

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

NORTH PENN TOWNS, LP	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
CONCERT GOLF PARTNERS, LLC.,	:	No. 967 EDA 2020
PHILMONT COUNTRY CLUB,	:	
CONCERT PHILMONT, LLC., AND	:	
CONCERT PHILMONT PROPERTIES,	:	
LLC	:	

Appeal from the Order Entered February 24, 2020
 In the Court of Common Pleas of Montgomery County
 Civil Division at No(s): No. 2017-04395,
 No. 2018-00605

NORTH PENN TOWNS, LP	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
CONCERT PHILMONT PROPERTIES,	:	No. 1016 EDA 2020
LLC, CONCERT PHILMONT, LLC.,	:	
CONCERT GOLF PARTNERS, LLC,	:	
AND PHILMONT COUNTRY CLUB	:	

Appeal from the Order Entered February 24, 2020
 In the Court of Common Pleas of Montgomery County
 Civil Division at No(s): No. 2018-00605

BEFORE: PANELLA, P.J., MURRAY, J., and STEVENS, P.J.E.*

MEMORANDUM BY PANELLA, P.J.: **FILED SEPTEMBER 17, 2021**

* Former Justice specially assigned to the Superior Court.

This appeal involves a real estate transaction that deteriorated prior to the completed sale. The central argument is whether a party can establish a legally valid right to property based on allegations of unjust enrichment and tortious interference where the benefit received by the opposing party was engineering and legal work paid for by the complaining party in connection with its efforts to obtain township approval for a development plan. Here, based on the circumstances, the trial court found such relief, including the remedy of a constructive trust, could not be granted. Following extensive review, we affirm on the basis of the trial court opinion.

In July 2015, North Penn Towns, LP (“North Penn”) entered into an agreement with Philmont Country Club (“Philmont”) to purchase approximately 61.6 acres of property (“the Property”) for the purpose of residential development. Issues transpired with the governing township over the residential density that the township would approve and the conditions to be imposed based on its approval. To allow time for these negotiations, the agreement included a due diligence period, which was extended eight times by the parties.

In the summer of 2016, the relationship between the parties soured when North Penn learned Philmont surreptitiously negotiated with a third party, Concert Golf Partners, LLC (“Concert Golf”), to sell the Property to it rather than North Penn. Faced with another expiration of the due diligence period, at which point North Penn would lose its right to terminate the

agreement without forfeiting its deposit, North Penn exercised its right of termination in September 2016.

In March 2017, Concert Golf, through two newly formed entities, Concert Philmont, LLC (“Concert Philmont”) and Concert Philmont Properties, LLC (“Concert Philmont Properties”) (collectively, with Concert Golf, the “Concert Entities”), purchased all of Philmont’s assets, including the Property. Additionally, the Concert Entities “obtained the benefit of substantial legal and engineering work, paid for by North Penn in the course of seeking and obtaining development approvals from the Township, including an increase in the residential density permitted.” Trial Court Opinion, 9/8/2020, at 2.

North Penn filed two actions against Philmont and Concert Entities, sounding in contract and tort. The first action, docketed at No. 2017-04395, named Philmont and Concert Golf as defendants (“the First Action”). The second action, docketed at No. 2018-00605, named Concert Philmont and Concert Philmont Properties as defendants (“the Second Action”). Both actions were subsequently consolidated.

In its consolidated, third amended complaint, North Penn raised ten counts, including but not limited to, tortious interference with contracts against Concert Golf, unjust enrichment against Concert Golf and Philmont, and quiet title against Concert Philmont and Concert Philmont Properties.

North Penn also filed praecipes to enter a *lis pendens*¹ against the Property in conjunction with both actions, which were subsequently consolidated.

¹ “*Lis pendens* literally means a pending suit[.]” **McCahill v. Roberts**, 219 A.2d 306, 308 (Pa. 1966) (citations omitted). As such, the doctrine is used as means to give notice to third parties that any interest they may purchase in the property may be subject to the results of pending litigation:

The use of the doctrine was applied in Pennsylvania as early as 1831, when it was held in **Lodge v. Simonton**, 2 P. & W. 439 (Pa. 1831), that the rights of a party in real estate cannot be defeated by a conveyance thereof to a third party pending the adjudication of litigation, which has been properly filed and indexed, involving those rights.

