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IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY

CIVIL ACTION—LAW NO. 11-SU-1386

NOTICE OF ACTION IN MORTGAGE FORECLOSURE

Fannie Mae ("Federal National Mortgage Association"), Plaintiff
vs.

Susie M. Brown, Randall K. Conner &
Jennifer S. Conner, Mortgagors and Real
Owners, Defendants

To: Susie M. Brown, Randall K. Conner & Jennifer S. Conner, Mortgagors and Real Owners, Defendants, whose last known address is 3720 Carlisle Road, Gardners, PA 17324. This firm is a debt collector and we are attempting to collect a debt owed to our client. Any information obtained from you will be used for the purpose of collecting the debt. You are hereby notified that Plaintiff, Fannie Mae ("Federal National Mortgage Association"), has filed a Mortgage Foreclosure Complaint endorsed with a notice to defend against you in the Court of Common Pleas of Adams County, Pennsylvania, docketed to No. 11-SU-1386, wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 3720 Carlisle Road, Gardners, PA 17324, whereupon your property will be sold by the Sheriff of Adams County.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE

THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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800-692-7375

KML Law Group, P.C.
Attorneys for Plaintiff
Suite 5000
Mellon Independence Center
701 Market Street
Philadelphia, PA 19106-1532
215-627-1322

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LEGAL NOTICE-ANNUAL MEETING

The annual meeting of the policyholders of the Protection Mutual Insurance Company of Littlestown will be held at the office located at 101 South Queen Street in the Borough of Littlestown, PA, between the hours of 1:00 and 2:00 p.m., on January 14th, 2012 to elect directors and to transact any other business properly presented.

Attest: Marilyn Q. Butt
President/Treasurer

12/2, 9, 16 & 22

NOTICE

NOTICE IS HEREBY GIVEN that the Application for Domestic Limited Liability Company was filed by DAVE MESSINGER, LLC with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of registering under 15 Pa. C.S. 8913, relating to Domestic Limited Liability Companies.

Samuel A. Gates, Esq.
Solicitor

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SHORB VS. BOSLEY

1. There are separate rules which specifically address the pleading of new matter and counterclaims. Each of these rules require that they be specifically identified in a pleading under a separate heading relating to the respective claim. As such, they must be pleaded separately and may not be joined as a single claim. Moreover, separate counterclaims should be pleaded under separate counts.

2. A cause of action for the partition of personal property is a viable cause of action.

3. The Superior Court has implicitly recognized that a claim of “set-off” by a party to a partition action is appropriate.

4. The clean hands doctrine is an affirmative defense upon which a claim of partition may be denied.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 10-S-2147, BARRY L. SHORB VS. STEPHANIE
BOSLEY.

Jennifer M. Stetter, Esq., for Plaintiff

Archie V. Diveglia, Esq., for Defendant

George, J., June 28, 2011

OPINION

Plaintiff, Barry L. Shorb (“Shorb”), initiated this litigation by Complaint seeking partition of the real property located at 2270 Harney Road, Littlestown, Pennsylvania. The Complaint alleges that Shorb and the Defendant, Stephanie Bosley (“Bosley”), jointly own the property, however, the property is currently vacant as both have moved. Shorb claims the property cannot be severed and therefore is requesting that it be sold with the proceeds from the sale being divided. In her Answer, Bosley essentially admits all allegations and agrees to list the property with a realtor. Bosley’s pleading also alleges seven additional paragraphs under the heading “New Matter Counterclaim.” These paragraphs raise a number of claims including allegations of conversion related to her personal property which allegedly is in Shorb’s unlawful possession. In addition to a claim of conversion, Bosley claims that Shorb has been unjustly enriched by his continued possession of the personal property. Bosley also raises a claim in the form of a set-off for jointly owned personal property which also allegedly remains in possession of Shorb. Finally, Bosley raises the affirmative defense of unclean hands.

