

that the farm should be retained as an investment rather than sold; and, as stated above, there is no competent evidence that the proposed sale price of \$150,000 does not represent the current fair market value of the farm.

Based on the above analysis and based on the undisputed fact that the estate has insufficient assets from which to pay the estate bills, the court finds that the proposed sale as recommended by a majority of the personal representatives is in the best interest of the estate of Mattie L. Douglas. The proposed sale is hereby approved by this court.

#### ORDER OF COURT

March 5, 1990, the court hereby approves the proposed sale of the farm to Marvin A. Douglas, Marlin T. Douglas, Bruce E. Douglas, Lucille Weller, and Ricky M. Douglas.

However, if this sale is not completed within one hundred twenty (120) days of this order, the real estate shall be listed by the personal representatives for public sale.

MOCK V. ELIE, C.P. Franklin County Branch, A.D. 1989-270

*Trespass to Real Estate - Trespass to Chattels - Emotional Distress*

1. A trespass to realty occurs whenever a person enters upon the real property of another without authorization.
2. The intent required to hold a person liable for the trespass is the intent to enter onto the particular piece of realty.
3. A cause of action in trespass where no actual injury or damage is sustained is maintainable in Pennsylvania.
4. A cause of action exists for inconvenience and discomfort caused by the interference with the peaceful possession of real property.

*Thomas M. Painter, Esq.*, Counsel for Plaintiffs  
*Richard J. Walsh, Esq.*, Counsel for Defendant

#### OPINION AND ORDER

KAYE, J. March 5, 1990:

#### OPINION

This case is before the Court on preliminary objections filed by the defendant.

#### 1. PROCEDURAL HISTORY AND FACTS

On August 16, 1989, Thomas R. Mock and Joyce E. Mock ("the plaintiffs"), filed a civil action against John Elie ("the defendant"), in trespass, trespass to chattels, and infliction of emotional distress. The defendant filed preliminary objections in the nature of a motion to strike and a motion for a more specific pleading on November 14, 1989. The plaintiffs filed an amended complaint on November 21, 1989 to which the defendant filed preliminary objections in the nature of a demurrer and a motion for a more specific pleading on December 13, 1989. On January 22, 1990, the defendant filed a praecipe for the issuance of a writ to join Nicole Mock as an additional defendant. On February 1, 1990, oral argument was held on the defendant's preliminary objections.

The plaintiffs claim that the defendant entered their residence on three separate occasions (February 17, March 5 and March 16, 1989), without their consent or permission. Further, the plaintiffs aver that since September, 1988, they had informed the defendant not to enter onto their property on several occasions.

The plaintiffs also allege that during the March 5, 1989, entry onto their property, the defendant removed a stereo, video cassette recorder, and a television from their residence. On March 6, 1989, the property was returned to the plaintiffs.

Finally, the plaintiffs allege that they have suffered severe emotional distress as a result of the defendant's conduct, and that the defendant either acted with the intention to cause the severe emotional distress or with reckless disregard to the severe emotional distress and anxiety suffered by the plaintiffs. The plaintiffs allege that as a result of the severe emotional distress caused by the defendant, they purchased a home security system at a cost of \$2,466.00 to protect themselves and their property from the defendant's intrusion.

In his preliminary objections, the defendant contends that: 1) the

plaintiffs have failed to state a claim upon which relief can be granted as a matter of law in their trespass to realty action, 2) paragraph 4 of the complaint fails to set forth the specifics of when and how the defendant was informed not to enter their property, 3) the plaintiffs failed to specifically detail the damages suffered by the plaintiffs, 4) paragraph 11 of the plaintiffs' complaint fails to state the basis of their valuation of the items of personal property listed.

At the oral argument held on February 1, 1990, the defendant waived his third preliminary objection regarding the measure of damages.

## II. DISCUSSION

In his first preliminary objection, the defendant contends that the plaintiffs have failed to state a claim in the trespass to realty action upon which relief can be granted as a matter of law. The defendant maintains that the plaintiffs have not pleaded any damage or injury from the alleged trespass nor have they pleaded any intention on the part of the defendant to cause harm or injury. Accordingly, the defendant urges that Counts I, II and III of the amended complaint be dismissed.