Lis pendens is construed to be . . . the jurisdiction, power or control which courts acquire over property involved in a suit, pending the continuance of the action, and until its final judgment therein[.] The initial basis of the application of the doctrine was one of constructive notice to all the world of the pending litigation[.] In later years, the courts determined that the doctrine was one of policy only, i.e., it would be unfair and an insult to the courts to permit the severance of rights in a property which they were then in the process of deciding[.] Having determined that the doctrine was founded on a policy, rather than conceptual basis, the next logical step was to decree the use of equitable principles in the application of the rule. This point was reached in **Dice v. Bender**, 383 Pa. 94, 117 A. 2d 725 (1955), wherein we held that the doctrine does not establish an actual lien on the affected property, but rather merely gives notice to third parties that any interest that may be acquired in the property pending the litigation will be subject to the result of the action. Further, in **Dice**, we laid to rest the argument that *lis pendens* is a statutory right and that the court lacks power to rescind its operation. Therein, we decided that the court may cancel *lis pendens* if the equities indicate such action.

McCahill, 219 A.2d at 308-309 (quotation marks and some citations omitted).

The Concert Entities filed a motion for summary judgment in February 2019. Philmont also filed a motion for summary judgment but prior to argument, it and North Penn informed the court they had reached a settlement of claims between them. After oral argument, the trial court entered an order on October 18, 2019, granting summary judgment in favor of the Concert Entities in two respects. First, the court found that North Penn proposed remedy of a constructive trust based on its contention the Concert Entities unjustly benefited from engineering and legal work paid for by North Penn would be out of proportion to the nature of the benefit that was allegedly unjustly conferred on the Concert Entities. **See** Order, 10/18/2019, at 2 n.1. Second, as to the quiet title count, the court noted it is black letter law that a claim to quiet title may only be brought by a party in possession of the property and North Penn did not have possession of the Property. **See id.**, at 2 n.2. The court denied the Concert Entities' motion in all other respects. North Penn sought reconsideration of the order, but the court only granted relief in terms of amending its order to reflect North Penn's potential entitlement to the monetary value of the benefit that was unjustly conferred, and not a constructive trust. **See** Order, 11/6/2019, at 1.

North Penn also filed a motion for partial summary judgment as to the liability on certain counts of its third amended complaint. The court subsequently denied the motion *in toto*.

During this time, the Concert Entities filed several motions to strike the *lis pendens*. The court denied relief as to their first two motions. When the Concert Entities filed their third motion to strike, their motion for summary judgment had been resolved by the trial court. As such, the Concert Entities noted that because North Penn settled certain claims with Philmont, the only relevant and remaining counts that sought to compel conveyance of the Property were tortious interference, unjust enrichment, and quiet title. The Concert Entities also pointed out that the claim for unjust enrichment, to the extent that North Penn sought to impose a constructive trust on the Property, and the claim to quiet title both had been dismissed on summary judgment. The Concert Entities maintained North Penn no longer had a viable claim of title to the Property and the *lis pendens* could no longer be maintained. The court held a hearing on the matter in January 2020. On February 24, 2020, the court granted the Concert Entities' motion and ordered that the *lis pendens* be stricken. The court indicated that its order was based on its "conclusion that the facts asserted by North Penn were insufficient to establish a legally valid claim for title to the property." Trial Court Opinion, 9/8/2020, at 1.

North Penn filed an appeal to the First Action on March 25, 2020, and an appeal to the Second Action on April 8, 2020.² The appeals were docketed

² North Penn complied with the requirements of ***Commonwealth v. Walker***, 185 A.3d 969 (Pa. 2018), by filing a separate notice of appeal at each trial court docket.

at 967 EDA 2020 and 1016 EDA 2020, respectively, and subsequently consolidated upon consideration of North Penn's unopposed request. **See** Order, 10/1/2020. In addition to appealing from the February 24, 2020, order, the notices of appeal indicated North Penn purported to appeal from the court's October 18, 2019, order denying its motion for partial summary judgment.

