Actions to Quiet Title in Pennsylvania

By Bradley S. Dornish, Esq.

In Pennsylvania there existed a long history of various different actions in equity, such as a "bill quia timet", which were designed to clear different types of clouds on the title to particular parcels of real estate within the Commonwealth. As part of an effort to streamline and simplify legal proceedings in Pennsylvania, Rule 1061 et. seq. of the Pennsylvania Rules of Civil Procedure, creating an action at law to quiet title in 1947. Since the adoption of these rules and the creation of this action, an action at law to quiet title has been the exclusive way to clear title to real estate except in actions involving injunctions, which are still handled in equity, and not at law.

The purpose of a quiet title action is to resolve a conflict over an interest in real property. It is not an eviction action or an ejectment action addressing possession of the property, but an action to resolve competing claims to or open clouds on title. In fact, under PA R.C.P. 1061(b)(1), an action to quiet title may not be used when an action in ejectment is available. The interest in real estate subject to a quiet title action can be the entire fee simple interest in the property, or some lesser interest in the property, such as an easement, a mortgage, or even mineral or oil and gas rights.

Generally, an ejectment action can be used by someone out of possession of real property to obtain possession under a claim of title superior to that of the person in possession of the property. Conversely, a quiet title action is normally brought by someone who is in possession of property to extinguish the rights of others which cloud his or her title and could otherwise be used to challenge that that title, ultimately affecting their continued possession. If a plaintiff files a quiet title action where an ejectment action was the correct form, some Pennsylvania courts have allowed the amendment of the complaint to plead the correct form of action. Plauchak v. Boling, 439 Pa. Super. 156, 653 A.2d 671 (1995). However, there are many instances where someone who is not in possession may not be able to bring an ejectment action because they do not or may not have the right to full possession of the property even with the title they seek to prove. For example, a landlord under a valid and ongoing lease who also gave the tenant a recorded option to buy the property, or an agreement of sale to buy the property, of which a

memorandum was recorded, would not have the right to immediate possession of the property because of the lease, even if the option or memorandum of agreement creating a cloud on the title were cleared. Therefore, an ejectment action would not be available to that landlord, and he or she would be able to file a quiet title action. Brennan v. Shore Brothers, Inc., 380 Pa. 283, 110 A.2d 401 (1955).

Quiet title actions are also used by former owners of real estate which has been sold at tax sale or judicial sale to attack defects in the sale which would invalidate the deed by which they lost title, and by purchasers of property at tax or judicial sales to clear or confirm the deed by which they obtained title. Pa. R.C.P 1061(b)(4). We often file quiet title actions to clear old mortgages which have not been satisfied in the Recorder of Deeds' office, to clear an old easement or right of way which hinders further development of the parcel, or to clear the interest of someone whose signature was missed long ago on a deed in the chain of title to the property. These actions are necessary so that owners can sell or mortgage their properties and get clear and insurable title.

Sometimes, the title insurers will allow us to issue the title insurance on the properties without exception for the cloud on the title. This is possible only if the cloud is of the type which will clearly be able to be removed by the quiet title action, we escrow the cost of the quiet title action, and our law firm agrees to pursue that action on behalf of the owners of the property. In these instances, it is clearly an advantage to the buyers to use a settlement or closing company affiliated with a law firm known to the title insurance company to be experienced in and capable of handling quiet title actions. Without the law firm escrow arrangement for a quiet title action, the sale or refinance would have to wait for the title to be quieted before closing, meaning the seller would not have the sale proceeds or the refinancing owner would not have the loan proceeds from which to pay for the quiet title action.

Quiet title actions can also be used to determine the respective interests of different parties claiming an interest in real estate to oil and gas rights related to the property. These actions are becoming more common in Pennsylvania as landowners seek to enter into gas leases, only to have a thorough title search by the gas company before they pay the owner reveal competing claims to the gas rights and royalties.

Quiet title actions are also used by those who believe they have met the time and possession requirements for adverse possession to take the title from

the record owner through the determination of the court. Adverse possession is the subject of another entire article, so it won't be discussed here at greater length.

Finally, a quiet title action can be used by someone in possession of property to force someone else to file, record or satisfy of record a document affecting title, or to compel someone who has threatened to file an ejectment action, but has not yet filed, to move forward with the action or lose the right to do so in the future. Roberts v. Estate of Pursley, 700 A.2d 475, (Pa. Super. Ct. 1997).

Once it is determined that a quiet title action is the appropriate action to address the title problem affecting the property, the process under the rules is relatively simple and the time line to completion of the actions shorter than many other lawsuits. The action must be filed in a county where all or part of the land in question is located. Pa. R.C.P. 1062. It can be started by a complaint by one party against the others who have apparent interests in the record title to the property. In the alternative, if both parties agree that the court should resolve the title to the property between them, an amicable action to quiet title can be used instead of a complaint, saving time and attorneys' fees. Pa.R.C.P. 1063.

The quiet title action is a non-jury action heard by a judge. Pa. R.C.P. 1067. The action follows the rules for civil actions except as modified by the specific rules for these actions. The complaint in a quiet title action must state who is in possession of the property. It must also identify any statutes, such as the adverse possession law, which give the plaintiff the right to file the action. If there are deeds, mortgages, easements or other writings upon which the action is based, they should be attached to the complaint. The complaint must also identify with specificity the land which is the subject of the action. This may already be in the deed or other documents attached, but in some cases, such as certain adverse possession claims, it may be a claim to only part of a property identified in a deed.

Once the complaint is filed, service of the complaint can be a complicating factor. Many defendants cannot be found, particularly when the quiet title involves an old private mortgage, an old easement, or an heir whose signature was missed long ago. These actions require more effort to find and serve the defendants, but after a good effort, courts are likely to allow service by posting or the more expensive publication in a newspaper of general circulation in the county where the property is located. The rest of that type of case usually moves quickly due to lack of opposition.

Once served, a defendant can of course file preliminary objections if the complaint does not meet the above requirements. It has been my experience that judges liberally allow amendments of the complaints in these types of actions to allow for correction of errant complaints, but the procedure causes delay and increases legal fees for both sides. A defendant in a quiet title action can file with an answer a counterclaim which is contractual (as opposed to a tort claim for negligence, for example), and which arises from the same circumstances as the quiet title claim. If the defendant who files a counterclaim wants to quiet title in his or her name, however, that must be plead as a counterclaim or can be lost. Carringer v. Taylor, 402 Pa. Super. 197, 586 A.2d 928, (1990).

The Rules provide that the plaintiff who files the quiet title action has the burden of proving the facts which support his claim to title, but the burden of proof is a mere preponderance of the evidence, often described as tipping the scales by the weight of a feather. Poffenberger v. Goldstein, 776 A.2d 1037, Pa. Commw. Ct. 2001). In cases where the defendants don't appear to defend their claim to title, the standard is usually very easy to meet.

Once the judge decides the quiet title action, an appeal is more difficult to win, since the appellate courts are limited to reviewing whether the trial court's findings are supported by competent evidence. Watkins v. Watkins, 775 A.2d 841 (Pa. Super. Ct. 2001). The appellate courts don't typically reverse trial courts in quiet title actions absent a capricious or reckless disregard of the evidence.

Overall, quiet title actions are versatile, relatively quick, taking only a few months most of the time, and relatively inexpensive; we usually estimate under $2,500.00 in court costs and attorneys' fees unless there is strong opposition. They are a useful tool in clearing all sorts of title problems, and making sales, refinances and developments happen. Every real estate investor should know enough about quiet title actions at least to consider the possibility before walking away from a transaction with a clouded title.