

**IN THE COURT OF COMMON PLEAS  
COUNTY OF PHILADELPHIA  
CIVIL TRIAL DIVISION**

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<b>631 N. Broad Street, L.P.,</b> <i>Plaintiff</i>	:	<b>April Term, 2016</b>
	:	<b>No. 02632</b>
	:	
v.	:	<b>378 EDA 2018</b>
<b>Congregation Rodeph Shalom,</b> <i>Defendant</i>	:	

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FIRST JUDICIAL DISTRICT OF PHILADELPHIA  
2018 FEB 28 PM 4:41

**OPINION**

**DJERASSI, J.**

**February 28, 2018**

This Opinion follows the notice of appeal filed on January 25, 2018 by plaintiff 631 North Broad Street, L.P. (“631 N. Broad”).

On October 30, 2017, this Court entered a Findings of Fact and Conclusions of Law Upon Completion of Trial Evidence. These findings and conclusions addressed plaintiff’s action for declaratory judgment and defendant Congregation Rodeph Shalom’s action for permanent injunction. (See Exhibit A, attached and incorporated by reference here).

On October 30, 2017, this court also entered a Permanent Injunction Order enjoining plaintiff from demolishing any portion of a wall that lies over both sides of a property line separating lots at 619 North Broad Street and 631 North Broad Street. (See Exhibit B, attached and incorporated by reference here).

On November 9, 2017, plaintiff 631 North Broad Street filed post-trial motions.

On December 27, 2017, this court entered an Order Denying Post-Trial Motion. The court order stated in part that “this order shall apply to all claims, in law and equity, made by Plaintiff.” (See Exhibit C, attached and incorporated by reference here).

631 North Broad Street, Lp Vs Congregation R-OPFLD



On December 27, 2017, this court also entered a Final Judgment Order addressing all counts in both plaintiff's complaint and defendant's counterclaims---other than injunctive relief. (See Exhibit D, attached and incorporated by reference here).

On January 25, 2018, plaintiff 631 N. Broad Street filed a notice of appeal from the Final Judgment Order and the Order Denying Post-Trial Motions. In doing so plaintiff appealed both the declaratory judgment and the permanent injunction.

For the convenience of the Court, we highlight here our reasoning why a permanent injunction is necessary on the issue of irreparable harm. It is due to absence of an adequate remedy at law for defendant. At footnote 1 of the October 30, 2017 Permanent Injunction Order, this court wrote,

A permanent injunction is appropriate because there is no adequate redress at law for 631 North Broad Street's proposed demolition, partial or total, of the party wall. Demolition would prevent Congregation Rodeph Shalom from complete enjoyment of its property right. This may include using the party wall for support or fire protection for a structure in the future. It is not possible for a court to assess specific monetary damages for the many types of repercussions of a demolition conducted without the other party's consent. Assessing such damages is speculative because there are multiple factors dependent on how Rodeph Shalom or a successor buyer uses the property. These variables are unknown and may include the cost of delay if the demolition of the party wall causes future zoning litigation over what may be built, and where, on the 619 North Broad Street lot. This potential for delay relates to whenever zoning or other approvals will be necessary if the party wall is demolished and the owner of 619 North Broad Street then wants to build a structure that may impact plaintiff's planned condominiums which are below the height of the existing wall.

This injunctive conclusion of "no adequate remedy at law" follows our declaratory conclusion that the disputed wall is a party wall which may not be demolished, in its entirety or in part, without consent of the property owners of both 631 N. Broad and 619 N. Broad Street, the lot now owned by Congregation Rodeph Shalom. This court's reasons are stated in our Findings of Fact and Conclusions of Law which is submitted here as the main body of this Opinion.

A series of 19<sup>th</sup> Century Pennsylvania Supreme Court cases, addressing Philadelphia County in particular, account for the property law principles that guide this court. *Vollmer's Appeal*, 61 Pa. 118, 129 (1869); *Milne's Appeal*, 81 Pa. 54, 56 (1876). This court also explored potential exceptions to the general rule that forbids the opening of a party wall in Philadelphia without the other owner's consent, but we concluded that the circumstances in this case are not applicable because the openings proposed by plaintiff are on the property line owned by its neighbor. Compare *McCall's Appeal*, 16 W.N.C. 95 (Pa. 1895) (Opening is permitted on party wall but only on that portion of the wall that is recessed behind the property line itself).

The general principles applied by our Supreme Court follow common law first established in England during Queen Anne's reign after the Great Fire of London in the 17<sup>th</sup> Century. For reasons that make sense even today, unilateral destruction of party walls are not permitted in Philadelphia, and we respectfully request the Court to affirm.

**BY THE COURT**



**RAMY I. DJERASSI, J.**

# EXHIBIT A

IN THE COURT OF COMMON PLEAS  
COUNTY OF PHILADELPHIA  
CIVIL TRIAL DIVISION

DOCKETED

OCT 30 2017

R. POSTELL  
COMMERCE PROGRAM

631 North Broad Street, LP.,  
*Plaintiff,*

v.

Congregation Rodeph Shalom,  
*Defendant*

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April Term, 2016  
No. 02632

Commerce Program

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FINDINGS OF FACT AND CONCLUSIONS OF LAW  
UPON COMPLETION OF TRIAL EVIDENCE

**FINDINGS OF FACT**

1. Plaintiff 631 North Broad Street, LP (“631 North Broad Street”) is a Pennsylvania limited partnership that owns real property located at 631 North Broad Street in Philadelphia.
2. Defendant Congregation Rodeph Shalom (“Congregation Rodeph Shalom”) owns real property at 619 North Broad Street. This property is immediately south and adjacent to 631 North Broad Street.
3. Plaintiff 631 North Broad Street is redeveloping a brick structure that has occupied their lot on North Broad Street since the 1860s. Plans involve converting the existing building into residences while also preserving some historical portions of the building, primarily its original exterior brick walls. As part of its plan, 631 North Broad Street seeks to demolish a portion of the South Wall of the existing structure to open up light and air for several proposed apartments. These living spaces must be set back ten feet from the property line to comply with City of

631 North Broad Street, Lp Vs Congregation R-FACTS



Philadelphia building codes.<sup>1</sup> Without the partial demolition, windows of several proposed apartments as designed by plaintiff's architect would face a closed brick wall ten feet away.

4. However, the South Wall lies directly over a property line separating both litigants' real estate. The South Wall extends approximately five inches over Congregation Rodeph Shalom's 619 North Broad Street property lot.

5. The structure located at 631 North Broad was originally built to be a stable. It is unknown exactly when the stable was built, but we find construction took place during the Civil War era in the 1860's or years close in time either before or after the War. During this period, a relevant party wall statute allowed for the construction of party walls up to 6 ½ inches over a property boundary.<sup>2</sup>

6. Sometime after the stable was constructed, a commercial bakery was built at the 619 North Broad Street property. It is unknown when the bakery's construction took place, but it is clear the bakery was in operation during the first half of the 20<sup>th</sup> Century. The bakery and the stable were physically attached along the South Wall until the bakery was demolished sometime in 1949 or 1950. After the bakery's demolition, the South Wall remained attached to the stable building.<sup>3</sup> From the 1950s through the present time, no building on the 619 North Broad Street lot has physically adjoined the South Wall.

7. The South Wall as it exists today is three stories high and approximately 17 inches thick; approximately 5 inches of the wall are over the 619 North Broad Street side of the property line.<sup>4</sup> It is unknown who originally constructed the South Wall but the evidence shows the South Wall was built to be used as a single structure---with a part of the South Wall over the 619 North

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<sup>1</sup> NT 12/2/16, p. 68.

<sup>2</sup> Plaintiff's Original Proposed Findings of Fact, parag. 5.

<sup>3</sup> NT 12/2/16, p. 198.

<sup>4</sup> NT 12/2/16, p. 50.

Broad Street property line. The components of the South Wall were constructed at the same time and for use as a single wall.<sup>5</sup>

8. Congregation Rodeph Shalom purchased 619 North Broad Street in 2009. At that time, the former stable on the property at 631 North Broad Street was being used as an art gallery and was not owned by plaintiff. Today, there is a one story building located on Congregation Rodeph Shalom's 619 North Broad Street lot and this building was used until recently as an early learning center for young children. The building is not used today for this purpose and children now attend classes at Congregation Rodeph Shalom's main building across Mt. Vernon Street. Congregation Rodeph Shalom moved the children out of the building on 619 North Broad Street for reasons that we find are not related to plaintiff's proposed plans for the South Wall.

