

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. :

BRIEF IN SUPPORT OF
RESPONDENT BOROUGH OF BOSWELL'S PRELIMINARY
OBJECTIONS TO COMPLAINANT'S
COMPLAINT

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TO THE HONORABLE JUDGES OF SAID COURT:

AND NOW comes the Borough of Boswell, by and through its Solicitor, David T. Leake Esq., who offers the following in support of Preliminary Objections filed against Complainant's Complaint:

I. CONCISE STATEMENT OF THE CASE

The Borough of Boswell (hereinafter "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. The Complainant, Jason Paul, has filed a Complaint that alleges there is a, "vaugé [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. Said filed Complaint also alleges, in his request for relief, that "Deed Book 3678 Page 373 Westmoreland County PA . . . has recorded a vaugé [sic] unreadable deed, at same time claims land I own." See Complaint, at ¶5. Ultimately, the Complainant's prayer for relief is 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.*

Said Complaint does not allege any factual or legal claim(s) against the Borough of Boswell. *Id.* Further, while the Complainant indicates his address is within the Borough of

Boswell, it is unclear how any of its content relates to Boswell. Without opining as per the viability or merit of Complainant's Complaint (as it is impossible to do so without further professional research, surveying, and title review) the Complainant appears to be attempting to allege what is a land ownership dispute or quiet title action. A land ownership dispute or quiet title action neither involves the Borough of Boswell and is under the subject matter jurisdiction of a county Court of Common Pleas (potentially in this case Somerset or Westmoreland County as relates to what is allegedly the conflicting recorded title) and NOT the Pennsylvania Utilities Commission. As such, this Complaint must be dismissed in its entirety, or at least as alleged against the Borough of Boswell.

II. STATEMENT OF THE QUESTIONS INVOLVED

A. SHOULD COMPLAINANT'S COMPLAINT BE DISMISSED/STRICKEN FOR LACK OF LEGAL SUFFICIENCY (DEMURRED) UNDER 52 Pa.C.S. §5.101(4)?

Answer Advocated: Yes.

B. SHOULD COMPLAINANT'S COMPLAINT BE DISMISSED/STRICKEN FOR LACK OF PENNSYLVANIA UTILITIES COMMISSION ("PUC") JURISDICTION UNDER 52 Pa.C.S. §5.101(1)?

Answer Advocated: Yes.

C. SHOULD COMPLAINANT'S COMPLAINT BE DISMISSED/STRICKEN FOR LACK OF CAPACITY TO SUE/NONJOINER OF A NECESSARY PARTY UNDER 52 Pa.C.S. §5.101(5)?

Answer Advocated: Yes.

D. SHOULD COMPLAINANT'S COMPLAINT BE DISMISSED/STRICKEN OR, IN THE ALTERNATIVE BE ORDERED TO AMEND, FOR INSUFFICIENT SPECIFICITY OF A PLEADING UNDER 52 Pa.C.S. §5.101(3)?

Answer Advocated: Yes.

III. SUMMARY OF ARGUMENT

Respondent, the Borough of Boswell (“Boswell”), asserts its preliminary objections that the Complaint in this case is materially infirm and thereby must be dismissed. Foremost, the Complaint should be dismissed per 52 Pa.C.S. §5.101(4) as: (1) it is legally insufficient in failing to state any cause of action related to Boswell as what is claimed by Complainant appears to be an attempt to assert a quiet title actions; and, (2) the Complaint is legally insufficient because it states a claim that is barred by immunity as Boswell is a political subdivision of the Pennsylvania Commonwealth and thereby wholly exempt from this liability as it fails to qualify as an exception to governmental immunity.

Second, Boswell asserts this Complaint must be dismissed as the Pennsylvania Utilities Commission (“PUC”) lacks jurisdiction over the subject matter of this litigation because the Complainant is raising an ownership/quiet title dispute the subject matter of which is not within the purview of the Public Utilities Act or other laws and regulations which grant the PUC jurisdiction over railroad affairs. Instead, this matter should be brought in the Court of Common Pleas.

Third, Boswell asserts this Complaint must be dismissed as the Complainant failed to join a necessary party. The Complaint alleges a Westmoreland County deed has claims his land unto the railroad but has not joined Westmoreland County to strike said title from the public record. The PUC is not in the position to grant the relief requested and the necessary party that could, Westmoreland County, has not even been named in this suit.

