

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

CAROLYN MASTEN HUMES,	:	
DANIEL R. MASTEN, and	:	C.A. No. 05C-08-042 WLW
ARTHUR ROBERT MASTEN,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CHARLES H. WEST FARMS, INC.,	:	
	:	
Defendant.	:	

Submitted: October 7, 2005
Decided: January 18, 2006

ORDER

Upon Defendant's Motion to Dismiss.
Denied.

Robert A. Penza, Esquire and Peter M. Sweeney, Esquire of Gordon Fournaris & Mammarella, P.A., Wilmington, Delaware; attorneys for the Plaintiffs.

R. Brandon Jones, Esquire of Hudson Jones Jaywork & Fisher, Dover, Delaware; attorneys for the Defendant.

WITHAM, R.J.

Defendant, Charles H. West Farms, Inc., filed a Motion to Dismiss, alleging that Plaintiffs', Carolyn Humes, Daniel Masten and Arthur Masten, claim must be dismissed because it does not comply with the three-year statute of limitations imposed on ejectment actions pursuant to 10 *Del. C.* § 8106 and, therefore, also fails to state a claim upon which relief may be granted. In support of these arguments, Defendant cites *Russo v. Nelson*,¹ which states, “[e]jectment, a legal action to determine title to land, is subject to the three-year statute of limitations mandated by 10 *Del. C.* § 8106.” Plaintiffs contend that Defendant’s reliance on that case is misplaced and assert that 10 *Del. C.* § 7902 should apply because this is a real action.

For the reasons set forth below, Defendant’s Motion to Dismiss is *denied*.

Discussion

Defendant’s first argument is that the complaint must be dismissed because *Russo* held that an ejectment action is subject to the three-year statute of limitations provided for in 10 *Del. C.* § 8106.²

However, Defendant’s reliance upon *Russo* is misplaced. In *Russo*, the

¹2003 Del. Super. LEXIS 114, at *15.

²No action to recover damages for trespass, no action to regain possession of personal chattels, no action to recover damages for the detention of personal chattels, no action to recover a debt not evidenced by a record or by an instrument under seal, no action based on a detailed statement of the mutual demands in the nature of debit and credit between parties arising out of contractual or fiduciary relations, no action based on a promise, no action based on a statute, and no action to recover damages caused by an injury unaccompanied with force or resulting indirectly from the act of the defendant shall be brought after the expiration of 3 years from the accruing of the cause of such action; subject, however, to the provisions of §§ 8108-8110, 8119 and 8127 of this title.

plaintiff filed an action in ejectment because the defendant altered the exterior of his condominium, causing it to encroach upon a common area. The Supreme Court reversed the lower court's decision on appeal, observing that "[t]he complaint was styled an action in ejectment, but appellee's purpose in bringing the lawsuit was to have the enclosures that are obstructing the common area airspace removed." The Supreme Court also noted that while the plaintiff first sought removal of the addition, alternatively, she sought money damages for the loss in value to her property. As a result, the Supreme Court determined that the Court of Chancery had jurisdiction because it was, in fact, an action in equity.³

Conversely, an ejectment action is within the common law jurisdiction of the Superior Court.⁴ It is an action to determine legal title to property.⁵ For an action to lie in ejectment, the plaintiff must be out of possession, but have a present right to immediate possession.⁶ A plaintiff may evidence legal title to land:

(1) by proving or producing the deed, will, and descendants under which said title is claimed, or (2) by proving that the claimant and those under whom he claims had adverse, exclusive and continuous possession of the premises for at least twenty years next before the commencement of

³It should be noted that in its opinion, the Supreme Court did not directly address the issue of whether Section 8106 was the appropriate statute of limitations for an ejectment action, presumably because it reversed on jurisdictional grounds.

⁴*Heathergreen Commons Condo. Ass'n v. Paul*, 503 A.2d 636, 643 (Del. Ch. 1985).

⁵*Tallent v. Meredith*, 1988 Del. Super. LEXIS 234, at *4.

⁶*Old Time Petroleum Co. v. Tsaganos*, 1978 Del. Super. LEXIS 686, at *9.

the action--in which case the law presumes that he had the legal title to the premises.⁷

Additionally, in order to be successful, the plaintiff must prove legal title by a preponderance of the evidence.⁸

In *Old Time Petroleum Co.*, the Court of Chancery opined that the possessory actions of ejectment and trespass “are commonly regarded as the principal remedies which the law provides against adverse possessors.”⁹ Further, this Court implied that the statute of limitations for an ejectment action is twenty years when it stated, “[t]he law will not permit the plaintiffs . . . to sleep upon their rights for over 20 years, and then come into this court and seek to oust the adverse possessor. If they do sleep, it will be at their own peril. This is the effect of our statute of limitations”¹⁰

Moreover, “[s]tate law provides that anyone who wishes to take possession of real estate must do so within a period of twenty years after that right first arose, 10 *Del. C.* § 7901, and that such person must assert such a right within the twenty year period, *Id.*, § 7902.”¹¹ Additionally, American Jurisprudence explains, “[w]ith respect

⁷*Doe ex dem. Townsend v. Roe*, 80 A. 352, 354 (Del. Super. 1911).

⁸*Id.*

⁹1978 Del. Super. LEXIS 686, at *14.

¹⁰*Pepper v. Pepper*, 43 A. 90 (Del. Super. 1896).

¹¹*Biddle v. Scowdrick*, 1997 Del. Ch. LEXIS 101, at *8.

to ejectment, the statutes governing actions to recover real property apply.”¹²

Section 7902 states:

No person shall have, or maintain any writ of right, or action, real, personal, or mixed, for, or make any prescription, or claim, to, or in, any lands, tenements, or hereditaments, of the seisin, or possession of the person, the person's ancestor, or predecessor, and declare, or allege, in any manner whatever, any further seisin of the person, the person's ancestor, or predecessor, but only an actual seisin of the person, the person's ancestor, or predecessor, of the premises sued for, or claimed, within 20 years next before such writ, or action.

Because Plaintiffs filed an ejectment action, which is a possessory action, this case should be governed by the real property statute. As such, I hold that 10 *Del. C.* § 7902 is the applicable statute. To hold otherwise would extinguish a property owner’s right to oust a potential adverse possessor through ejectment after only three years, which clearly is not the intent of this Court.

Defendant’s second argument is that Plaintiffs’ action for ejectment should be dismissed for failure to state a claim. In evaluating a motion to dismiss for failure to state a claim, the Court must assume that all well-pled allegations are true.¹³ A motion to dismiss will not be granted if plaintiffs would be “entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.”¹⁴ Because the

¹²1 Am. Jur. 2d *Adjoining Landowners* § 126 (2005).

¹³*Nix v. Sawyer*, 466 A.2d 407, 410 (Del. Super. 1983).

¹⁴*Id.*

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facts alleged in the complaint must be accepted as true, and given the fact that Defendant has not filed an answer to the Complaint, Plaintiffs may very well be entitled to possession. Because I am obliged to accept the facts asserted as true, the motion to dismiss for failure to state a claim cannot survive.

Based on the foregoing, Defendant's Motion to Dismiss is *denied*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution