into the RES Lease.” *Id.* at ¶¶ 39-40.

6. The Complaint purports to set forth three causes of action: (1) Violation of Pennsylvania’s Donated or Dedicated Property (“DDPA”); (2) Violation of Deed Restrictions; and (3) Declaratory Relief.

7. In Count I of the Complaint, Plaintiff requests that this Court void the LMS Lease and the RES Lease, and issue injunctive relief requiring Verizon to remove its cell tower from the LMS property, and prohibiting Verizon from building a cell phone tower on its leased premises on the RES property. *See id.* at p. 6.

¹ The actual party to the lease(s) about which Plaintiff complains is “CELLCO PARTNERSHIP d/b/a Verizon Wireless.” *See* Compl. at Exhs. A & B.

8. In Count II of the Complaint, Plaintiff requests that this Court void the RES Lease, and issue injunctive relief prohibiting Verizon from building a cell phone tower on its leased premises on the RES property. *See id.* at p. 7.

9. In Count III of the Complaint, Plaintiff requests injunctive relief against the School District prohibiting it from leasing *any* of its property for cell tower usage. *See id.* at p. 8.

10. For the reasons set forth herein, Plaintiff's Complaint should be dismissed or, in the alternative, Plaintiff should be forced to re-plead as set forth below.

PRELIMINARY OBJECTION I
Nonjoinder of a Necessary Party
Pa. R. Civ. P. 1028(a)(5)

11. The School District hereby incorporates the preceding Paragraphs of these Preliminary Objections as though set forth at length herein.

12. Pa. R. Civ. P. 1028 provides, in relevant part, that “[p]reliminary objections may be filed by any party to any pleading [for]...nonjoinder of a necessary party.” Pa. R. Civ. P. 1028(a)(5).

13. “A necessary party has been defined as one whose rights are so connected with the claims of the litigants that no relief can be granted without infringing on those rights.” *Pa. Dept. of Transp. v. Pa. Power & Light Co.*, 383 A.2d 1314, 1317 (Pa. Commw. Ct. 1978).

14. In Count I of the Complaint, Plaintiff alleges that the School District's lease of the LMS property and RES property to Verizon violates the DDPA.

15. In Count II of the Complaint, Plaintiff alleges that the RES Lease between the School District and Verizon violates the property's deed restrictions.

16. Further, as relief in Counts I and II, Plaintiff seeks to have the LMS Lease and RES Lease *to Verizon* declared void; a mandatory injunction requiring *Verizon's* cell phone

tower removed from the LMS property; and an order enjoining *Verizon's* construction of a cell phone tower at the RES property.

17. Plaintiff has not joined Verizon as a party even though it is a necessary party.

18. Verizon's presence in the litigation is essential for the court to resolve Plaintiff's causes of action and render relief.

19. A court order of the relief sought by Plaintiff would directly infringe on Verizon's rights by, *inter alia*, "ordering the removal of [Verizon's] LMS cell phone tower, and enjoining [Verizon's] construction of the RES cell phone tower." Compl. at p. 6.

WHEREFORE, Defendant, Hempfield School District, respectfully requests that this Court dismiss Plaintiff's Complaint for failure to join a necessary party, and award such further relief as the Court deems necessary or appropriate under the circumstances.

PRELIMINARY OBJECTION II
Failure to Conform to Law or Rule of Court
Pa. R. Civ. P. 1028(a)(2)

20. The School District hereby incorporates the preceding Paragraphs of these Preliminary Objections as though set forth at length herein.

21. Pa. R. Civ. P. 1019 provides, in relevant part, as follows:

When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.

Pa. R. Civ. P. 1019(i).

22. In the Complaint, Plaintiff acknowledges that "[t]he District's use of the RES property is restricted by the covenants in its chain of title," but fails to attach the RES property's deed to support its claim. (Compl. ¶ 39).

23. In addition, Plaintiff makes numerous references to the contents of the deeds for the District's other properties, but fails to attach a single deed. *See id.* at ¶¶ 5, 20, 23.

24. Plaintiff has not alleged that the deeds are not accessible; quite to the contrary, Plaintiff references portions of the deeds for the RES property and Centreville Elementary School property ("CES property") directly in its Complaint. *See id.* at ¶¶ 15(A)-(B), 23(A).

25. Because Plaintiff has failed to adhere to the requirements of Pa. R. Civ. P. 1019, the Complaint should be dismissed for failure to conform to law or rule of court.

WHEREFORE, Defendant, Hempfield School District, respectfully requests that this Court dismiss Plaintiff's Complaint for failure to conform to law or rule of court, and award such further relief as the Court deems necessary or appropriate under the circumstances.

PRELIMINARY OBJECTION III
Demurrer Due to Lack of Standing – Count II
Pa. R. Civ. P. 1028(a)(5)

26. The School District hereby incorporates the preceding Paragraphs of these Preliminary Objections as though set forth at length herein.

27. Pursuant to Pa. R. Civ. P. 1028(a)(5), a defendant may state a preliminary objection where the Complaint fails to allege any capacity of the plaintiff to sue.

28. Here, Plaintiff has failed to demonstrate through its pleadings that it has standing to enforce the restrictive covenants located in the RES property's deed restrictions.

29. Under Pennsylvania law, "[t]he persons initially entitled to enforce the obligation of a promise respecting the use of land are the promisee and such third persons as are also beneficiaries of the promise." *Mariner v. Rohanna*, 92 A.2d 219, 220 (Pa. 1952).

30. Plaintiff has failed to state a claim upon which relief may be granted because it has failed to allege any basis for standing to enforce the restrictive covenants located in the RES property's deed restrictions.

