

-GEORGE ARTHUR WILLSON II, et al. * IN THE
Plaintiffs * CIRCUIT COURT
v. * FOR
TDH FARMS, LLC * HOWARD COUNTY
Defendant * Case No. C-13-CV-22-000990

* * * * *

MEMORANDUM AND ORDER

Before the Court is Defendant’s Motion to Dismiss Plaintiff’s First Amended Verified Complaint and Plaintiffs’ Opposition thereto. This matter was heard by the Court on November 2, 2023, when representatives for both parties were present and represented by counsel.

BACKGROUND FACTS

The parties own adjacent properties in Howard County. Plaintiffs own an 8-acre parcel, and Defendant owns a neighboring 71-acre parcel. One of the Plaintiffs had also owned the 71-acre parcel until it was sold at foreclosure sale in 2016. The same year Defendant purchased the property from the buyer in the foreclosure sale. The dispute between the parties arises out of a large 9000+ square foot horse barn that sits on the property line between Plaintiff’s land and Defendant’s land, with about half of the barn on each side. Plaintiff George Willson, II had erected the barn in 1986, when his parents owned the property current owned by Defendant. According to Plaintiffs, George Willson, II’s parents consented to the barn being located across the property line. There is no indication in the Amended Complaint that there were any written documents regarding the barn, nor were there filings in the Howard County land records alerting subsequent purchasers of the status of that structure. After Defendant took possession of the 71-acre parcel, it erected a wall inside the barn along the property line, and thereafter Defendant has exercised

dominion and control of the half of the barn and its contents that lie on Defendant's side of the property line, much to Plaintiffs' dismay and displeasure.

In 2022 Plaintiffs filed this instant case, which was amended on August 23, 2023, seeking injunctive relief, declaratory judgment, damages for trespass to possessory interest and trespass to chattel, quiet title, possession of property, and conversion. Defendant filed the instant motion to dismiss.

LEGAL STANDARD

Motions to dismiss are governed by Maryland Rule 2-322. When moving to dismiss, a defendant is asserting that, even if the allegations of the complaint are true, the plaintiff is not entitled to relief as a matter of law. *Lubore v. RPM Assocs.*, 109 Md. App. 312 (1996). In ruling on such a motion, the Court must assume the truth of all relevant and material facts that are well pleaded and all inferences which can be reasonably drawn from those pleadings. *Bennett Heating & Air Conditioning, Inc. v. NationsBank*, 103 Md. App. 749 (1995). Bald allegations or conclusory statements will not save a pleading from dismissal if the facts set forth in the complaint do not establish a legally sufficient cause of action.

OWNERSHIP OF THE BARN

Underlying all the arguments in this matter is the issue of who owns the barn. Plaintiffs refer to the structure as "Plaintiffs' barn" in their pleadings but fail to enunciate facts that would support any legal theory supporting their exclusive ownership of the building. Defendant has treated the half of the barn on its land as its property and has not attempted to take control of the half of the barn on Plaintiffs' land. Plaintiffs conceded at oral argument that if the entire structure was on Defendant's property it would belong to Defendant, just as if the structure was entirely on Plaintiffs' property it would belong to Plaintiffs. The identity of the person who built and used the

structure is not determinative of its ownership. Buildings convey with the property on which they are located, absent a written document filed with land records denoting a different arrangement, such as an easement or ground rent agreement. Plaintiffs have cited no authority for its claim to ownership of a structure that is at least 50% on the property owned by Defendant. Conclusory references to the barn as “Plaintiffs’ barn” fail to address the necessary elements to proceed with their case, since their case rests on this underlying fact that has not been properly pleaded.