9. This existing one story building on the lot at 619 North Broad Street is separated from the South Wall by an alleyway.

10. In 2011, the South Wall required repair due to falling brick and masonry. A dispute took place between Congregation Rodeph Shalom and plaintiff's predecessor owner of the 631 North Broad Street property. Neither wanted to pay for the repairs and a lawsuit ensued. This included pleadings by Congregation Rodeph Shalom denying ownership and responsibility for the South Wall. However, the litigation was settled and Congregation Rodeph Shalom paid \$350,000 to masonry contractors to fix the South Wall's brickwork. This included adding new meshwork and a layer of stucco.<sup>6</sup>

11. After plaintiff introduced its plans for the 631 North Broad Street property to community and zoning authorities, Congregation Rodeph Shalom did not give consent to plaintiff for demolition of the South Wall, partial or complete.

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<sup>5</sup> NT 12/21/16, p. 46.

<sup>6</sup> NT 12/21/16, p. 128.

12. Ultimately the dispute led to legal action on two fronts. The first was this case, filed by 631 North Broad Street in the Commerce Court to quiet title and for issuance of a declaratory judgment. Later, Congregation Rodeph Shalom sought injunctive relief in this court to block demolition while this lawsuit remains pending. The second track involved zoning litigation in Philadelphia's Zoning Board of Adjustment ("ZBA"). On appeal to Common Pleas Court by Congregation Rodeph Shalom from an adverse decision by the ZBA, the zoning issues were ultimately decided in favor of 631 North Broad Street by this court and are not in litigation now.

13. After the zoning issues were decided in favor of plaintiff, this court granted preliminary injunction in favor of Congregation Rodeph Shalom to stay a demolition permit issued to plaintiff by Philadelphia's Department of Licenses and Inspection to take down the South Wall. The preliminary injunction was explained in a Memorandum Order dated March 1, 2017.

14. We find that if this court is reversed, plaintiff's demolition plans comply with Philadelphia's Department of Licenses and Inspections requirements to take the South Wall down safely, either partially or completely.

#### **CONCLUSIONS OF LAW**

14. In its Complaint, Plaintiff 631 North Broad Street seeks declaratory judgment granting permission to demolish all or part of the South Wall. Defendant Congregation Rodeph Shalom opposes and argues that 631 North Broad Street may not do so without its consent because it has an ownership interest in the South Wall.

15. The declaratory judgment count is intertwined with a second count in quiet title. 631 North Broad Street claims property law gives it complete title to the South Wall. As a result, 631 North Broad Street asserts it has the right to carry out its unilateral plans for the South Wall. Congregation Rodeph Shalom disagrees.



16. Congregation Rodeph Shalom's pleadings during its lawsuit with plaintiff's predecessor over repairs to the South Wall in 2011 are not material to the property law issues now before this court.

17. We conclude Congregation Rodeph Shalom prevails on the merits on declaratory judgment and in quiet title because the South Wall is a party wall which defendant owns in part and plaintiff owns in part. No owner may make an opening on a party wall without the other owner's consent.

18. The South Wall partially lies on Congregation Rodeph Shalom's side of the property line, a fact agreed by stipulation.<sup>7</sup> For many years up to the demolition of the bakery in 1949 or 1950, the South Wall supported buildings belonging to owners on both sides of the property line.

19. Since acquiring ownership of the 619 North Broad Street lot, Congregation Rodeph Shalom has not abandoned its rights to the wall as demonstrated by its repair of the South Wall in 2011.<sup>8</sup>

20. 631 North Broad Street argues that it is entitled to quiet title and declaratory judgment on grounds that Congregation Rodeph Shalom has no property interest in the South Wall. 631 North Broad Street posits two grounds for its position. First is its claim that the South Wall is not a party wall. Second is its claim that even if the South Wall is a party wall, Congregation Rodeph Shalom has no remaining interest because the South Wall is no longer used for its original purpose. 631 North Broad Street argues the party wall belongs either to the property owner whose predecessor originally built the wall or to the owner of the surviving building when the adjoining building has been destroyed. None of these points is correct.

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<sup>7</sup> NT 12/21/16, p. 196.

<sup>8</sup> NT 12/21/16, p. 128.

