

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

JASON PAUL, :  
Complainant :  
vs. : No. C-2020-3019169  
NORFOLK SOUTHERN RAILWAY :  
COMPANY, BOROUGH OF BOSWELL, :  
COUNTY OF SOMERSET, PENNDOT, :  
Respondent. :

**RESPONDENT BOROUGH OF BOSWELL'S**  
**PRELIMINARY OBJECTIONS TO COMPLAINANT'S**  
**COMPLAINT**

TO THE HONORABLE JUDGES OF SAID COURT:

AND NOW comes the Borough of Boswell, by and through its Solicitor, David T. Leake Esq., who sets forth the following:

**INTRODUCTION AND FACTUAL BACKGROUND**

1. The Borough of Boswell has received a Formal Complaint Notice to Respondent to Answer or Satisfy, the same being filed before the Pennsylvania Public Utility Commission February 18, 2020 and served on March 12, 2020.

2. Due to the COVID – 19 shut down, this present response is made outside the usual twenty (20) days to file a written response, but is considered timely either as a result of the shutdown or at the request of counsel herein for additional time to respond, said extension request being granted April 2, 2020, by the Rail Division in the Bureau of Technical Utility Services (“TUS”).

3. Complainant, Jason Paul, has filed a Complaint that alleges there is a, “vaugue [sic] deed from Pennsylvania Lines LLC that is unlegeable [sic] was recorde [sic] now a claim seemi [sic] to be performed from a merger 2004 Norfolk Southern Railway LLC”. See Complaint, at ¶4.

4. Complainant, Jason Paul, also in his filed Complaint alleges, in his request for relief, that “Deed Book 3678 Page 373 Westmoreland County PA . . . has recorded a vaugue [sic] unreadable deed, at same time claims land I own.” See Complaint, at ¶5.

5. Complainant, Jason Paul, also requests for relief that, “I ask Pennsylvania Line; to properly supply me with a readable deed and reliquish [sic] all claim to my land aka 54-04-14-0-115 map # ...”. *Id.*

6. Respondent, the Borough of Boswell (hereinafter “Boswell”), is a Pennsylvania Municipality located in Somerset County, Pennsylvania.

### **PRELIMINARY OBJECTIONS**

#### **Preliminary Objection I: Legal Insufficiency/Demurrer Pursuant to 52 Pa.C.S.**

#### **§5.101(4), Motion to Dismiss Complaint**

6. Boswell incorporates the averments contained in paragraphs 1 through 6 as though fully set forth herein at length.

7. Title 52 Pa.C.S. §5.101(4) provides that a party may file preliminary objections based upon the “legal insufficiency of a pleading (demurrer).” 52 Pa.C.S. §5.101(4).

8. Boswell is a Pennsylvania Municipality, a political subdivision of Somerset County, and the Commonwealth of Pennsylvania.

9. As a political subdivision of the Commonwealth of Pennsylvania, Boswell is offered broad protections under the Sovereign Immunity Act and the Political Subdivision Tort Claims Act, at 42 Pa.C.S. §8521, *et seq.*

10. Complainant does not set forth any claim or claims which may be reasonably construed, even when construing the Complaint in the light most favorable to Complainant, as an exception to the broad immunity afforded a political subdivision of the Commonwealth of Pennsylvania, as set forth by the Pennsylvania Legislature. See 42 Pa.C.S. §8522.

11. Complainant's Complaint also fails to state a claim upon which relief may be granted as relates to Boswell.

12. The gist of Complainant's Complaint asserts Pennsylvania Line and/or Norfolk Southern Railway Co. has recorded a deed in Westmoreland County and said deed is vague or illegible and claims his property without providing legal support, such a survey to even suggest the truth of the matter asserted.

13. Foremost, the alleged deed at issue is public record (albeit not in this County's Recorder of Deeds Office, but in Westmoreland County – not a party to this action) and it merely being vague or illegible as recorded is not a legal claim, let alone a claim to be made against Boswell.

