

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

ESP ENTERPRISES, LLC and LIBERTIES	:	JANUARY TERM 2005
WEST PARTNERS, LLC	:	
	:	NO: 4218
v.	:	
	:	
JOHN J. GARAGOZZO and RONALD	:	CONTROL NO: 040566
EGAN	:	

ORDER

AND NOW, this 27th day of June, 2005, upon consideration of Defendant Ronald Egan's Motion to Determine Preliminary Objection, and response thereto, it is hereby ORDERED and DECREED that said Preliminary Objection is SUSTAINED.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

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MEMORANDUM OPINION

Background

Before the Court is defendant Ronald Egan’s Preliminary Objection to plaintiffs ESP Enterprises, LLC and Liberties West Partners, LLC’s Complaint. Plaintiffs filed a declaratory judgment action against defendants. Defendant Egan has raised one preliminary objection to plaintiffs’ Complaint, pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(5), for failure to join a necessary party. The following allegations are set forth in Plaintiff’s Complaint:

On December 16, 2003, Ron Fante (“Fante”), Richard Disco (“Disco”), and defendant John Garagozzo (“Garagozzo”) entered into an agreement (the “Agreement of Sale”) to sell real property located at 800-806 N. Third Street, Philadelphia, Pennsylvania, to defendants John Garagozzo and Ronald Egan (“Egan”). The Agreement of Sale provided that settlement was to be held on or before March 31, 2004, and contained a “time is of the essence” clause. Settlement on the property did not occur on or before March 31, 2004. On November 23, 2004, Fante granted by deed his entire interest in the property to plaintiff ESP Enterprises, LLC (“ESP”). Additionally, on November 23, 2004, Disco granted by deed his entire interest in the property to plaintiff Liberties West Partners, LLC (“Liberties”). Plaintiffs ESP and Liberties assert that they,

along with defendant Garagozzo, are the real owners of the property. In Count I of the Complaint, plaintiffs are asking for a judicial declaration that the Agreement of Sale is not enforceable because it expired naturally when there was no settlement on or before March 31, 2004. In Count II, plaintiffs are seeking a judicial declaration that plaintiffs and Garagozzo are entitled to retain all sums paid by defendants pursuant to the Agreement of Sale, including deposit monies, since defendants defaulted under the Agreement of Sale. Defendants, however, maintain that the Agreement of Sale is valid and enforceable.

I. Defendant's Preliminary Objection in the Nature of a Motion to Strike for Failure to Join a Necessary Party Pursuant to Pa. R.C.P. 1028(a)(5).

Defendant Egan asserts that Plaintiffs' Complaint should be stricken for failure to join necessary parties, specifically Fante and Disco. For the reasons set forth below, the Court sustains defendant's preliminary objection.

Pennsylvania Rule of Civil Procedure 1028(a)(5) allows preliminary objections based on nonjoinder of a necessary party. A party is considered indispensable to a lawsuit "when its rights are so connected with the claims of the litigants that no decree can be made without impairing its rights, and it must be made a party to protect such rights." International Fiber Systems, Inc. v. City of Philadelphia, Commerce Program, October Term 2001, No. 0968, Control No. 122034, Sheppard, J. (June 2002), quoting Grimme Combustion, Inc. v. Mergentime Corporation, 406 Pa. Super. 620, 629, 595 A.2d 77, 81 (1991). The following factors are used in Pennsylvania to determine whether a party is indispensable:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of the right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating due process rights of absent parties?

Id., citing E-Z Parks, Inc. v. Philadelphia Parking Authority, 103 Pa. Cmwlth. 627, 631, 521 A.2d 71, 73 (1987). In analyzing this issue, a court must examine the nature of the claim and the relief sought. Hubert v. Greenwald, 1999 Pa. Super. 328, *P9, 743 A.2d 977, 980 (1999).

Additionally, with respect to declaratory judgment actions, the failure to join an indispensable party deprives a court of subject matter jurisdiction. Tremco, Inc. v. Pennsylvania Manufacturer's Insurance Co., Commerce Program, June Term 2000, No. 388, Control Nos. 040125, 04232, Sheppard, J. (June 2002), citing Vale Chemical Co v. Hartford Accident and Indemnity Co., 512 Pa. 290, 292, 516 A.2d 684, 685 (1986). There is a statutory requirement that all interested parties shall be joined before a declaratory judgment can issue. Section 7540(a) of Pennsylvania's Declaratory Judgment Act states:

General rule. -- When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

Therefore, it is clear that "all parties whose interest will necessarily be affected must be present on the record." Vale, 512 Pa. at 296.

Here, in its Complaint, plaintiffs are asking the Court to declare that the Agreement of Sale contract is void. However, not all of the parties to the Agreement of Sale are parties to this litigation, namely Fante and Disco. Fante and Disco, along with Garagozzo, are the owners and the sellers of the property in the Agreement of Sale. Since the Court's determination of the enforceability of the Agreement of Sale will affect Fante's and Disco's rights and interests, they are necessary parties to the current litigation.

CONCLUSION

For all the foregoing reasons, defendant's Preliminary Objection to plaintiffs' Complaint is sustained.

BY THE COURT,

HOWLAND W. ABRAMSON, J.