Plaintiffs argue that the barn is an encroaching structure. They cite *Urban Site Venture II Ltd v. Levering Associates Limited Partnership et al.* 340 Md. 223, 665 A.2d 1062 (1995) in support of their allegation that the structure’s encroachment was due to an “innocent mistake”. Citing *Lichtenberg v. Sachs*, 213 Md. 147, 131 A.2d 264 (1957) The Court in *Urban Site Venture* recited that, “The preferred remedy for encroachment is an injunction ordering removal of the encroaching structure.” 340 Md. at 230. In this case, no one seeks removal of the structure. Plaintiffs seeks exclusive use and possession of the barn and surrounding land. Defendant has divided the barn in half, using the portion on its side of the property line, and permitting Plaintiffs to use the portion of their side. The Court, in *Urban Site Venture*, went on to hold that, “where an encroachment results from reasonable, good faith reliance on the mistaken work of competent surveyors, the encroachment is innocent.” 340 Md. at 234. Plaintiffs fail to make factual allegations to support such a contention.

The facts of this case do not support that the barn was built across the property line by mistake, or in reliance of the mistake of a competent surveyor on whom they relied. Instead, Plaintiffs’ verified amended complaint indicates that the barn was built across the property line with permission of the owners of the neighboring property that now belongs to Defendant. There

would be no reason to get permission from the owners of the neighboring property if Plaintiff George Willson, II was unaware that the barn would encroach on the neighbor's land.

STATUTE OF LIMITATIONS

Defendant's first argument is that the Plaintiff's claims are barred by the statute of limitations for civil actions articulated in Courts and Judicial Proceedings §5-101. Many of the wrongs Plaintiff alleges occurred more than 3 years ago in 2016 when Defendant purchased the adjoining property and erected the wall dividing the barn. Plaintiffs argue that their trespass actions survive under the continuing violation theory. Defendant agrees that even if the Court finds that Plaintiffs have properly stated claims for ongoing trespass, Plaintiffs would be limited to damages that have occurred during the three years preceding their filing of the Complaint. The application of the statute of limitations is discussed in each section below.

TRESPASS TO POSSESSORY INTEREST

Plaintiffs' third count is for Trespass to Possessory Interest. Plaintiffs allege that "Defendant has physically entered upon the aforesaid barn owned and possessed by Plaintiffs."¹ Plaintiffs have not alleged that Defendant crossed the property line and trespassed onto the part of the barn on Plaintiffs' property. Having failed to plead facts that would establish Plaintiffs' legal ownership of the portion of the barn on Defendant's land, this Count cannot survive. As Defendant points out, one cannot trespass on its own land. In addition, Defendant took possession and control of the half of the barn on its property in 2016 and have continued to exercise dominion over that portion of the barn ever since. Defendant's acts have been open and known to Plaintiffs since 2016. Plaintiffs argue that Defendants continue to deprive them of access to the portion of the barn on Defendant's land and continue to block their access to the electrical box and leave the windows

¹ Amended Complaint, page 11.

open. Absent factual allegations sufficient to establish a possessory interest in the portion of the barn located on Defendant's land, there can be no action for trespass to possessory interest. In addition, since Defendant's conduct has been ongoing since 2016 it is barred by the statute of limitations.

TRESPASS TO CHATTEL

Plaintiffs Fourth Count is for trespass to chattel. They complain that Defendant has removed and damaged their property located in the barn, including electrical panels, lights switches, horse stalls, floors, electrical fixtures, water lines, etc. All these items are fixtures attached to the barn, presumably on the side of the barn on Defendant's land. Fixtures become part of the structure in which they are affixed, and like the structure, convey with the land. Plaintiffs have failed to allege that Defendant trespassed to chattel on the portion of the barn on Plaintiffs' property. To the extent that the chattels Plaintiff claims were destroyed or damaged were affixed to the side of the barn on Defendant's land, Plaintiff failed to state allegations that would support that it maintained ownership of the fixtures on the portion of the barn on Defendant's land. Absent Plaintiffs' ability to plead facts supporting their right to ownership of the barn, trespass to the fixtures therein will not survive the motion to dismiss. In addition, Plaintiffs' have been aware that Defendant has exercised control and ownership of the chattel on its side of the barn since 2016 when it erected the wall blocking Plaintiffs' access to the side of the barn located on Defendant's property. Therefore, the claim is barred by statute of limitations.

