

# Lawrence Law Journal

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VOL. 31

September 27, 2021

No. 248

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Mims Realty, LLC  
v.  
Speedway, LLC

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Owned and Published By  
**THE LAWRENCE COUNTY BAR ASSOCIATION**

Phillip L. Clark, Jr., *President*

Phone 724-656-2136

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# Lawrence Law Journal

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## LAWRENCE COUNTY BAR ASSOCIATION QUARTERLY MEETING

To be held virtually on Zoom. Thursday, September 30, 2021 at 12:00 noon.

The zoom link has been sent to all members.  
If you need the link, please email [jthomas@lawrencecountypa.gov](mailto:jthomas@lawrencecountypa.gov).

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## 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 against the estate of the decedent shall make known the same to the person(s) named or to his/her/their attorney and all persons indebted to the decedent shall make payment to the person(s) named without delay.

### FIRST PUBLICATION

#### **Kitzko, Felix S.**

#### **a/k/a Kitzko, Felix S., Jr.**

Late of the City of New Castle, Lawrence County, Pennsylvania

Executor: Richard S. Kitzko, 715 Brooklyn Ave., New Castle, PA 16101

Attorney: Anthony Piatek, 414 N. Jefferson St., New Castle, PA 16101

#### **Minner, Joann E.**

Late of Union Township, Lawrence County, Pennsylvania

Executor: Judith A. Wellman, 620 W. Clayton St., New Castle, PA 16102

Attorney: John R. Seltzer, 713 Wilmington Ave., New Castle, PA 16101, 724-652-0821

#### **Saginak, Michael R.**

Late of New Castle, Lawrence County, Pennsylvania

Executrix: Lori A. Saginak, 2110 N.E. 39th Street, Fort Lauderdale, FL 33308

Attorney: Carmen F. Lamancusa, 414 N. Jefferson St., New Castle, PA 16101

### SECOND PUBLICATION

#### **Bessell, William A.**

Late of New Castle, Lawrence County, Pennsylvania

Executrix: E. Loraine Leasure, 105 Tammaro Dr., Ellwood City, PA 16117

Attorney: Darla J. Hancher, 101 North Green Lane, Zelenople, PA 16063

#### **Graves, Mary P.**

Late of Ellwood City, Lawrence County, Pennsylvania

Executor: Ralph Decaria, 206 Martin Ave., Ellwood City, PA 16117

Attorney: Nick A. Frisk, Jr., 303 Fifth St., Ellwood City, PA 16117

#### **Shaffer, Oliver W.**

Late of New Castle, Lawrence County, Pennsylvania

Executrix: Debra J. Johns

Attorney: Louis Pomerico, 2910 Wilmington Rd., New Castle, PA 16105, (724) 658-7759

## THIRD PUBLICATION

#### **Bretz, Robert M.**

Late of Pulaski, Lawrence County, Pennsylvania

Executrix: Patricia J. Bochy, 391 Woodland Dr., Pulaski, PA 16143

Attorney: Carmen F. Lamancusa, 414 N. Jefferson St., New Castle, PA 16101

#### **Farinelli, Paul**

Late of Wampum Borough, Lawrence County, Pennsylvania

Administrator: Albert Farinelli, Nalli, Elias & Associates, PC, 150 Pleasant Dr., Suite 101, Aliquippa, PA 15001

Attorney: Michael W. Nalli, Nalli, Elias & Associates, PC, 150 Pleasant Dr., Suite 101, Aliquippa, PA 15001

#### **Regan, William E., Jr.**

Late of the City of New Castle, Lawrence County, Pennsylvania

Executrix: Kathy Coblenz, 1451 Harlansburg Rd., New Castle, PA 16101

Attorney: Anthony Piatek, 414 N. Jefferson St., New Castle, PA 16101

#### **Strealy, Barbara H.**

Late of Ellwood City, Lawrence County, Pennsylvania

Administrator: Robert D. Strealy, Ellwood City, Pennsylvania

Attorney: Edward Leymarie, Jr., Leymarie Clark Long, P.C., 412 Sixth St., Ellwood City, PA 16117