A trespass to realty occurs whenever a person enters upon the real property of another without authorization. Trespass §6, 37 P.L.E. 324. The owner of the realty has a cause of action against any person who has committed a trespass on his land. *Valley Forge Golf Club v. L.G. DeFelice & Son*, 124 F. Supp. 873 (1954).

The trespass to realty cause of action has its roots in our early common law.

"Our law holds even the unenclosed property of every one in such respect and so sacred, that no man can set his foot on his neighbor's land without his leave: if he does, he is a trespasser though he do no damage at all." *Hobbs v. Geiss*, 13 St.R. 417, 419 (1826).

The plaintiff in a trespass to realty action is not required to allege or prove that a defendant intended to cause harm or injury. The intent required to hold a person liable for the trespass is the intent to enter onto the particular piece of realty. *Valley Forge Garden v. Marrissey*, 385 Pa. 477, 123 A.2d 888 (1956). In addition, Pennsylvania law recognizes a cause of action for inconvenience and discomfort caused by the interference with

an individual's peaceful possession of his or her real property. *Houstar v. Texaco*, 371 Pa. Super. 399, 538 A.2d 502 (1988), alloc. den. 520 Pa. 575, 549 A.2d 136 (1988).

In order to maintain an action in trespass, the plaintiff must either be in actual possession or have a right to immediate possession of the property which was entered. *Roncace v. Welch*, 141 Pa. Super. 170, 14 A.2d 616 (1940).

In the case at bar, the plaintiffs have alleged that the defendant, without their permission, entered their residence on three separate specified dates. At the time of the entries, the plaintiffs owned and were in possession of the property in question.

The plaintiffs, therefore, have adequately averred a trespass to realty.

The defendant claims that the plaintiffs cannot maintain a cause of action in trespass because the plaintiffs have not suffered or alleged any actual injury or damages, but are seeking only nominal damages. We disagree. The cause of action in trespass where no actual injury or damages is sustained is maintainable in Pennsylvania

"Every trespass gives a right to at least nominal damages. Thus, one whose property rights have been invaded by a tortious act can, without proof of any amount of damage, recover a nominal amount for the purpose of vindicating his right."

Trespass, §60, 37 P.L.E. 411, 412.

See also, *Hobbs v. Geiss*, *supra*; *Evans v. Yarnall*, 1810 Nisi Prius, Nov. 27, 1810, coram Brackenridge J., Pamph. 149; *Woodring v. Hollenbach*, 202 Pa. 65, 61 A. 318 (1902); *Devlin v. Snellenburg*, 132 Pa. 186, 18 A. 1119 (1890); *Ripka v. Sergeant*, 7 Watts & S 9 (1844).

We therefore overrule the defendant's first preliminary objection and find that the plaintiffs have stated a claim upon which relief may be granted.

The defendant, in the second preliminary objection, requests a more specific pleading with regard to the averment that the plaintiffs informed the defendant not to enter their property on several occasions. P.R.C.P. 1910 (a) provides that "[t]he material facts on

which a cause of action or defense is based shall be stated in a concise and summary form." P.R.C.P. 1019 (f) states that "[a]verments of time, place and items of special damage shall be specifically stated."

A complaint is to contain the material facts upon which a cause of action is based in order to apprise a defendant of the plaintiff's claim. Additionally, the complaint must "formulate issues by summarizing those facts essential to support the claim." *Cassell v. Shellenberger*, 356 Pa.Super. 101, \_\_\_\_\_, 514 A.2d 163, 165 (1986).

In the case at bar, the plaintiffs allege that they informed the defendant not to enter onto their property on several occasions since September, 1988. The purpose of making this allegation is to indicate that the defendant was aware at the time of the alleged trespasses that he was not authorized to enter the plaintiffs' realty.