WHEREFORE, Defendant, Hempfield School District, respectfully requests that this Court dismiss Plaintiff's Complaint because Plaintiff has failed to allege that it has standing to enforce the RES property's deed restrictions, and award such further relief as the Court deems necessary or appropriate under the circumstances.

PRELIMINARY OBJECTION IV
Laches with Regard to LMS Lease
Pa. R. Civ. P. 1028(a)(4)

31. The School District hereby incorporates the preceding Paragraphs of these Preliminary Objections as though set forth at length herein.

32. "It is settled that laches may be raised and determined by preliminary objection if laches clearly appears in the complaint." *Holiday Lounge, Inc. v. Shaler Enters. Corp.*, 272 A.2d 175, 177 (Pa. 1971).

33. "[I]n order to prevail on an assertion of laches, [Defendant] must establish: a) a delay arising from [Plaintiff's] failure to exercise due diligence; and, b) prejudice to [Defendant] resulting from the delay." *Fulton v. Fulton*, 106 A.3d 127, 131 (Pa. Super. Ct. 2014) (citation omitted).

34. The District approved and signed the LES Lease in 2013 and recorded the LES Lease in 2014. *See* Compl., Ex. A.

35. Plaintiff has sat on its rights for over four years, and Verizon and the School District are prejudiced by the delay because "Verizon has [already] erected a cell phone tower [on the LMS property]." *See* Compl. ¶ 10.

36. Because “laches clearly appears in the complaint,” this Court should sustain Defendant’s Preliminary Objections. *Holiday Lounge*, 272 A.2d at 177.²

WHEREFORE, Defendant, Hempfield School District, respectfully requests that this Court dismiss Plaintiff’s Complaint based on laches, and award such further relief as the Court deems necessary or appropriate under the circumstances.

PRELIMINARY OBJECTION V
Demurrer to Count III
Pa. R. Civ. P. 1028(a)(4)

37. The School District hereby incorporates the preceding Paragraphs of these Preliminary Objections as though set forth at length herein.

38. Preliminary objections in the nature of a demurrer are deemed to admit all well-pleaded facts and all inferences reasonably deduced therefrom. *See Lumax Indus., Inc. v. Aultman*, 669 A.2d 893, 894-95 (Pa. 1995) (citation omitted).

39. Significantly, though, “[t]he pleader’s conclusions or averments of law are not considered to be admitted as true by a demurrer.” *Id.* at 895 (citation omitted).

40. Plaintiff’s Complaint alleges that “Other District Properties³ [have] been dedicated for public purposes” and that “the District is considering or would consider the lease [of] the Other District Properties for use as cell phone towers.” Compl. ¶ 27-28.

² Indeed, Plaintiff’s claims with relation to the RES Property are likewise barred by laches. However, a proper factual record outside the allegations of the Complaint will demonstrate the prejudice caused by Plaintiff’s delay that may not be evident from Plaintiff’s allegations.

³ Plaintiff’s Complaint defines the term “Other District Properties” as a collection of eight (8) District properties that are allegedly dedicated for public purposes. *See* Compl. ¶¶ 26-27.

41. Plaintiff seeks from this Court an order “enjoining the District from entering into Cell Tower Leases,” which is defined as “collectively, the LMS Lease, the RES Lease, the [Centreville Elementary School] Lease, and any future similar leases.” *Id.* at ¶ 29 and p. 8.

42. However, Plaintiff’s Complaint fails to allege any facts surrounding its unwarranted conclusion that the Other District Properties “have been dedicated” or any other facts, such as deed restrictions, affecting the Other District Properties on which its claim could be based.

43. Due to Plaintiff’s shortcomings in alleging facts regarding the Other District Properties, Plaintiff cannot seek relief regarding the Other District Properties and future similar leases on such properties because, as pleaded, the properties are not covered by the DDPA.

WHEREFORE, Defendant, Hempfield School District, respectfully requests that this Court dismiss Count III of Plaintiff’s Complaint for failure to state a claim, and award such further relief as the Court deems necessary or appropriate under the circumstances.

PRELIMINARY OBJECTION VI
Insufficient Specificity in a Pleading
Pa. R. Civ. P. 1028(a)(3)

44. The School District hereby incorporates the preceding Paragraphs of these Preliminary Objections as though set forth at length herein.

45. Pennsylvania is a fact-pleading jurisdiction, meaning that a complaint must “formulate the issues by summarizing those facts essential to support the claim.” *Lerner v. Lerner*, 954 A.2d 1229, 1235 (Pa. Super. Ct. 2008).

46. In its Complaint, Plaintiff fails to provide details to support its conclusion that the LMS property, RES property, CES property and Other District Properties have been dedicated for public purposes. *See* Compl. ¶¶ 7, 14, 22, 27.

47. In addition, in Count III, Plaintiff fails to provide support as to why any of its claims apply to the Other District Properties.

48. Therefore, in the event that Plaintiff's claims are not dismissed, Plaintiff should be forced to re-plead its allegations with sufficient specificity.

WHEREFORE, Defendant, Hempfield School District, respectfully requests that this Court dismiss Plaintiff's Complaint, or in the alternative, order Plaintiff to amend its Complaint for failure to plead its claims with sufficient specificity.

Respectfully submitted,

FOX ROTHSCHILD LLP

By: /s/ Andrew W. Bonekemper

Andrew W. Bonekemper, Esq. (84313)

Mark W. Fitzgerald, Esq. (93635)

10 Sentry Parkway, Suite 200

P.O. Box 3001

Blue Bell, PA 19422

(610) 397-6500

Attorneys for Defendant

Hempfield School District

Dated: June 4, 2018

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Andrew W. Bonekemper

Signature: /s/ Andrew W. Bonekemper

Name: Andrew W. Bonekemper

Attorney No. (if applicable): 84313