14. Accordingly, Boswell respectfully requests that Your Honorable Court strike and dismiss the Complaint in its entirety for legal insufficiency of a pleading (demurrer), as alleged against the Borough of Boswell, pursuant to 52 Pa.C.S. §5.101(4).

WHEREFORE, Respondent, the Borough of Boswell, prays that Your Honorable Court dismiss the Complaint in its entirety for legal insufficiency of a pleading (demurrer), as alleged against the Borough of Boswell, pursuant to 52 Pa.C.S. §5.101(4).

## **Preliminary Objection II: Lack of Commission Subject Matter Jurisdiction**

15. Boswell incorporates the averments contained in paragraphs 1 through 14 as though fully set forth herein at length.

16. Title 52 Pa.C.S. §5.101(1) provides that a party may file preliminary objections based upon the “lack of commission jurisdiction...”. 52 Pa.C.S. §5.101(1).

17. The Pennsylvania Utilities Commission (hereinafter “PUC”) has its jurisdiction codified in the Public Utility Code.

18. As the Complaint alleges claims regarding “Pennsylvania Line” and “Norfolk Southern Railway”, two railroad companies whose railway is subject matter of the allegations made, PUC jurisdiction would depend on some finding under the Public Utility Code, Title 52, Chapter 33 – Railroad Transportation, or some other general safety provision.

19. Here, the gist of the matter asserted by Complainant is a quiet title action, which is not within the jurisdiction of the PUC.

20. In a general sense the PUC regulates and enforces Railroad Safety, Railway Transportation Safety, and the interaction therefrom with public and public transportation, it is not vested with jurisdiction to address the issue of the present Complainant commencing a boundary dispute.

21. Accordingly, Boswell respectfully requests Your Honorable Court strike and dismiss the Complaint in its entirety, and especially as alleged against the Borough of Boswell, for lack of subject matter jurisdiction pursuant to 52 Pa.C.S. §5.101(1).

WHEREFORE, Respondent, the Borough of Boswell, prays that Your Honorable Court dismiss the Complaint for lack of subject matter jurisdiction pursuant to 52 Pa.C.S. §5.101(1).

**Preliminary Objection III: Non-joinder of a Necessary Party**

22. Boswell incorporates the averments contained in paragraphs 1 through 21 as though fully set forth herein at length.

23. Title 52 Pa.C.S. §5.101(5) provides that a party may file preliminary objections based upon the “lack of capacity to sue, nonjoinder of a necessary party. . . ”. 52 Pa.C.S. §5.101(5).

24. Complainant’s Complaint appears to allege, in its Paragraph 5, that there is a certain deed at “Deed Book 3678, Page 373 Westmoreland County PA” that “claims land I own”. See Complaint, ¶5.

25. Presently, the apparent relief requested, what appears to be a bald assertion that a deed is vague, illegible, and claims property Complainant owns, seeks either “Pennsylvania Line to properly supply me with a readable deed and reliqiush [*sic*] all claim to my land.” *Id.*

26. Addressing Complainant’s request to have a legible and readable deed, the document requested is apparently of public record in the Westmoreland County Recorder of Deeds Office, and Westmoreland County is not a party to this action, as such Westmoreland County is necessary party failed to be joined to this action by the Complainant.

27. Addressing Complainant’s request that the railroad companies relinquish all claim(s) to Complainant’s land, assuming as Complainant has alleged, that there is a deed of record at the deed book and page referenced in the complaint in Westmoreland

County, Pennsylvania, and assuming *arguendo* that said deed does in fact conflict with title of Complainant, Westmoreland County must be a necessary party to correct the conflict in the chain of title and is presently not a party to this action.

28. Accordingly, Boswell respectfully requests Your Honorable Court strike and dismiss the Complaint in its entirety, and especially as alleged against the Borough of Boswell, for lack of capacity to sue and/or nonjoinder of a necessary party pursuant to 52 Pa.C.S. §5.101(5).