21. In reaching our conclusion, we first look to our own Commerce Court precedent. As U.S. District Judge C. Darnell Jones, II summarized when he served on Commerce Court, “A party wall sits between adjoining properties. Each property is servient to the service of the other with respect to the property wall. The primary factor in determining whether a wall is a party wall is the intent of the builder. Other factors include the wall’s location with reference to the boundary line between adjoining properties...the understanding of the adjoining owners at the time it was built, and its use for a long number of years.”<sup>9</sup>

22. Ordinarily, a party wall is constructed upon the division line, and each adjoining lot owner has an easement on his neighbor's premises to assure the support and any other particular use that is made of the party wall.<sup>10</sup> “It is not necessary that such a wall be used to support the roof or floors of both buildings. It is enough that the wall be used as a curtain wall, protecting the buildings from the elements and protecting the spread of fire.”<sup>11</sup>

23. The situation presented here raises the question what happens to the status of a party wall after its ordinary party wall uses are no longer applicable because of the demolition of one of the attached buildings?

24. Evidence established the South Wall was built as a party wall in accordance with relevant Pennsylvania statutes and Philadelphia ordinances authorizing builders to encroach over property lines when building party walls. Photo evidence also established actual use of the South Wall as a party wall for many years connecting the bakery and the stable. After the bakery was demolished, the South Wall was left standing and no evidence shows any of the subsequent 619

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<sup>9</sup> *Turchi v. MCW Washington Square Partners*, Aug. Term 2004, No. 1187, p. 4 (Phila. Ct. of Common Pleas, Commerce Program, Jan. 3, 2006, C. Darnell Jones, II, J.)(memorandum opinion published on FJD website and available at <http://www.courts.phila.gov/PDF/cpcvcomprg/040801187.pdf>) citing *Lukens v. Lasher*, 51 A. 887 (Pa. 1902); *Appeal of the Western National Bank*, 102 Pa. 171 ( 1883); *McClernan v. Greenberg*, 182 A.59, 61, 64 (Pa. Super. 1935)

<sup>10</sup> *Sobien v. Mullin*, 783 A.2d 795, 798 (Pa. Super. 2001) citing *Bright v. Morgan*, 67 A. 58 (Pa. 1907).

<sup>11</sup> *Gimbel Bros. v. Markette Corp.*, 307 F.2d 91, 93 (3d Cir. 1962).

North Broad Street owners sold or otherwise devised their interest in the South Wall or the land on which the party wall lies.

25. Upon review, we conclude the South Wall remains a party wall today, even though it is presently not used for ordinary party wall purposes. We are persuaded that despite its lapsed use for ordinary party wall purposes, the wall lies over Congregation Rodeph Shalom's property line and the Congregation has not abandoned its maintenance of the wall. It is also unknown what use a developer on the 619 North Broad Street side may want to make of the South Wall in the future.

26. Again, it is undisputed that the property line between plaintiff and defendant's properties runs beneath the wall. Approximately 5 inches are on the 619 North Broad Street side. There is no evidence of any express easements or covenants that affect the property status or use of the party wall in the event one of the adjoining buildings is demolished. Nothing states that ownership of the wall transfers to the lot owner who owns the last building standing. There is no easement running personally or with the land that grants any special rights such as the privilege to break into the wall and create a hole or opening.<sup>12</sup> And there is no evidence to this point that one party has contracted with the other to alter the legal status of the wall from party ownership to sole ownership. Nor is there evidence to this point that plaintiff has purchased defendant's land on which a part of the South Wall stands.

27. Accordingly, both 631 North Broad Street and Congregation Rodeph Shalom own the South Wall whether it is called a party wall, a joint wall or something else.<sup>13</sup>

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<sup>12</sup> Compare *Turchi*, Aug. Term 2004, No. 1187, at p. 6 (Court found existence of express easements in applicable deeds).

<sup>13</sup> See *Evans & Watson v. Jayne*, 23 Pa. 34, 36 (1854), "When a fence or party wall is constructed, "the regulation of its enjoyment and repair is as plain as that belonging to *any other property held in common.*" (italics added)

28. In this context and absent express agreements, we conclude that Congregation Rodeph Shalom is entitled to title recognition of its part ownership of the South Wall. We will therefore enter declaratory judgment in favor of Congregation Rodeph Shalom and 631 North Broad Street is permanently enjoined from demolishing the South Wall, either completely or partially, without the other owner's consent.

