

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JASON PAUL,

v.

NORFOLK SOUTHERN RAILWAY COMPANY, et al

:  
:  
:  
:  
:

C-2020-3019169

Type of Pleading:

Preliminary Objections filed  
On Behalf of:

Westmoreland County

Counsel of Record for this Party:

David A. Regoli, Esquire  
PA ID # 61970

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**RESPONDENT WESTMORELAND COUNTY'S  
PRELIMINARY OBJECTIONS TO COMPLAINANT'S COMPLAINT**

TO THE HONORABLE JUDGES OF SAID COURT:

AND NOW comes the County of Westmoreland, by and through its Assistant Solicitor, David A. Regoli, who sets forth the following:

**INTRODUCTION AND FACTUAL BACKGROUND**

1. Westmoreland County received a Formal Complaint Notice to Respondent to Answer or Satisfy, the same being filed before the Pennsylvania Public Utility Commission.
  
2. 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.
  
3. 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 vaugé [sic] unreadable deed, at same time claims land I own." See Complaint, at ¶ 5.
  
4. Complainant, Jason Paul, also requests for relief that, "I ask Pennsylvania Line; to properly supply me with a readable deed and relinquish [sic] all claim to my land aka 54-04-14-0-115 map# . . ." .Id.

5. 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. Westmoreland County incorporates the averments contained in paragraphs 1 through 5 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. Westmoreland County is a 3rd Class County in the Commonwealth of Pennsylvania.

9. As a political subdivision of the Commonwealth of Pennsylvania, Westmoreland County 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 Westmoreland County.

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 in Westmoreland County and it merely being vague and illegible as recorded is not a legal claim, let alone a claim to be made against Westmoreland County.

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

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

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

15. Westmoreland County 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 vest with jurisdiction to address the issue of the present Complainant commencing a boundary dispute.

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

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

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

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

23. 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).

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

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

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

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

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

*/s/ David H. Regoli, Esquire*

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CERTIFICATE OF SERVICE

I hereby certify that on the date listed below I served the following persons via United States Mail, postage pre-paid a true and correct copy of the within pleading:

Jason Paul  
132 Cessna Hill Road  
Boswell, PA 15531

David Leake, Esquire  
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May 11, 2020

*/s/ David H. Regoli, Esquire*

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**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2020, having considered the Preliminary Objections filed by Westmoreland County (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 Westmoreland County is hereby DISMISSED WITH PREJUDICE.

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