Bosley’s pleading has been met by Preliminary Objections from Shorb. The Preliminary Objections are several and allege that Bosley’s

pleading fails to conform to law, is legally insufficient for failure to state a proper claim, and contains the inclusion of scandalous or impertinent material. Underlying each of these objections is Shorb's belief that allegations regarding Bosley's conversion of personal property are not properly raised in an action for the partition of real property.

The current status of the pleadings makes it difficult to frame the issues for resolution. As mentioned above, Bosley's pleading under the heading "New Matter Counterclaim" raises the various issues of conversion, unjust enrichment, set-off, and unclean hands in seven paragraphs. Despite each of these being a separate legal theory for a cause of action or affirmative defense, the manner of the pleading allows a "mix-em, match-em" approach which allows each of the pled paragraphs to have a different meaning depending on the argument needed to be accommodated. As a result, Shorb's Preliminary Objections are similarly confusing in that Shorb raises at least five separate legal arguments under a single preliminary objection alleging a failure of Bosley's pleading to conform with law. This shotgun approach to pleading does little to advance the interests of the parties.

The purpose of pleadings is to accurately convey notice of the intended claims and legal theories raised by a party rather than require an opponent to guess at their substance. *Schweikert v. St. Luke's Hospital of Bethlehem*, 886 A.2d 265 (Pa. Super. 2005). Parties to an action are entitled to know the issue in any particular proceeding and the nature and extent of the allegations so that they may meet the allegations by proper evidence. *Weiss v. Equibank*, 460 A.2d 271 (Pa. Super. 1983). Such purpose is thwarted if the courts are burdened with the responsibility of deciphering a legal claim from a pleading of facts that obscurely supports the claim in question. The Rules of Civil Procedure collectively require claims in a pleading to be certain and specific so as to avoid a confusing array of fragmented claims. See generally *Hohensee v. Luger*, 412 A.2d 1111 (Pa. Cmwlth. 1980).

In order to promote clarity, there are separate rules which specifically address the pleading of new matter (Pa. R.C.P. 1030) and counterclaims (Pa. R.C.P. 1031). Each of these rules require that they be specifically identified in a pleading under a separate heading relating to the respective claim. As such, they must be pleaded separately and may not be joined as a single claim. *Daniels v. Daniels*, 15 Pa. D & C

3d 589 (1980). Moreover, separate counterclaims should be pleaded under separate counts. *Spotz v. Campbell*, 14 Pa. D & C 3d 376 (C.P. 1980); *Reston v. Ambrosia Coal & Const. Co.*, 4 Pa. D & C 3d 132 (C.P. 1977). Since Bosley's pleading fails to conform with the Rules of Civil Procedure, it will be stricken as, in its current form, it hampers effective discussion of the substantive issues. Nevertheless, the error is technical and can easily be remedied by amendment.

Although Bosley's Answer will be stricken, the Court makes several observations which may assist prompt resolution of the issues raised between the parties once an appropriate Amended Answer has been filed.

The gist of Shorb's Preliminary Objections is that it is improper to raise a counterclaim or affirmative defense unrelated to the real property which is the subject of the partition action. Shorb cites Pennsylvania Rules of Civil Procedure 1555 and 1556 as support for this argument. Pa. R.C.P. 1555, however, discusses the plaintiff's right to join multiple causes of action for partition in a single complaint. It does not include any prohibition precluding the joinder of other causes of action. Similarly, Pa. R.C.P. 1556 is permissive in that it allows a defendant the right to include in a counterclaim for partition any and all property which the plaintiff might have otherwise included in the complaint. There is nothing in this rule which limits in any way the broader rules of pleading.

Under Pa. R.C.P. 1501, a case brought in equity is to be governed by the same procedural rules as a civil action. Thus, Pa. R.C.P. 1030 and 1031 govern the types of factual allegations that can be raised in new matter or a counterclaim. Respectively, those rules permit a party to raise as new matter any other material facts which are not merely denials in the pleadings and also any cause of action cognizable in a civil action which the defendant may have against the plaintiff. The sole limitation on the subject of new matter or counterclaim is the instruction from the Supreme Court that the claims have some relationship to each other. *T.C.R. Realty, Inc. v. Cox*, 372 A.2d 721 (Pa. 1977).¹

¹ At the time of the *Cox* decision, former Pa. R.C.P. 1510 required that counterclaims in an equity action arise from the same acts or transactions. What effect the subsequent repeal of Pa. R.C.P. 1510 has on the reasoning of that opinion has not yet been addressed by appellate courts.