Last, Boswell asserts it has not been notified or apprised of material facts or a cause of action to which to respond as the Complaint fails to list any facts or cause(s) of action against Boswell which would render Boswell capable of formulating an appropriate response and legal defense.

IV. ARGUMENT

A. COMPLAINANT’S COMPLAINT MUST BE DISMISSED/STRICKEN UNDER 52 Pa.C.S. §5.101(4) BECAUSE IT LACKS LEGAL SUFFICIENCY (DEMURRED)?

The Complaint must be dismissed against the Borough of Boswell as it is legally insufficient for it fails to state any claim for which relief may be granted against Boswell. Under

52 Pa.C.S. §5.101(4), a party may object to a Complaint for “[l]egal insufficiency of a pleading.”
52 Pa.C.S. §5.101(4).

Here, even assuming the facts and claim(s) as plead by the Complainant, the Complainant has completely failed to legally assert any claim against Boswell. The only fact relative to Boswell is that Complainant’s address is in Boswell. There are no allegations that Boswell has engage in any act or failed to act in any manner to support a claim against Boswell. Further, the Complaint begs the assumption that the potential property dispute is even in the boundaries of the Boswell Borough.

Taken in its totality, the Complaint alleged against Boswell has no facts or claims that are relevant to assert any duty, obligation, or liability on the part of Boswell to the Complainant. Instead, the Complainant is alleging that railroad companies had a merger and recorded a deed “to land that he owns”. This is especially suspect as the evidentiary basis to which he supports such a claim cites to a deed that is recorded in Westmoreland County, Pennsylvania. Thus, even making the leap of faith in assuming what Complainant has plead is true the only potential claim is some sort of ownership or quiet title dispute among the Complainant and the railroad, but legally it is a quagmire to assume that there is a deed or title to land, that is a conveyance of Somerset County property, recorded not in Somerset County’s recorder of deeds.

Pennsylvania is a race-notice recording state, per 21 P.S. §351, which states in pertinent part:

“All deeds, conveyances, contracts, and other instruments of writing wherein it shall be the intention of the parties executing the same to grant, bargain, sell, and convey any lands, tenements, or hereditaments situate in this Commonwealth, upon being acknowledged by the parties executing the same or proved in the manner provided by the laws of this Commonwealth, shall be recorded in the office for the recording of deeds in the county where such lands, tenements, and hereditaments are situate. Every such deed, conveyance, contract, or other instrument of writing which shall not be acknowledged or proved and recorded, as aforesaid, shall be adjudged fraudulent and void as to any subsequent bona fide purchaser or mortgagee or holder of any judgment, duly entered in the prothonotary's office of the county in which the lands, tenements, or hereditaments are situate, without actual or constructive notice unless such deed, conveyance, contract, or instrument of writing shall be recorded, as aforesaid, before the recording of the deed or conveyance or the entry of the judgment under which such subsequent purchaser, mortgagee, or judgment creditor shall claim.

Nothing contained in this act shall be construed to repeal or modify any law providing for the lien of purchase money mortgages.” 21 P.S. §351.

As such, even if a party named to this action assumes what is factually asserted is truthful, and the railroads so named have filed a deed in Westmoreland County, Pennsylvania, (and not Somerset County, Pennsylvania) placing the world on notice of title ownership to the Complainant’s land – the effect of such a deed and ownership is “fraudulent and void”.

Thus, there is no legal action herein asserted as relates to Boswell and it is clear litigation has been initiated without any legally actionable facts or circumstances.

In addition to the lack of a legal issue or claim, Boswell is a political subdivision of the Commonwealth of Pennsylvania and is afforded very broad protections under the Sovereign Immunity Act and the Political Subdivision Tort Claims Act, at 42 Pa.C.S. §8521, *et seq.* Under the act, the Commonwealth of Pennsylvania, including its political subdivisions, are immune from suit, except for those at 42 Pa.C.S. §8522, which include:

(1) Vehicle liability.--The operation of any motor vehicle in the possession or control of a Commonwealth party. As used in this paragraph, "motor vehicle" means any vehicle which is self-propelled and any attachment thereto, including vehicles operated by rail, through water or in the air.

(2) Medical-professional liability.--Acts of health care employees of Commonwealth agency medical facilities or institutions or by a Commonwealth party who is a doctor, dentist, nurse or related health care personnel.