WHEREFORE, Respondent, the Borough of Boswell, prays that Your Honorable Court dismiss the Complaint for lack of capacity to sue and/or nonjoinder of a necessary party pursuant to 52 Pa.C.S. §5.101(5).

#### **Preliminary Objection IV: Insufficient Specificity of a Pleading**

29. Boswell incorporates the averments contained in paragraphs 1 through 28 as though fully set forth herein at length.

30. Title 52 Pa.C.S. §5.101(3) provides that a party may file preliminary objections based upon the “insufficient specificity of a pleading.” 52 Pa.C.S. §5.101(3).

31. The current complaint lacks sufficient specificity to state any claim(s) against Boswell to the extent that Boswell lacks specific knowledge and notice to apprise Boswell of the facts or legal claim(s) to which Boswell must respond.

32. Without further specific facts or claim(s) alleged in the Complaint, Boswell cannot properly formulate an appropriate response to the Complaint.

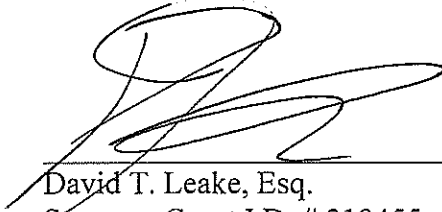
33. On its face, the plain language of the Complaint fails to state any facts or claim(s) that even relate to Boswell as a party.

34. Accordingly, Boswell respectfully requests that should Your Honorable Court not strike and dismiss the Complaint in its entirety against Boswell per those other preliminary objections contained herein, that Your Honorable Court direct and order Complainant to amend the Complaint with enough specificity that Boswell is apprised of the facts and claim(s) against Boswell so that a proper answer and formulated defense may be made, pursuant to 52 Pa.C.S. §5.101(3).

WHEREFORE, Respondent, the Borough of Boswell, prays that Your Honorable Court dismiss the Complaint or, in the alternative, direct and order Complainant to amend the Complaint with requisite specificity so Respondent is apprised of the facts and claim(s) alleged against them.

Respectfully submitted,

Date: April 9, 2020

  
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David T. Leake, Esq.

Supreme Court I.D. # 319455

Solicitor for Respondent, Borough of Boswell

David T. Leake, Esq. & Associates

130 West Main Street

Somerset, PA 15501

(814) 445-6946

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ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, having considered the Preliminary Objections filed by the Borough of Boswell (the “Preliminary Objections”), the Complainant’s response thereto, oral argument, if any, and for good cause show, it is hereby ORDERED that the Preliminary Objections are SUSTAINED. The Complaint against Borough of Boswell is hereby DISMISSED WITH PREJUDICE.

\_\_\_\_\_  
J.

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<b>Complainant</b>	:	
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COUNTY OF SOMERSET, PENNDOT, :	:	
<b>Respondent.</b>	:	

**CERTIFICATE OF SERVICE**

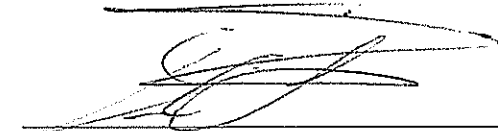
I, David T. Leake, Esq., do hereby certify that I served a copy of the foregoing Preliminary Objections upon the following individuals, by first class mail, postage prepaid, addressed as follows:

Norfolk Southern Railway Company  
110 Franklin Road, S.E.  
Roanoke, VA 24042-0028

Somerset County  
Barbera Law  
ATT: Michael P. Barbera, Esq., Solicitor  
146 West Main Street  
Somerset, PA 15501

PennDOT  
William Cressler, Chief Counsel  
Office of Chief Counsel  
P.O. Box 8212  
Harrisburg, PA 17105-8212

Date: April 9, 2020




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David T. Leake, Esq.  
Supreme Court I.D. # 319455  
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