29. Reviewing cases cited by plaintiff in briefs and at closing argument, we note that none stands for the proposition that a party wall loses its status as a party wall simply by demolition of the wall itself or an adjoining building. Courts hold that an owner of a party wall may take a party wall down only on condition that the owner rebuild it.<sup>14</sup>

30. Plaintiff cites *Jackman v. Rosenbaum Co.*<sup>15</sup> for the proposition that party walls lose their legal status when the wall's use changes, but on review we note *Jackman* addresses different issues and is inapplicable. *Jackman* considers a negligence claim and whether consequential damages are available to a property owner for lost business sales after a neighboring owner negligently demolished an old wall *which was entirely on the neighbor's side of the property line*. This is not the situation here.

31. On the question of one party unilaterally opening a hole in the wall without the other's permission, the Pennsylvania Supreme Court long ago said no in *Milne's Appeal*.<sup>16</sup> When a party wall exists, an owner of the party wall is entitled to a solid wall.

32. In *Milne*, defendant built a party wall on a Lombard Street property in Philadelphia. The wall's foundation encroached over a property line into plaintiff's lot. When defendant's wall

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<sup>14</sup> *Evans & Watson v. Jayne, supra.* at 36. ("...the builder of a new house may take down a party-wall that is insufficient for his purposes, and rebuild it at his own expense...")

<sup>15</sup> *Jackman v. Rosenbaum Co.*, 263 Pa. 158 (1919)

<sup>16</sup> *Milne's Appeal*, 81 Pa. 54, 56 (1876) (another benefit of a party wall owner "is the right to have a solid wall (without openings) of brick or stone or other non-combustible materials").

was finished, defendant constructed window openings along the wall, annoying plaintiff and provoking a lawsuit. Even though the party wall ended behind defendant's own property line, the *Milne* Court held it made no difference. Because the wall had infringed on plaintiff's property at some point, the entire wall was a party wall. The Court then issued an injunction to remove the window openings created by the defendant and restore to plaintiff the benefits he was entitled to through ownership of his side of a party wall.

33. The *Milne* Court cited *Vollmer's Appeal*, which a few years earlier had held that a party wall in Philadelphia must be a solid wall of brick or stone, without openings and that if a builder does not comply, "he becomes a trespasser and a wrongdoer."<sup>17</sup> In explanation, *Vollmer's Appeal's* author, Justice John M. Read, reviewed statutory history going back to The Building Acts in England under King Charles II and Queen Anne whose governments were responding to the Great Fire of London in 1666. The Building Acts were sources for Pennsylvania's colonial legislation of 1721 that set the Commonwealth's first rules for party walls applicable to Philadelphia. Statutory law governing party walls in Philadelphia existed when the South Wall was built and the law was enforced by the *Milne* and *Vollmer's Appeal* courts.<sup>18</sup> Since a party wall must be a solid wall unless the parties agree otherwise, 631 North Broad Street may not create any opening to the party wall without consent of Congregation Rodeph Shalom.<sup>19</sup>

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<sup>17</sup> *Vollmer's Appeal*, 61 Pa. 118, 129 (1869). ("But the windows in this party wall are wrongfully and illegally put there, contrary to law, and with a direct intention to do an unlawful act for the private benefit of the defendant. Using the language of the English Building Act, it is a nuisance, both public and private, and is clearly within the restraining powers of a court of chancery".)

<sup>18</sup> See the Acts of February 2, 1854, April 21, 1855 and May 13, 1856 followed by an enactment on May 7, 1855, Pampl. L. 464 in which the legislature passed, "An act to provide for the regulation and inspection of buildings in the city of Philadelphia, and for the better preservation of life and property", followed by additional acts on April 11, 1856 (Pamph. L. 319, May 20, 1857, Pamph. L. 590, and April 13, 1858, Pamph. L. 244) to form the supervisory system in Philadelphia that was in place when the party wall in this case was built.