(3) Care, custody or control of personal property.--The care, custody or control of personal property in the possession or control of Commonwealth parties, including Commonwealth-owned personal property and property of persons held by a Commonwealth agency, except that the sovereign immunity of the Commonwealth is retained as a bar to actions on claims arising out of Commonwealth agency activities involving the use of nuclear and other radioactive equipment, devices and materials.

(4) Commonwealth real estate, highways and sidewalks.--A dangerous condition of Commonwealth agency real estate and sidewalks, including Commonwealth-owned real property, leaseholds in the possession of a Commonwealth agency and Commonwealth-owned real property leased by a Commonwealth agency to private persons, and highways under the jurisdiction of a Commonwealth agency, except conditions described in paragraph (5).

(5) Potholes and other dangerous conditions.--A dangerous condition of highways under the jurisdiction of a Commonwealth agency created by potholes or sinkholes or other similar conditions created by natural elements, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the

Commonwealth agency had actual written notice of the dangerous condition of the highway a sufficient time prior to the event to have taken measures to protect against the dangerous condition. Property damages shall not be recoverable under this paragraph.

(6) Care, custody or control of animals.--The care, custody or control of animals in the possession or control of a Commonwealth party, including but not limited to police dogs and horses and animals incarcerated in Commonwealth agency laboratories. Damages shall not be recoverable under this paragraph on account of any injury caused by wild animals, including but not limited to bears and deer, except as otherwise provided by statute.

(7) Liquor store sales.--The sale of liquor at Pennsylvania liquor stores by employees of the Pennsylvania Liquor Control Board created by and operating under the act of April 12, 1951 (P.L.90, No.21), known as the "Liquor Code," if such sale is made to any minor, or to any person visibly intoxicated, or to any insane person, or to any person known as an habitual drunkard, or of known intemperate habit.

(8) National Guard activities.--Acts of a member of the Pennsylvania military forces.

(9) Toxoids and vaccines.--The administration, manufacture and use of a toxoid or vaccine not manufactured in this Commonwealth under the following conditions:

(i) The toxoid or vaccine is manufactured in, and available only from, an agency of another state.

(ii) The agency of the other state will not make the toxoid or vaccine available to private persons or corporations, but will only permit its sale to another state or state agency.

(iii) The agency of the other state will make the toxoid or vaccine available to the Commonwealth only if the Commonwealth agrees to indemnify, defend and save harmless that agency from any and all claims and losses which may arise against it from the administration, manufacture or use of the toxoid or vaccine.

(iv) A determination has been made by the appropriate Commonwealth agency, approved by the Governor and published in the Pennsylvania Bulletin, that the toxoid or vaccine is necessary to safeguard and protect the health of the citizens or animals of this Commonwealth.

(v) The toxoid or vaccine is distributed by a Commonwealth agency to qualified persons for ultimate use.

The Commonwealth shall make the toxoid or vaccine available to a qualified person only if the person agrees to indemnify, defend and save harmless the Commonwealth from any and all claims and losses which may arise against the Commonwealth from the manufacture, distribution, administration or use of the toxoid or vaccine.

(10) Sexual abuse.--Conduct which constitutes an offense enumerated under section 5551(7) (relating to no limitation applicable) if the injuries to the plaintiff were caused by actions or omissions of the Commonwealth party which constitute negligence. See 42 Pa.C.S. §8522.

The present case is not within the scope of exceptions meant to pierce immunity of Boswell, a political subdivision of the Commonwealth of Pennsylvania. As such, said claim(s) are legally insufficient and therefore must be dismissed pursuant to 52 Pa.C.S. §5.101(4).

B. COMPLAINANT'S COMPLAINT MUST BE DISMISSED OR STRICKEN FROM THE PUBLIC UTILITY COMMISSION AS THE PUC LACKS SUBJECT MATTER JURISDICTION, PER 52 Pa.C.S. §5.101(1), TO HEAR, RULE, OR ADJUDGE DISPUTES OVER TITLE/LAND OWNERSHIP.

The PUC has very specific grounds to have jurisdiction over disputes among parties depending on the statutory and regulatory code, mostly the Public Utility Code. As relates to railroads, the PUC authority is mostly codified at Title 52, Chapter 33, or as promulgated via act of federal law or regulation granting said commissions authority over utilities. Short of engaging in a voluminous description of the PUC's jurisdiction over railroad matters, Title 52, Chapter 33 – Railroad Transportation and the Public Utility Code enumerate the specific authority of the PUC over railroads. Said authority and jurisdiction is limited to disputes over the safety of railroad transportation, railway traffic, the intersections of railroads and public highways or roads, railway crossings, and transportations of certain substances through the Pennsylvania Commonwealth.