QUIET TITLE

Plaintiffs' fifth count is for quiet title. Plaintiffs argue that this count should be subject to the 20-year statute of limitations applicable to disputes over title to land. However, Plaintiffs do not contend that they have a possessory interest to Defendant's land. Instead, they claim ownership

of the barn itself: “Plaintiffs seek an order from this Court declaring that Plaintiffs are the absolute owners of the barn and appurtenant utilities to the barn, have the right of disposition of the barn, and enjoining Defendant from asserting any claim, at law or otherwise, relating to the use, occupancy or possession of the barn or any portion thereof...”²² Significantly, Plaintiffs do not dispute Defendant’s right and title to the 71-acre parcel on which half of the barn sits. Therefore, an action to quiet title is not established by the facts in Plaintiffs’ pleading.

Since the title to land is not disputed, the 20-year statute of limitations is not applicable. Here, Plaintiffs have been aware of Defendant’s actions and intentions demonstrated by its agents’ words and deeds since 2016 when Defendant erected the wall inside the barn on the property line. This action is barred by the 3-year statute of limitations.

POSSESSION OF PROPERTY AND CONVERSION

Plaintiffs final two counts are for possession of property and conversion. Plaintiffs’ access to the portion of the barn on Defendant’s property has been restricted since 2016. Defendant has exercised dominion and control of the personal property on its side of the property line since that time. Both counts are barred by the 3-year statute of limitations.

INJUNCTION

Plaintiffs’ first count seeks injunctive relief preventing Defendant from restricting their access to the barn and property immediately adjacent to the barn. Since the substantive counts above are barred by statute of limitations, the Plaintiffs will not be able to establish entitlement to an injunction.

Defendant’s Motion to Dismiss is granted as to Count I.

²² Amended Complaint, page 13.

DECLARATORY JUDGMENT

Count II of Plaintiffs' Amended Complaint seeks Declaratory Judgment asking the Court to "adjudicate the rights and liabilities of the parties with respect to Plaintiff's right to access the barn and immediately surrounding property surrounding the barn."³ Defendant argues that Plaintiffs lack a judicable controversy because Plaintiffs seeks to have the Court transfer title to part of its property to Plaintiffs, a power that the Court lacks. Plaintiffs respond by stating that the Courts have established an "innocent mistake rule" for situations where a landowner accidentally erects a structure which encroaches on a neighboring property. That is not the situation here, as detailed above. Over the 30 years between the time the barn was erected and 2016 when Defendant bought the adjacent land Plaintiffs could have, and it now seems they should have, taken steps to establish their exclusive ownership rights to the barn in a writing filed with land records to put subsequent purchasers on notice⁴. Plaintiffs failed to do so. Having apparently failed to take reasonable and necessary available means to protect their interest in the structure, Plaintiffs now seek to impose a duty on Defendant, as a subsequent purchaser in due course, to allow them access to the encroaching structure and surrounding land based only on its notice of the existence of the structure at the time of its purchase of the property. The Court finds that it lacks the authority to enter the order that Plaintiffs seek, to "find and declare that the Plaintiffs have unrestricted access and the immediate property serving the barn" that is located on Defendant's property. Therefore, Count II is dismissed.

CONCLUSION

For reasons set forth above, it is this 16th day of November 2023

³ Amended Complaint, page 11.

⁴⁴ The Court notes that the Plaintiff who built the barn later became the owner of the 71-acre parcel until the foreclosure in 2016. He was in a unique position to create and file a written document assuring his future rights to the barn.

ORDERED, that Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint is granted.



JUDGE

Entered: Clerk, Circuit Court for
Howard County, MD
November 17, 2023