<sup>19</sup> Since issuing our preliminary injunction memorandum entered on March 1, 2017, further review identified common law consideration *in dicta* of the possibility of an exception to this rule for openings for air and light. See *Bedell v. The Rittenhouse Company*, 5 Pa. D. 689 (Ct. Common Pleas, Phila., Sulzberger, J. 1896). On checking *Bedell's* citation to *McCall's Appeal*, 16 W.N.C. 95 (Pa. 1895), we find the common law is firm as stated in *Milne* and *Vollmer*. A party wall in Philadelphia must remain solid and be made of stone or brick. In *McCall's Appeal*, our

34. 631 North Broad Street, nonetheless claims otherwise, citing *Roberts v. Bye*<sup>20</sup> and *Masson and Besanson's Appeal*.<sup>21</sup> These cases are cited for the proposition that the party who built the wall is entitled to sole ownership of a party wall if the other party has not paid his share of the costs of the wall's construction. This involves a different legal issue than reviewed here. Over two days of testimony, no evidence was presented on whether the construction costs of the South Wall were paid, or not, by the adjoining landowner and no evidence was offered conclusively as to who put up the wall and when. As the South Wall's initial construction costs are not in evidence, neither *Roberts v. Bye* nor *Masson and Besanson's Appeal* is helpful. *Milne's Appeal* does not cite either case, and *Vollmer's Appeal* which was decided after *Roberts v. Bye* makes no mention of *Masson and Besanson's Appeal*.<sup>22</sup>

35. While these conclusions dispose of plaintiff's declaratory judgment and quiet title actions in favor of Congregation Rodeph Shalom, defendant has filed counterclaims.

36. As to Counterclaim Count I—Unclean Hands and Estoppel, defendant Congregation Rodeph Shalom's counterclaim was not orally argued at closing. Based on evidence presented, we conclude defendant has not met its burden to prove unclean hands and estoppel against 631 North Broad Street because the counterclaim is based on the conduct of the predecessor owner who is not a party here.

37. As to Counterclaim II-Quantum Meruit, we conclude this count is moot. Our legal holding in favor of defendant on plaintiff's actions for declaratory judgment and quiet title

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Supreme Court permitted wall openings but only on that portion of a wall that had been fully recessed behind the property line.

<sup>20</sup> *Roberts v. Bye*, 30 Pa. 375 (1858)

<sup>21</sup> *Masson and Besanson's Appeal*, 70 Pa. 26 (1871)

<sup>22</sup> *Compare Cohen v. Perrino*, 355 Pa. 455 (1947) ("If a property owner builds a wall entirely on her own property, the wall is not a party wall and the property owner may create windows and openings through the wall as she pleases; however if the adjoining property owner retaliates by building a wall on his side of the property line, and the new wall obstructs the other property owner's air and light, the obstructing property owner has every right to do so, even if her motive is malicious.").

forecloses defendant from collecting quantum meruit for conduct that took place before plaintiff owned the property.

38. As to Counterclaim III-Trespass, we conclude defendant has not met its burden. There is no evidence that any entry by plaintiff or its agents caused destruction to Congregation Rodeph Shalom's property or harm to any person who is a member, employee, agent, vendor, guest or other person associated with Congregation Rodeph Shalom and its religious community.

39. As to Counterclaim IV-Defendant's Failure to Comply with Building and Zoning Codes, we conclude this claim is moot. This court has previously addressed these issues in the context of the ZBA appeal and concluded against Congregation Rodeph Shalom.

40. As to Counterclaim V-Declaratory Judgment, we conclude this claim, as proposed, is not properly before this court and is dismissed. It is presented as a hypothetical without evidentiary basis. We note the written counterclaim was argued at closing by Congregation Rodeph Shalom but we specifically decline to enter a judgment that "even if it [plaintiff] is permitted to demolish a portion of the South Wall, Counterclaim Defendant shall not have any such rights to light, air or open space and that a new wall may be built up to the property line of the 619 Property and Counterclaim Defendant is enjoined from asserting any such rights and awarding Counterclaim Plaintiff costs of suit and such other relief that the Court in its discretion may deem equitable and just".

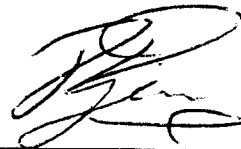
41. We hold only that land under part of the existing South Wall belongs to Congregation Rodeph Shalom and the South Wall is a party wall owned in part by Congregation Rodeph Shalom.

42. In proposing to unilaterally demolish a portion of the party wall for purposes solely related to its own architectural choices, 631 North Broad Street is proposing to do

something the law forbids. There are no implied or expressed easements or covenants giving 631 North Broad Street the right to unilaterally alter the party wall. Congregation Rodeph Shalom prevails on the merits at Count 1 and Count 2 of plaintiff's Complaint. In sum, we conclude the South Wall is a party wall which is not subject to unilateral changes.

