

license is sustained, and the Board is directed to grant such license when all the requirements save the limits on number of licenses have been met.

ROBINSON V. TIMMONS, C.P. Franklin County Branch, A.D. 1983 - 5

*Action to Quiet Title - Motion For More Specific Pleading - Possession*

1. Where plaintiffs have set forth their chain of title and allege they are in possession of real estate, defendants are sufficiently advised of the nature of plaintiff's claim.

*George E. Wenger, Jr., Esquire, Counsel for Plaintiffs*

*Deborah K. Hoff, Esquire, Counsel for Defendants*

#### OPINION AND ORDER

KELLER, J., June 16, 1983:

This action was commenced on January 7, 1983, with plaintiffs filing of a complaint to quiet title to certain real estate situated in Montgomery Township, Franklin County, Pennsylvania. Defendants filed a Preliminary Objection in the nature of a Motion for More Specific Pleading on March 14, 1983. The objection was listed by plaintiffs for argument which was heard by this Court on May 5, 1983. The matter is now ripe for disposition.

Plaintiffs' Complaint is in the form of an Action to Quiet Title. The allegations contained therein set forth the names and addresses of all parties, the chain of title ending with each parties' ownership of a particular tract of real estate, the fact that plaintiffs are in possession of their real estate, the encroachment of defendants' land upon that of plaintiffs, and the request that defendants be compelled to commence an action of ejectment. Defendants' objection is to paragraph seven of the complaint which simply states, "The Plaintiffs are in possession of their real estate." The objection is raised due to plaintiffs' failure to set forth the manner in which plaintiffs allegedly assumed possession of the land and the nature of their occupancy and use of the land in question.

The authority cited by defendants in support of their motion for a more specific pleading is the case of *Goodhart v. Goodhart*, 6 Cumb. L.J. 123 (1956). The complaint in that action to quiet title was in the nature of a rule on the defendant to bring an action in ejectment. It consisted of four paragraphs giving the names and addresses of the parties, a description of the land in question, and an adverse possession claim. The Court, in discussing the inadequacy of the complaint, stated that the nature and extent of ownership by both parties should be set forth. Since the ultimate question concerned a claim of adverse ownership, the Court also said that the manner in which plaintiff assumed possession of the land and the nature of the possession over the years should also be alleged in the complaint.

The allegations set forth by plaintiffs in the instant case are certainly more detailed than those contained in the complaint in the *Goodhart* case. Here plaintiffs have quite clearly set forth the chain of title for all parties involved and identified the deed records verifying their claims. Furthermore, plaintiffs have not made any mention of adverse ownership. The comments made by the *Goodhart* court concerning the need for specificity in an adverse possession claim are therefore inapplicable to the present case.

In the case of *Detwiller v. Geyer*, 39 Northampton Co. Rep. 228 (1970), the plaintiff brought an action to quiet title and claimed ownership of the land by virtue of a chain of title set forth in an exhibit attached to the complaint. There was no averment that either party was in actual possession. Nonetheless, the Court found that the claim of ownership was sufficient to find that plaintiff was in possession of the land for purposes of passing on his right to bring an action to quiet title.

In the present case, plaintiffs have not only set forth their chain of title which they feel entitled them to possession but they have also included an allegation that they are in possession of their real estate. This is more than sufficient to advise defendants of the nature of their claim. Defendant's preliminary objection will be denied.

#### ORDER OF COURT

NOW, this 16th day of June, 1983, the defendants' Preliminary Objection in the nature of a motion for a more specific pleading is denied. The defendant shall file a responsive pleading

within twenty (20) days of date hereof.

Exceptions are granted the defendants.

ESTATE OF HARRY D. HARVIE, DECEASED, C.P. Franklin County Branch

*Orphans' Court Division - Trust - Will - Tax Clause - Declaratory Judgment Act - Appointment of Guardian Ad Litem*

1. A guardian ad litem to represent the interest of minors is not necessary where their interests are identical to interests of children who have reached majority and have joined in the action.
2. Sections 3702 and 3704 of the Probate Code creates a presumption that a testator intends that proration of taxes should be made in accordance to its terms unless the testator's will provides otherwise.
3. A direction in testators will that "all estate and inheritance taxes shall be paid by my executors out of my estate" clearly supercedes tax instructions in a prior trust agreement.

*Charles H. Davison, Esq., Counsel for Petitioners*

*Daniel W. Long, Esq., Counsel for Trustee*

OPINION AND ORDER

KELLER, J., May 12, 1983:

On July 31, 1975, Harry D. Harvie entered into a trust agreement with Valley Bank and Trust Company as trustee, which provided for the payment of the net income of the trust to Mr. Harvie during his lifetime, and upon his death to his wife, Mildred B. Harvie, and upon her death the trust assets would be divided into separate equal trusts for the benefit of the children of Mr. Harvie for their lives with remainder to their respective children. The trust agreement provided inter alia:

PARAGRAPH SIX. If any estate, inheritance, succession or other death taxes are assessed against or measured by the assets of this trust upon the death of the Settlor, this trust shall bear its proportionate part thereof unless the will of

such Settlor so dying shall provide otherwise and shall bear such additional part thereof as Settlor's will may provide. If at the death of the Settlor, there shall be a tax on the said trust estate divisible into a tax on a life estate, followed by a tax on a remainder, the said Trustee may, in its discretion, pay the entire tax from the principal of the trust estate before the tax on the remainder would ordinarily become due and payable.

Harry D. Harvie executed his Last Will and Testament on June 26, 1980, and appointed his wife, Mildred B. Harvie, his two daughters, Joan Harvie Vander Sluis and Carolyn Harvie Thompson, and Valley Bank and Trust Company of Chambersburg his executors and trustees. He gave one-half of his estate to his wife to be held in trust by his executors/trustee for her benefit for life with discretion in the trustee to invade the principal and with remainder over to the two daughters in equal shares. Out of the remaining one-half of the estate, he made specific bequests equal to \$65,000 and bequeathed the remainder to his two daughters in equal shares. Paragraph Frist of his Will provided:

"I direct that all my just debts and funeral expenses be paid as soon as practicable after my death. I direct that all estate and inheritance taxes shall be paid by my executors out of my estate."

Mr. Harvie died on June 10, 1981, and his said Last Will and Testament was probated on June 19, 1981. Letters testamentary were issued to Joan Harvie Vander Sluis, Carolyn Harvie Thompson and Valley Bank and Trust Company; Mrs. Harvie having renounced her right to serve by renunciation duly filed. The value of the assets held in the trust as of the date of the decedent's death was \$165,294.71. The decedent's gross estate for Federal Estate Tax purposes, including the trust assets, was \$890,407.42. The Federal Estate Tax payable on the same was \$74,251.45. A proportionate part of the total Federal Estate Tax allocable to the trust assets would be \$29,463.86. The Pennsylvania Inheritance Tax payable on the decedent's net estate was \$21,593.14. The proportionate share of the Pennsylvania Inheritance Tax allocable to the trust assets would be \$9,917.68.

The total United States Estate Tax and Pennsylvania Inheritance Tax has been paid out of assets of the estate by the executors. Due to the value of the jointly owned property, insurance on the decedent's life, and the assets in the trust estate the executors held according to the Federal Estate Tax Return a probate estate of \$233,846.79, and according to the Pennsylvania Inheritance Tax Report \$235,753.71. After the deduction of