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## ESTATE NOTICE

Ancillary Letters of Administration have been granted on the estate of the following decedent to the personal representative named, File No. 37-21-0492, who requests all persons having claims against the estate of the decedent to make known the same in writing to her attorney, and all persons indebted to the decedent make payment without delay:

**Bonnie W. Altman, a/k/a Bonnie Altman**, deceased, of Masury, Ohio, and owning a certain parcel of real estate located at 214 East Edison Avenue in New Castle, Pennsylvania, 16101. Anna M. Ciambotti, Admrx, 6 Federal Plaza Central, Ste 1300, Youngstown, Ohio, 44503.

Keith Hodgens, Esq.

Henderson, Convington, Messenger, Newman & Thomas, Co., L.P.A.

6 Federal Plaza Central, Ste. 1300

Youngstown, Ohio

(330) 744-1148

L.C.L.J. - September 13, 20, and 27, 2021

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**NOTICE OF CERTIFICATE OF ORGANIZATION DOMESTIC LIMITED LIABILITY COMPANY**

Notice is hereby given that a Certificate of Organization Domestic Limited Liability Company was filed with the Department of State, Commonwealth of Pennsylvania with respect to a Limited Liability Company which has been organized under the provisions of the Limited Liability Company Law of 1994 as amended. The name of the Limited Liability Company is **Frank J's Boxes, LLC** and it was organized on August 3, 2021.

John J. DeCaro, Jr., Esquire  
Cusick, DeCaro & Langer, P.C.  
100 Decker Dr.  
P.O. Box 5137  
New Castle, PA 16105

L.C.L.J. - September 27, 2021

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**NOTICE OF NAME CHANGE**

Notice is hereby given that the Petition of Name Change was filed in the above-named Court requesting a Decree to change the Petitioner's name from **Charlie Tarzan Most** to **Charlie T. Sacco**.

The Court has fixed the 9th day of November 2021 at 8:30 a.m. as the time and date for the hearing on said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of the said petition should not be granted.

Daniel S. Soom, Esquire  
439 Court St.  
New Castle, PA 16101

L.C.L.J. - September 27, 2021

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**Mims Realty, LLC v. Speedway, LLC****Declaratory Judgment – Preliminary Objections – Legal Insufficiency of Complaint – Vacation and Closure of Alley – Ownership – Retention of Private Easement – Public Rights of Passage – Attorneys’ Fees**

1. If a municipality fails to accept a dedicated street within 21 years, meaning no effort is made in that time to improve and open the street for a sustained and indefinite public use, the public easement expires and may only be renewed with the consent of the abutting property owners along the street.
2. The dedication of a street by a municipality creates a mere right of public passage and the fee remains in the abutting landowners.
3. Upon the vacation of a street, the landowners whose lands abut the street become the fee simple owners of the street to its center line and the right of public passage expires.
4. Absent an allegation of the existence of a street created by a subdivision plan which could bestow a private easement upon a plaintiff and the absence of an allegation that a street was not previously opened or projected as a public street, no basis exists to conclude a plaintiff has a private easement.
5. A claim for attorneys’ fees as additional relief in a declaratory judgment action is premature in the absence of a decree or declaration in the underlying dispute.

Declaratory Judgment Action – Court of Common Pleas of Lawrence County, Pennsylvania, No. 10484 of 2019, C.A.

*Bradley S. Dornish*, attorney for Plaintiff

*Kevin L. Colosimo*, attorney for Defendant

**OPINION**

Cox, J.

April 23, 2020

Presently before this Court are the Preliminary Objections raised by Defendant Speedway, LLC (Defendant) to the Complaint in Declaratory Judgment filed by Plaintiff Mims Realty, LLC (Plaintiff). Specifically, Defendant raises a demurrer under Pa.R.C.P. No. 1028(a)(4) to Plaintiff’s principal claim it has an easement in a vacated portion of Cochran Way in the City of New Castle (City), and to Plaintiff’s request for attorney’s fees.