Issues raised by Bosley in his pleading appear to fit within the parameters established by the Rules of Civil Procedure and case law. A cause of action for the partition of personal property is a viable cause of action. See 68 P.S. § 111. Also, the Superior Court has implicitly recognized that a claim of “set-off” by a party to a partition action is appropriate. See *Reaping v. Reaping*, 419 A.2d 766 (Pa. Super. 1979). Finally, the clean hands doctrine is an affirmative defense upon which a claim of partition may be denied. *Lombardo v. DiMarco*, 504 A.2d 1256, 1261 (Pa. Super. 1985).

A recognition that potential counterclaims and affirmative defenses may properly be raised in an action in partition is not an endorsement that the claims must be raised. Instantly, Bosley appears to consent to the partition of the real property. Inexplicably, however, she simultaneously raises the defense of unclean hands which, if found to be factually correct, will result in the complete denial of Shorb’s request for partition. This inconsistency may be nothing more than the result of a lack of clarity in the pleadings. Nevertheless, it is an example of why the Preliminary Objections will be granted. If Bosley is requesting the Court to ultimately deny Shorb’s request for the equitable relief of partition, her Amended Answer should be clear in claiming the same. On the other hand, if Bosley is agreeable to the partition of the property but rather seeks a set-off against the proceeds or is seeking to join a cause of action for the partition of personal property, once again, her pleading should be clear. Currently, the Court is left to guess her intentions.

For the foregoing reasons, the attached Order is entered.

ORDER

AND NOW, this 28th day of June 2011, the Preliminary Objection for failure of a pleading to conform to law pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2) is granted. Defendant is granted twenty (20) days from the date of this Order within which to file an amended pleading in compliance with the Pennsylvania Rules of Civil Procedure.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF ALFORD L. SHULL, DEC'D**

Late of the Borough of York Springs, Adams County, Pennsylvania

Executor: Alford L. Shull, Jr., 273 Baywood Avenue, Pittsburgh, PA 15228

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

SECOND PUBLICATION**ESTATE OF DAVID L. BOSSERMAN, DEC'D**

Late of the Borough of York Springs, Adams County, Pennsylvania

Executrix: Jayne L. Bosserman, P.O. Box 251, York Springs, PA 17372

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF EMMA P. HAHN, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executors: Betty L. Teal and Ray L. Hahn, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF LLOYD T. KLUNK, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executor: Barry L. Klunk, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF ROBERT C. LOTT, JR., DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Gary E. Hartman, 126 Baltimore Street, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF MYRTLE L. HETRICK, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Patricia A. Sterner, 1010 Alvin Street, Hanover, PA 17331

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF LAURA D. MARTZ, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Ronald E. Martz, 164 Branch Circle, East Berlin, PA 17316

Attorney: Thomas R. Nell, Esq., 340 Nell Road, East Berlin, PA 17316

ESTATE OF FANNIE B. NACE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Mary Susan Miller, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

ESTATE OF CASSIE A. NUTTER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executors: Ronald M. Roache, 18 Kenneth Drive, Walkersville, MD 21793; Sarah F. Roache, 18 Kenneth Drive, Walkersville, MD 21793

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF EDNA V. REEVER, a/k/a EDNA VIOLA REEVER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Janet L. Sheffer, c/o Sean M. Shultz, Esq., Law Office of Sean M. Shultz, P.C., 4 Irvine Row, Carlisle, PA 17013

Attorney: Sean M. Shultz, Esq., Law Office of Sean M. Shultz, P.C., 4 Irvine Row, Carlisle, PA 17013

ESTATE OF ROBERT J. ROELKER, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executrix: Stephanie J. Roelker, 220 Roelker Road, York Springs, PA 17372

Attorney: John R. White, Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