The Concert Entities filed applications to quash the appeals. At Docket No. 967 EDA 2020, by *per curiam* order, this Court denied quashing the appeal from the February 24, 2020 order striking the *lis pendens*, but granted the application to quash the appeal from the October 18, 2019 order. **See** Order, 7/23/2020. At Docket No. 1016 EDA 2020, by *per curiam* order, this Court quashed the appeal as untimely. **See** Order, 7/23/2020; **see also** Pa.R.A.P. 903(a) (notice of appeal shall be filed within 30 days after entry on the docket of the order from which the appeal is taken).

North Penn raises two issues on appeal:

1. The trial court struck the *lis pendens* based on its earlier entry of summary judgment in the Concert Entities' favor as to [North Penn]'s claims for a constructive trust as remedy for valid unjust enrichment claim. Did the trial court err where [North Penn] cannot be adequately compensated with monetary damages alone and therefore a constructive trust is an appropriate remedy?

2. Is [North Penn] entitled to obtain title to the real property at issue as a remedy for the tortious interference with contract claim, where [the Concert Entities'] tortious interference caused the termination of the agreement of sale for the property?

Appellant's Brief at 4.

Both of North Penn's issues challenge the trial court's refusal to grant North Penn any property interest in the subject property. While North Penn's arguments utilize different legal theories, they both are based upon its assertion that the trial court erred in concluding title to the property was at issue in this case.

Our standard of review in *equity* cases is very narrow:

[A]ppellate review of equity matters is limited to a determination of whether the chancellor committed an error of law or abused his discretion. The scope of review of a final decree in equity is limited and will not be disturbed unless it is unsupported by the evidence or demonstrably capricious.

Rosen v. Rittenhouse Towers, 482 A.2d 1113, 1116 (Pa. Super. 1984) (internal quotations, citations, and quotation marks omitted). ***See also Michael v. GLD Foremost Holdings, LLC***, 156 A.3d 318, 322 (Pa. Super. 2017).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the trial court, we conclude that there is no merit to the issues North Penn has raised on appeal. The trial court opinion properly disposes of North Penn's arguments, and we adopt it as our own. ***See*** Trial Court Opinion, 9/8/2020, at 9-13, 14-16 (concluding that (1) while North Penn's allegations, if accepted as true, make out a case for unjust enrichment, it was nevertheless not entitled to a constructive trust on the Property as a remedy for this unjust enrichment because awarding ownership of the Property to North Penn would not reflect the equity of the

transaction, and specifically, would not correspond in any manner to the benefit unjustly conferred on the Concert Entities through the legal and engineering services paid for by North Penn but rather, would confer on North Penn a windfall wholly disconnected from the nature of its allegations; (2) North Penn failed to cite to any legal authority supporting its argument that when a third party tortiously interferes with a contract for real property and purchases the property, that party is liable for specific performance; and (3) the legal authority, such as the Restatement (Second) of Torts § 766 and ***Fisher Bioservices, Inc. v. Bilcare, Inc.***, No. 06-567, 2006 WL 1517382 (E.D. Pa. May 31, 2006), relied on by North Penn is misplaced as the language either provides a remedy in the form of pecuniary loss or concerns the authorization of equitable relief to enjoin prospective or ongoing tortious interference, not completed interference).³

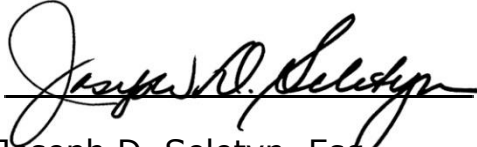
Accordingly, we affirm on the basis of the trial court opinion.

Order affirmed.

³ The trial court addressed a third argument raised by North Penn concerning its claim to quiet title. **See** Trial Court Opinion, 9/8/2020, at 13-14. North Penn has since abandoned that claim on appeal, and we need not address it.

J-A08009-21

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 9/17/2021