Under 52 Pa.C.S. §5.101(1), if the PUC finds it lacks jurisdiction the case must be dismissed, as the commission lacks authority over the potential dispute. In the present case, the Complainant has alleged that Norfolk Southern and Pennsylvania Lines merged and filed a title that claims ownership over land which he owns. This is not within purview of the PUC. The PUC's jurisdiction does not include a dispute over title to land within its subject matter jurisdiction, said action is reserved for a Court of Common Pleas. In the simplest sense, the PUC is a commission to regulate utilities not a commission that exists to determine title ownership of property.

Aside from the bald assertion of Complainant attempting to lay foundation for a quiet title action, the present case does not relate to Boswell. Accordingly, all claims should be dismissed by the PUC as it lacks jurisdiction pursuant to 52 Pa.C.S. §5.101(1).

C. COMPLAINANT'S COMPLAINT MUST BE DISMISSED/STRICKEN UNDER 52 Pa.C.S. §5.101(5) BECAUSE HE HAS FAILED TO JOIN A NECESSARY PARTY

WHOSE AUTHORITY WOULD BE NECESSARY TO REMEDY ANY TITLE DISCREPANCY.

The Complaint alleges there is a Westmoreland County, Pennsylvania, deed recorded at book 3678, page 373, that is illegible, unreadable, and vague, but that said deed “claims land” that he owns in Somerset County, Pennsylvania. Under 52 Pa.C.S. §5.101(5), a party may object to a pleading under grounds the original pleading has “nonjoinder of a necessary party”. In the present case, the Complainant has alleged there is a deed in Westmoreland County recorded at the behest of the Respondent, Norfolk Southern, which claims land he owns.

Even assuming, *arguendo*, that the Complaint is viable, that the commission has jurisdiction, and that the claim is successful, the lack of Westmoreland County (or the Recorder of Deeds of Westmoreland County) being a named party assures that the Complainant cannot effectively remedy the dispute he alleges exists. In other words, the PUC granting him relief cannot remove, strike, or confirm title ownership in the property allegedly in contest.

As such, in as much as this claim depends on a Westmoreland County deed, the Complainant has failed to join Westmoreland County as a party that is necessary to remedy the alleged claims, and therefore the Complaint must be dismissed pursuant to 52 Pa.C.S. §5.101(5).

D. COMPLAINANT’S COMPLAINT LACKS SUFFICIENT SPECIFICITY AS REQUIRED BY 52 Pa.C.S. §5.101(3) TO APPRISE RESPONDENT BOSWELL OF THE ABILITY TO APPROPRIATELY RESPOND AND DEFEND ANY ALLEGED CLAIMS.

The Complaint lacks even a mere skeletal framework of material facts upon which to base a cause of action. **There are absolutely no facts or claims made against Boswell.** Under 52 Pa.C.S. §5.101(3) a party may file preliminary objections based upon the “insufficient specificity of a pleading.”. Here, the Complainant has not plead a single fact, material or otherwise, nor a single claim against Boswell. As such, given that Boswell is a named party to the action and thereby must formulate an appropriate response or legal defense, and without specific facts relative to a cause of action against Boswell, Boswell is rendered in a manifestly unjust position to appropriately respond.


Without specific facts to respond, or a specific cause of action, Boswell is not apprised of those facts or actions in which to answer in defense. As such, given the extent of the lack of specificity here, Boswell respectfully requests the Complaint be dismissed against them. Alternatively, Boswell respectfully requests the Commission order and direct the Complainant to amend the Complaint with requisite specificity so that Boswell may Answer all material facts and causes of action with an appropriate defense.

V. CONCLUSION

In sum, Boswell requests the Commission dismiss the Complaint against Boswell in its entirety pursuant to the requirements of 52 Pa.C.S. §5.101(4); 52 Pa.C.S. §5.101(1); and 52 Pa.C.S. §5.101(5). The Complaint levied against Boswell fails in its entirety to state a legal cause of action, the commission lacks jurisdiction, and a necessary party is not named to this suit.

Respectfully submitted,

Date: April 9, 2020



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