Background

Plaintiff filed a Complaint for Declaratory Judgment on May 13, 2019, requesting this Court to determine the legal rights and obligations of Plaintiff and Defendant with respect to a vacated portion of a City street. According to the Complaint, Defendant, the owner and operator of an interstate chain of gas station/convenience stores, approached the City in April 2015 with a proposal to build a new store in downtown New Castle on the northeast corner of the intersection of North Jefferson Street and East Falls Street.<sup>1</sup> At this time, the land on which Defendant planned to build this store was comprised of four separate parcels divided by an alley 20 feet in width known as Cochran Way. Three contiguous parcels, then owned by Turner Funeral Home, Inc. (the Turner parcels), were situated to the west between North Jefferson Street and Cochran Way<sup>2</sup>, while the remaining parcel, then owned by the Paul Lynch Foundation (Lynch parcel), was bordered on each side by Cochran Way and North Mercer Street.<sup>3</sup> Defendant planned to acquire the Turner parcels and the Lynch parcel, have the City close and vacate the portion of Cochran Way abutting these properties, and then consolidate these parcels into one piece of property on which a gas station and convenience store would be built and operated. In July 2016, the City planning commission recommended approval of Defendant's plan, following which the City council approved an ordinance on August 25, 2016, officially vacating and closing the portion of Cochran Way between the Turner parcels and the Lynch parcel, an area of approximately 2,040 square feet. See Plaintiff's Complaint, Ex. B.

After the City vacated the relevant portion of Cochran Way, Defendant officially took ownership of the Turner parcels and the Lynch parcel through deeds dated February 16, 2017. By virtue of becoming the owner of these lots abutting the vacated part of Cochran Way, Defendant purportedly became the owner in fee simple of the former alleyway, which had now become a land bridge spanning the formerly disparate Turner parcels and Lynch parcel. Believing it now obtained contiguous pieces of property, Defendant proceeded with the planned construction, which culminated with the gas station and convenience store opening to the public in Fall 2018. Within the space formerly occupied by Cochran Way, Defendant's changes included installing a curb, planting a grassy reservation and designating parking areas for customers. These alterations to the landscape made it impossible to proceed on Cochran Way on its former alignment from East Falls Street to East Grant Street.

Plaintiff became the owner of an adjacent parcel, numbered as Lot 342 in the Official Survey, after a tax sale in December 2015. Plaintiff's parcel is bounded on the west by the still open portion of Cochran Way, on the south by Defendant via the former Lynch parcel, on the east by North Mercer Street, and on the north by a noncontiguous lot, which had been numbered Lot 341 on the Official Survey, owned by Defendant and severed from the remainder of its property by Cochran Way. Plaintiff, acting

under the belief it had an easement to use and traverse the vacated portion of Cochran Way, contacted Defendant and the City during construction to voice concerns about the former alleyway becoming impassable, but these concerns were ignored. Accordingly, Plaintiff is unable to use Cochran Way in its entirety from East Falls Street to East Grant Street.

To enforce what it believes is a valid easement to use the entirety of Cochran Way, Plaintiff filed the Complaint on May 13, 2019. In addition to one count of declaratory relief, Plaintiff seeks an award of attorney's fees for Defendant's "egregious" behavior of ignoring concerns about the easement during construction. See Plaintiff's Compl. at 16. Defendant has responded with demurrers under Pa.R.C.P. No. 1028(a)(4) to both Plaintiff's claim to an easement and the claim for attorney's fees.