Date: October 30, 2017

**BY THE COURT**

A handwritten signature in black ink, appearing to read 'Ramy I. Djerasi, J.', written in a cursive style.

**RAMY I. DJERASSI, J.**



# EXHIBIT B

IN THE COURT OF COMMON PLEAS  
COUNTY OF PHILADELPHIA  
CIVIL TRIAL DIVISION

DOCKETED

631 N. Broad Street, LP.,  
*Plaintiff,*

v.

Congregation Rodeph Shalom,  
*Defendant*

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: April Term, 2016  
: No. 02632  
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: Commerce Program  
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R. POSTEL  
COMMERCE PROGRAM

PERMANENT INJUNCTION ORDER

And now, this 30th day of October, 2017, following a nonjury trial on Monday, September 25, 2017 and entry of Findings of Fact and Conclusions of Law today, it is hereby ORDERED and DECREED as follows:

1. 631 North Broad Street, LP is PERMANENTLY ENJOINED from demolishing any portion of the party wall between the properties located at 619 and 631 North Broad Street without the consent of Congregation Rodeph Shalom.<sup>1</sup>

BY THE COURT



RAMY I. DJERASSI, J.

<sup>1</sup> “[I]n order to establish a claim for a permanent injunction, the party must establish his or her clear right to relief. However, unlike a claim for a preliminary injunction, the party need not establish either irreparable harm or immediate relief and a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law.” *Buffalo Twp. v. Jones*, 813 A.2d 659, 663 (Pa. Super. 2002). As discussed in our Findings of Fact and Conclusions of Law entered today, Congregation Rodeph Shalom has legal ownership rights in the party wall that lies over both the 619 and 631 North Broad Street properties. A permanent injunction is appropriate because there is no adequate redress at law for 631 North Broad Street’s proposed demolition, partial or total, of the party wall. Demolition would prevent Congregation Rodeph Shalom from complete enjoyment of its property right. This may include using the party wall for support or fire protection for a structure in the future. It is not possible for a court to assess specific monetary damages for the many types of repercussions of a demolition conducted without the other party’s consent. Assessing such damages is speculative because there are multiple factors dependent on how Rodeph Shalom or a successor buyer uses the property. These variables are unknown and may include the cost of delay if the demolition of the party wall causes future zoning litigation over what may be built, and where, on the 619 North Broad Street lot. This potential for delay relates to whether zoning or other approvals will be necessary if the party wall is demolished and the owner of 619 North Broad Street then wants to build a structure that may impact plaintiff’s planned condominiums which are below the height of the existing party wall.

631 North Broad Street, Lp Vs Congregation R-ORDER



# EXHIBIT C

DOCKETED

DEC 28 2017

R. POSTELL  
COMMERCE PROGRAM

IN THE COURT OF COMMON PLEAS  
COUNTY OF PHILADELPHIA  
CIVIL TRIAL DIVISION

631 N. Broad Street, LP.,  
*Plaintiff,*

v.

Congregation Rodeph Shalom,  
*Defendant*

:  
: April Term, 2016  
: No. 02632  
:  
: Commerce Program  
:  
: Control Number: 17111337  
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ORDER DENYING POST-TRIAL MOTIONS

And now, this 27th day of December, 2017, upon consideration of Plaintiff's Post-Trial Motions following a nonjury trial on Monday, September 25, 2017, Defendant's Response in Opposition, and Plaintiff's Reply, it is ORDERED and DECREED that Plaintiff's Post-Trial motions are DENIED for the reasons stated in our Findings of Fact and Conclusions of Law and our grant of a permanent injunction.<sup>1</sup> This order shall apply to all claims, in law and equity, made by Plaintiff.

BY THE COURT



RAMY V. DJERASSI, J.