We do not believe, however, that paragraph 4 of the complaint alleges a fact that is material to stating a cause of action in trespass. To state a cause of action in trespass to realty, the complaint must state the material facts, that the defendant intentionally or negligently entered the plaintiffs' property, when the alleged trespass occurred, and that the plaintiffs were in possession of the property at the time of the trespass. Trespass §50, 37 P.L.E. 392. The plaintiffs are not required to allege or prove that the defendant knew or was informed that he was unauthorized to enter. On the other hand, if the defendant has obtained the consent of the plaintiffs to enter the property, he can assert this as an affirmative defense to the alleged trespass in his answer. Trespass §39, 37 P.L.E. 375. Not until that time will the question of whether the plaintiffs informed the defendant that he was not to enter their property become important.

We overrule the defendant's second preliminary objection for the reasons stated above.

Defendant alleges that the Complaint is deficient in that it fails to set forth with requisite specificity the items of damage claimed. Prior to resolving this issue, we note that Counts I through IV, respectively, seek \$1.00 nominal damages, while the final Count, Count V, seeks damages in excess of \$10,000. Plaintiffs allege that this latter claim consists of \$2,466.00 for a home security system

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## BAR NEWS ITEM

### PaTLA PRESENTS INSURANCE BAD FAITH SEMINAR

On Saturday, December 1, 1990 the Pennsylvania Trial Lawyers Association's Trial Advocacy Foundation will present a seminar titled "Insurance Bad Faith". The program will be held at the Holiday Inn-Center City, 1800 Market Street in Philadelphia from 9:00 a.m. to 3:30 p.m.

Effective July 1, 1990 Pennsylvania, for the first time, allows insureds to be awarded punitive damages, counsel fees and interest when an insurance company acts in bad faith. Reportedly, this is to be found at 42 Pa C.S.A. §8371.

Contact Pennsylvania Trial Lawyers Association, 18th Floor, 230 South Broad Street, Philadelphia, PA 19102, Telephone (215) 546-6451, FAX 215/546-5430, for registration.

## BAR NEWS ITEM

At a "Lunch & Learn" seminar, held at noon, on Wednesday, October 31, 1990, at Grant Street Station, Chambersburg, Pennsylvania, and conducted under the auspices of the South Central Pennsylvania Alumni Club of the Dickinson School of Law, Professor Leslie M. MacRae of the faculty of Dickinson spoke on "Regulatory Takings" as that concept has developed with respect to regulations imposed upon private landowners in environmental law matters.

The event was chaired by Attorney Martha B. Walker, Esq., of Chambersburg and was attended by Dickinson alumni from Chambersburg, Gettysburg, and other Communities in the south central area.

Comments were also made by Dean John Maher of the Law School, and by Dickinson President of the Board of Trustees, Hon. Dale F. Shughart. Judge Shughart, who is a Senior Judge and former President Judge of the Court of Common Pleas in Cumberland County, Pennsylvania, also continues to teach at the Law School.

which was installed to inhibit defendant's alleged repeated incursions into the plaintiffs' residence, while the remainder is based upon plaintiffs' alleged severe emotional distress and anxiety arising from defendant's behaviors.

We note that only special damages need be pleaded with specificity, while general damages may be pleaded generally. Goodrich-Amram 2d §1019 (f):2. We believe that plaintiffs have met the burden of this rule of pleading, and thus will deny relief to defendant.

In his fourth preliminary objection, the defendant claims that the plaintiffs failed to state the basis for their valuation of the items of personal property listed in paragraph 11. The defendant correctly states that when a plaintiff is claiming a sum of money for damages to or loss of personal property, the basis for these damages must be set forth.

However, in the case at bar, the plaintiffs are not seeking damages for the loss of or damage to the items listed in paragraph 11 of the complaint. Instead, the plaintiffs are seeking \$1.00 or nominal damages for the defendant's alleged intentional interference with the plaintiffs' rights to possess their property. Therefore, the basis for the valuation of those items is not relevant to the cause of action because those values are not in issue.

We overrule the defendant's fourth preliminary objection.

## ORDER OF COURT

NOW, March 5, 1990, defendant's preliminary objections are DISMISSED.

Defendant shall file a responsive pleading to the Complaint within twenty (20) days of this date or a default judgment may be entered.