### Legal Discussion

The Pennsylvania Declaratory Judgments Act (DJA), 42 Pa. C.S. §§ 7531-7541, broadly provides that a trial court "shall have power to declare rights, status, and other relations whether or not further relief is or could be claimed." 42 Pa. C.S. § 7532. Moreover, the DJA permits any person "... whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising [thereunder] and obtain a declaration of rights, status, or other legal relations thereunder." 42 Pa. C.S. § 7533. Lastly, Section 7541 of the DJA directs that it is to be "liberally construed and administered," provided the proceeding is not "within the exclusive jurisdiction of a tribunal other than a court" or involves an "appeal from an order of a tribunal." 42 Pa. C.S. § 7541. Notwithstanding these limitations, it is clear that Pennsylvania appellate courts have long favored employing declaratory judgments as useful tools in facilitating the "determination of a genuine, justiciable controversy." Warner v. Continental/CNA Ins. Cos., 688 A.2d 177, 180 (Pa. Super. 1996); Singer v. Sheppard, 381 A.2d 1007 (Pa. Cmwlth. 1978).

In a declaratory judgment action, as in any civil action, a party may assert preliminary objections in response to a pleading, as permitted by Pa.R.C.P. No. 1028. The type of objections Defendant asserts here, demurrers, are "properly granted where the contested pleading is legally insufficient." Cooper v. Frankford Health Care System, Inc., 960 A.2d 134, 143 (Pa. Super. 2008). In other words, "the question presented by the demurrer is whether, *on the facts averred*, the law says with certainty that no recovery is possible." Bilt-Rite Contractors, Inc. v. The Architectural Studio, 866 A.2d 270, 274 (Pa. 2005) (emphasis added).

When a court is presented with a preliminary objection in the nature of a demurrer, all material facts averred in the complaint, as well as all reasonable inferences deducible therefrom, must be accepted as true. Smolsky

v. Governor's Office of Administration, 990 A.2d 173, 174 (Pa. Cmwlth. 2010). From these well-pleaded facts, the Court must determine, as a matter of law, whether the plaintiff may be entitled to recovery. Wiernik v. PHH U.S. Mortgage Corp., 736 A.2d 616, 619 (Pa. Super. 1999). Preliminary objections in the nature of a demurrer should be overruled unless the court *determines with certainty* that, upon the facts averred, the law will not permit the recovery sought by the plaintiff. R.W. v. Manzek, 888 A.2d 740, 749 (Pa. 2005). Conversely, a preliminary objection in the nature of a demurrer is properly sustained when the court finds, based on the facts pleaded, that there are no legal grounds upon which the claim can stand. Weiley v. Albert Einstein Med. Ctr., 51 A.3d 202, 208 (Pa. Super. 2012).

Resolution of these preliminary objections requires this Court to determine whether Plaintiff obtained an easement in the vacated portion of Cochran Way. Plaintiff argues that a municipality closing and vacating a portion of a street does not affect or diminish the rights of property owners abutting non-vacated portions of the street because these landowners retain an easement to use the entirety of the street (whether open or vacated) that exists wholly independently from any rights of the general public. In support, Plaintiff cites, *inter alia*, Rahn v. Hess, 106 A.2d 461, 464-65 (Pa. 1954) and Ferko v. Spisak, 541 A.2d 327, 330 (Pa. Super. 1988). Defendant, in response, argues that it became the owner in fee simple of the vacated portion of Cochran Way under Rahn and In re City of Altoona, 388 A.2d 313, 317 (Pa. 1978), and further contends non-abutting property owners only retain easement rights over non-opened or paper streets in subdivisions, a situation distinct from the case at bar. Moreover, Defendant notes, Plaintiff's property continues to abut the open portion of Cochran Way and also maintains access to North Mercer Street.

Plaintiff and Defendant reference various overlapping and intersecting types of property rights one could have in a street. What rights exist, and for whose benefit, depend on the character and heritage of the particular street. Chiefly, these issues turn on whether or not the street was created through an act of subdivision, was dedicated and opened to the public, or later vacated by the municipality.

