

ORDER OF COURT

NOW, May 7, 1987, defendants' motion to strike number 1 is granted, motion to strike number 2 is denied, motion to strike number 3 is granted, and motion for a more specific complaint number 4 is denied.

Plaintiffs are granted thirty (30) days from this date to file an Amended complaint.

Exceptions are noted for plaintiffs and defendants.

MYERS V. VANTOCH, C.P. Franklin County Branch, No. A.D. 1986-293

Equity - Interrogatories - Pre-Complaint Discovery

1. Pre-Complaint discovery is permitted if it is used to learn facts relating to a cause of action but not to determine whether a cause of action exists.
2. Where defendants refusal to convey real estate may be caused by a pending divorce and property dispute, pre-complaint interrogatories requesting such information are reasonably calculated to lead to admissible evidence.

John W. Frey, Esquire, Counsel for Plaintiff

Jan G. Sulcove, Esquire, Counsel for Defendant

OPINION AND ORDER

WALKER, J., June 29, 1987:

Plaintiff, Tex Myers, entered into an agreement to purchase land owned by defendant in June of 1986. Plaintiff requested that defendant's wife execute the deed with defendant; defendant informed plaintiff that his wife would not do so because of a pending divorce and property dispute. On September 16, 1986, plaintiff instituted suit against defendant by filing a writ of summons. Plaintiff served various interrogatories on defendant by filing a writ of summons. Plaintiff served various interrogatories on defendant in October of 1986 asking, among other things, whether defendant was the subject of a divorce action. Defendant objected to this interrogatory; both parties briefed and argued the matter.



13 West Main St.
P.O. Drawer 391
717-762-8161



TRUST SERVICES
COMPETENT AND COMPLETE



WAYNESBORO, PA 17268
Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS:
Potomac Shopping Center - Center Square - Waynesboro Mall
24 Hour Banking Available at the Waynesboro Mall

PRICE, Larry L. & Rosalie A.	26 5C-6-27 416 Cleveland Ave.	749.07
REDMAN, Albert III	26 5C-7-91 314 Cleveland Ave.	433.85
REED, Wallace E. Jr. & Lisa A.	26 5A-63-41 28 Fairview Ave.	961.93
RUCKMAN, Barry R.	25 5A-54-14 26 Tritle Ave.	325.33
SHOCKEY, Joan K.	24 5D-10-12 60 N. Locust St.	502.73
COGWELL INDUSTRIES INC.	WEST END SHIPPENSBURG 27 6A-24-45	4,943.06
SNOWBERGER, Michael L. & Barbara	ORRSTOWN 28 7A-14-3 118 Orrstown Rd.	1,258.31
STAKE, Gerald W. & Marie A.	28 7A-10-18 Orrstown	744.63

BAR NEWS ITEM

FROM: Register and Recorders' Office, Franklin County

TO: All users of the Register and Recorders' Office.

THE FOLLOWING WILL BE PLACED INTO EFFECT BY THIS OFFICE STARTING SEPTEMBER 1, 1987:

1. The largest size plat plan that can be recorded with a deed is 18" x 24". Anything larger MUST be recorded within the Plat Plan Book.
2. Realty Transfer Tax Statement of Values' that accompany deeds where the consideration is not indicated on the deed, Block D., items 1 through 6 MUST be completed before the deed can be recorded. This is necessary to compute the proper tax due the State.
3. When the mortgagee of a mortgage is held by individuals and two or more parties are involved, ALL parties MUST sign the mortgage SIMULTANEOUSLY. NO EXCEPTIONS WILL BE MADE TO THIS POLICY. (SATISFACTIONS)

4. Because of the increased work load placed upon this office due to the large increase in the amount of recordings, recordings can no longer be left at the counter by individuals unattended and receipts given later. The individual bringing the instruments MUST BE PRESENT when the instruments are recorded. When instruments are left and are not proper for recording, such as money not being correct, etc., it places considerable delays on the recording procedures.

If you have any questions about any of these policies, please feel free to discuss it with me.

Sincerely,
David W. Bowers
Register & Recorder
Franklin County

Defendant argues that discovery should not be permitted until a complaint has been filed and the nature of plaintiff's cause of action is known. Under Pennsylvania law, pre-complaint discovery is permitted if it is used to learn facts relating to a cause of action, but not to determine whether a cause of action exists. 5 Anderson, Pa. Civil Practice, §4001.131. See Pa. R.C.P. 4001 (written interrogatories may be used in preparation of pleadings). In the present case, plaintiff has filed an action against defendant for an alleged breach of the sales agreement. Now plaintiff needs to know facts relating to his cause of action, i.e., whether this alleged breach is related to a pending divorce action.

Having determined that the information may be requested at this stage of the proceedings, the court must decide whether, generally, it fits within the parameters of permissible discovery. For information to be discoverable, it must be relevant, not privileged and reasonably calculated to lead to admissible evidence. Pa. R.C.P. Rule 4003.1. Also, it must not be requested in bad faith, cause an unreasonable annoyance, embarrassment or burden to any person or party. *Id.* Rule 4011.

Here, defendant's inability to convey the property may be caused by a pending divorce and property dispute; as such it is reasonably calculated to lead to admissible evidence. Also, it is not an unreasonable annoyance or embarrassment for him to reveal this to plaintiff. Accordingly, defendant shall provide plaintiff with the answer to interrogatory number 5.

ORDER OF COURT

June 29, 1987, the defendant is ordered to answer interrogatory number 5 within twenty (20) days of this order.

DESHONG OIL AND GAS, INC., ETC. VS. MELLOTT AND WIFE, C.P. Fulton County Branch, No. 290 of 1980-C, Equity

Equity - Lease Agreement - Option to Purchase

1. When the subject matter of a contract is real estate, an action for specific performance will lie.
2. Where an option to purchase can be exercised 'at any time after the end of the first 20 year term of this house', it is open-ended as to the time of exercise.