<sup>1</sup> Research has revealed an ambiguous legal question whether this Court's Order of Permanent Injunction issued on October 30, 2017 immediately superseded our prior preliminary injunction, or whether the permanent injunction only becomes effective after resolving pending post-trial motions.. Compare *Chalkey v. Roush*, 805 A.2d 491, 496 (Pa. 2002) (finding a trial court's order at the conclusion of a trial, whether in law or in equity, cannot become final for purposes of filing an appeal until the court decides any timely post-trial motions) with *PA Energy Vision, LLC v. S. Avis Realty, Inc.*, 120 A.3d 1008, 1012-13 (Pa. Super. Ct. 2015) permanent injunction issued prior to filing post-trial motions supersedes and moots a prior preliminary injunction); see also *Den-Tal-Ez, Inc. v. Siemens Capital Corp.*, 566 A.2d 1214, 1217 n. 1 (Pa. Super. Ct. 1989); *Izenson v. Izenson*, 418 A.2d 445, 446 (Pa. Super. Ct. 1980). In light of today's denial of Plaintiff's Post-Trial Motions and entry of our accompanying Final Judgment Order, this legal question is moot. The permanent injunction is clearly in force.

631 North Broad Street,-ORDER



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# EXHIBIT D



IN THE COURT OF COMMON PLEAS  
COUNTY OF PHILADELPHIA  
CIVIL TRIAL DIVISION

DOCKETED

631 N. Broad Street, LP.,  
*Plaintiff,*

:  
: April Term, 2016  
: No. 02632

DEC 28 2017

v.

:  
: Commerce Program

R. POSTELL  
COMMERCE PROGRAM

Congregation Rodeph Shalom,  
  
*Defendant*

FINAL JUDGMENT ORDER

And now, this 27th day of December, 2017, following a bench trial held September 25, 2017, for the reasons stated in this court's Findings of Fact and Conclusions of Law,<sup>1</sup> it is hereby ORDERED and DECREED that JUDGMENT is a follows:

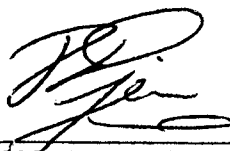
1. JUDGMENT IS ENTERED in favor of Defendant Congregation Rodeph Shalom as to Count I, Declaratory Relief of Plaintiff 631 N. Broad Street LP's Complaint. Defendant Congregation Rodeph Shalom is the legal owner of a portion of the South Wall, and Plaintiff 631 N. Broad Street, LP may not demolish the South Wall, in its entirety or partially, absent agreement or otherwise by the property owner of 619 North Broad Street, its assigns, heirs and successors.
2. JUDGMENT IS ENTERED in favor of Defendant Congregation Rodeph Shalom as to Count II, Action to Quiet Title of Plaintiff 631 N. Broad Street LP's Complaint. Defendant Congregation Rodeph Shalom is the owner, in fee simple, of a portion of the South Wall on 619 North Broad Street. Congregation Rodeph Shalom, as the property owner of 619 North Broad Street, and 631 North Broad Street, LP as the property owner of 631 North Broad Street, both have easement rights for use of the South Wall as a party wall.
3. JUDGMENT IS ENTERED against Defendant Congregation Rodeph Shalom as to Counterclaim Count I, Unclean Hands and Estoppel. Defendant has not met its burden of

<sup>1</sup> This court incorporates and adopts by reference its Findings of Fact and Conclusions of Law in its entirety.

proof because the counterclaim is based on the conduct of the predecessor owner who is not a party here.

4. JUDGMENT IS ENTERED against Defendant Congregation Rodeph Shalom as to Counterclaim II, Quantum Meruit. Our legal holding in favor of Defendant on Plaintiff's actions for Declaratory Judgment and Quiet Title forecloses Defendant from collecting quantum meruit for conduct that took place before Plaintiff owned the property.
5. JUDGMENT IS ENTERED against Defendant Congregation Rodeph Shalom's Counterclaim Count III, Trespass. Defendant failed to meet its burden of proof. There is no evidence that any entry by Plaintiff or its agents caused destruction to Congregation Rodeph Shalom's property or harm to any person who is a member, employee, agent, vendor, guest or other person associated with Congregation Rodeph Shalom and its religious community.
6. JUDGMENT IS ENTERED against Congregation Rodeph Shalom as to Counterclaim Count IV, Failure to Comply with Building and Zoning Code. This counterclaim is moot since this court has previously addressed these issues in the context of a ZBA appeal and concluded against Congregation Rodeph Shalom.
7. JUDGMENT IS ENTERED against Defendant Congregation Rodeph Shalom as to Counterclaim Count V, Declaratory Judgment. This claim is presented as a hypothetical without evidentiary basis and is denied for the reasons stated in this court's Findings of Fact and Conclusions of Law.

**BY THE COURT**



**RAMY I. DJERASSI, J.**