Many streets are created through subdivisions, when a landowner divides land into a plan of lots and streets which is approved by the local municipality and filed of record with the recorder of deeds. In such situations, any buyer of a lot in that plan acquires a perpetual private easement by implication over all of the laid out streets of the subdivision, regardless of which of those streets the property owner's land actually abuts. Potis v. Coon, 496 A.2d 1188, 1191 (Pa. Super. 1985). Additionally, for a period of 21 years following the creation of the subdivision plan, there is a presumption that the streets laid out and offered as public thoroughfares, i.e. "dedicated," will be accepted for public use by the municipality in which



the subdivision is located; for those 21 years, the subdivision plan creates a public easement. Elliott v. H.B. Alexander & Son, Inc., 399 A.2d 1130, 1133 (Pa. Cmwlth. 1979). Thus, an act of subdivision creates two distinct easement rights *ab initio*: one of a private character for the landowners of the subdivision and one of a public nature which anybody can use and enjoy. Mannherz v. Edgely Developers, Inc., 52 Pa. D.&C. 2d 510, 516 (Pa. Com. Pl. Bucks, Oct. 24, 1969).

By statute, however, these public easements are subject to a sunset provision. If the municipality fails to accept the dedicated streets within 21 years, meaning no effort is made in that time to improve and open the street for sustained and indefinite public use, the public easement expires on what is now known as a “paper street,” and may only be renewed with the consent of the abutting property owners along that “paper street.” 36 P.S. § 1961; Landis v. Wilt, 222 A.3d 28, 34-35 (Pa. Super. 2019). That public easements come with an expiration date is what distinguishes them most from their private counterparts, as the easements of the individual property owners in the plan survive and continue independently and irrespective of the public easement. Id. (citing Riek v. Binnie, 507 A.2d 865, 867 (Pa. Super. 1986)). Private easements receive this treatment because they are “private contractual rights resulting as a legal consequence from the implied covenants under which the grantees purchased, and as such are not affected by the failure of the municipalities to act upon the dedication.” Rahn, 106 A.2d at 464.

Beyond the question of easement rights is the altogether separate issue of title and fee ownership in dedicated but unaccepted “paper streets.” In Rahn, our Supreme Court firmly held that abutting property owners of a “paper street” became owners of the streets in fee simple to the center line of the street consistent with the boundaries of their properties. Id. (citing Paul v. Carver, 26 Pa. 223 (1854)). In Altoona, supra, at 316, the Supreme Court further recognized that “[d]edication of a public street does not invest the municipality with a fee title to the land on which the roadway rests...the municipality acquires...the right to use, maintain, regulate and control that land as a street or road for the benefit of the public.” Accord Sterling’s Appeal, 2 A. 105, 107 (Pa. 1886) (“By appropriating the land for the specific purpose of a common highway, the public acquires a mere right of passage...the fee still remains in the landowner.”); Murphy v. Martini, 884 A.2d 262, 266 (Pa. Super. 2004) (“Where a street has been dedicated to public use and the public does not accept the dedication, if the side of the street is a boundary in the deed for abutting land, the owners of this abutting land take title to the center line of the street.”).

Circumstances arise in which a municipality passes a resolution or ordinance setting forth a street pattern upon private property, perhaps pursuant to authorization by the state legislature, resulting in a taking, and a

land developer later creates a plan of lots to be sold within the *established* street pattern. In those scenarios, a purchaser from a land developer acquires no private easement rights because the public rights, regarded as supreme, came first through the municipality's adoption of the street system. Cohen v. Simpson Real Estate Corp., 123 A.2d 715, 717 (Pa. 1956) (citing, *inter alia*, Tesson v. H.K. Porter Co., 86 A. 278 (Pa. 1913) and Bell v. Pittsburgh Steel Co., 89 A. 813 (Pa. 1914)).

The Cohen case featured a property owner in downtown Scranton who sought to enjoin the City of Scranton from vacating a public alley so a parking garage could be built in its place on the basis that she had an easement in the soon-to-be vacated alley. After the trial court denied her injunction, the Pennsylvania Supreme Court affirmed the trial court by permitting the vacation and allowing construction to proceed.

More specifically, the plaintiff, Mrs. Cohen, owned several lots within a square block of downtown Scranton. Id., 123 A.2d at 716. Adjacent to her lots within this square were lots owned by the defendant, Simpson Real Estate Corp., whose lands abutted a public alley within the square, Oakford Court, along its entire length on both sides; Mrs. Cohen's lands did not abut Oakford Court. Id. All of these streets and alleys forming the square block, including Oakford Court, had been laid out by private surveyors and then adopted by the City of Scranton on March 7, 1857. Id. Although Mrs. Cohen's predecessors in interest had agreed to the purchase of what would become her lots in 1854 and 1855, the deeds were not delivered until years later between 1858 and 1865 due to the conditions of the installment land contracts governing the sales; accordingly, each deed to her land was delivered after the City of Scranton had adopted the public streets and alleys in 1857. Id. Nearly 100 years later, on March 9, 1955, the City of Scranton enacted an ordinance vacating Oakford Court so that Simpson Real Estate Corp. could build a parking garage spanning the former alley. Id. Mrs. Cohen, asserting she had an easement in this alley, sued to stop this construction and sought an injunction prohibiting the City of Scranton from vacating Oakford Court and Simpson Real Estate Corp. from proceeding with its construction. Id. The trial court denied the injunction, which Mrs. Cohen appealed and this issue was eventually decided by the Pennsylvania Supreme Court. Id.

On appeal, the Supreme Court, after first confirming the City of Scranton had the right to vacate a public street, reviewed whether Mrs. Cohen had an easement over Oakford Way. The Cohen Court stated there were two contrasting principles of law governing situations similar to those presented by Mrs. Cohen and Simpson Real Estate Corp. First, the Court explained, "The one is that the grantee of a lot which is sold according to a plan of lots on which streets or alleys not previously opened or projected as public streets are plotted by the grantor, acquires an easement

over all the streets of the plan as a private right of property arising out of the grant.” Id., 123 A.2d at 717. Second, the Court stated, “where there has been a prior opening or projection by a municipality, or a dedication by a private owner and acceptance by a municipality of streets and alleys appearing on a plan of lots, a subsequent purchaser of a lot which is part of the plan of lots obtains no private right to or easement over those streets.” Id. The Cohen Court concluded Mrs. Cohen’s property fell into the second category and noted that when Mrs. Cohen’s predecessors in title received their deeds between 1858 and 1865, “the streets and alleys had become public highways, as far as any private easements over such highways were concerned...and they acquired no individual rights apart from those of the general public in the streets and alleys mapped” on the original survey of Scranton. Id., 123 A.2d at 718. Accordingly, because her predecessors in interest never had a private easement in Oakford Court, Mrs. Cohen did not have one either, and her request for injunctive relief could not stand. Id.

Similar to Cohen, the City of New Castle, at some unknown point in the past, set forth and adopted the street grid currently covering the downtown area, including the square block wherein the subject properties lie. The Complaint avers Defendant acquired its property by deed dated February 16, 2017, and Defendant commenced construction of the gas station and convenience store in April of 2018. By Ordinance dated August 25, 2016, the City of New Castle vacated the disputed portion of Cochran Way stating ownership of that property reverted to the abutting property owners. Plaintiff baldly asserts it obtained an easement over the portion of Cochran Way at issue. However, Plaintiff did not set forth sufficient facts to plead the existence of a private easement. As explained in Cohen, a private easement can be created if the grantee’s lot is sold according to a plan of lots and the street in question has not been previously opened or projected as a public street. More specifically, Plaintiff did not aver its property was purchased according to a plan of lots or subdivision. Neither the Complaint nor the deeds attached thereto mention any subdivision plan which could have bestowed a private easement to Cochran Way upon Plaintiff and its predecessors in title. Plaintiff also failed to allege Cochran Way was not previously opened or projected as a public street.

As a result of failing to aver facts sufficient to establish a private easement, the only alternative is the parties obtained fee simple ownership in the vacated portions of Cochran Way abutting their property. Defendant, by its acquisition of the Turner parcels and Lynch parcel, became the owner of the land on each abutting side of the vacated Cochran Way, and became empowered to use its land for its intended purposes, which included the construction and operation of a gas station and convenience store. Therefore, Plaintiff’s claim for declaratory relief is legally insufficient and the Court sustains Defendant’s demurrer. Plaintiff is granted leave to

amend the Complaint in conformance with this Opinion.

The Court must also address the demurrer raised by Defendant to Plaintiff's request for attorney's fees. In its brief opposing the Preliminary Objections, Plaintiff cites 42 Pa. C.S. § 7538 and related case law for the principle that it is entitled to attorney's fees as part of its request for declaratory relief. However, this Court has reviewed these authorities and reached the opposite conclusion. Section 7538(a) of the Judicial Code authorizes "supplemental relief" to effect "a previously entered declaratory judgment." 42 Pa. C.S. § 7538(a). No declaratory judgment has been entered in this case. Further, Plaintiff's citation to Mosaica Academy Charter School v. Com., Dept. of Education, 813 A.2d 813, 824-25 (Pa. 2001) proves inapposite; in that case, the Supreme Court reversed a Commonwealth Court decision awarding attorney's fees as part of an entry of declaratory judgment, because the "Declaratory Judgments Act does not expressly authorize the award of counsel fees...[unless] implemented as supplemental relief to effectuate the declaratory judgment pursuant to Section 7538."

Accordingly, attorney's fees may only be sought and awarded in the context of a declaratory judgment action *after* the trial court has entered a decree or declaration on the underlying dispute. Here, because this Court will not enter a declaratory judgment in Plaintiff's favor on the main issue of property rights in Cochran Way, the claim for attorney's fees, which would be supplemental relief, must also fail as premature at best and a logical impossibility at worst. Therefore, this Court sustains Defendant's demurrer to Plaintiff's claim for attorney's fees and that claim is dismissed.

### ORDER OF COURT

NOW this 23rd day of April, 2020, this case was before the Court on January 27, 2020, for argument on Defendant's Preliminary Objections to Plaintiff's Complaint, and after consideration of the arguments and briefs provided by the parties, the Court entered the following order and it is ORDERED, ADJUDGED, and DECREED as follows:

1. In accordance with the attached Opinion, Defendant's Preliminary Objections are SUSTAINED.

2. Plaintiff is granted 90 days to amend the Complaint to include any additional averments supporting its claim to an easement over the vacated portion of Cochran Way. The Court has granted an extended period of time to file an Amended Complaint due to the Declaration of Judicial Emergency and court closures by the Supreme Court of Pennsylvania pursuant to its Order of Court dated March 18, 2020. In the event of further court closures, the Court would consider a motion to extend time to file an Amended Complaint.

4. The Prothonotary of Lawrence County shall properly serve notice of

this Order and attached Opinion upon counsel of record.

BY THE COURT:

J. Craig Cox, Judge

1 For some geographic background, downtown New Castle, as with many downtowns, is laid out in the form of a grid street pattern. All of the properties mentioned in this opinion are within a square component of this grid that is bounded by North Jefferson Street to the west, East Falls Street to the south, North Mercer Street to the east, and East Grant Street to the north. Cochran Way formerly bisected this square and ran parallel to North Jefferson Street and North Mercer Street at the halfway point of the East Falls and East Grant Streets sides of the square.

2 The Turner parcels had been numbered Lots 298, 300, and 301 under the Official Survey of the City of New Castle (Official Survey). Turner Funeral Home, Inc. took title to these three parcels in 2014 via two deeds, one of which conveyed Lots 298 and 300 and the other of which conveyed Lot 301.

3 The Lynch parcel had previously been five separate parcels until a 2012 consolidation. Accordingly, in contrast to the Turner parcels, the February 17, 2017, deed which conveyed this land to Defendant did not reference lot numbers under the Official Survey.

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