

ORIGINAL

IN THE COURT OF COMMON PLEAS
OF LEBANON COUNTY, PENNSYLVANIA

ENTERED & FILED
PROTHONOTARY OFFICE

CIVIL DIVISION

2025 MAY -9 A 9:30

MARK FOX and THUONG FOX

v.

Docket No: 2023-0-1300

PETER COOK, GLENDA COOK, TED
KLEINSASSER, JUST FOR YOU
CONSTRUCTION, LLC., GARY KUNKLE,
PREMIER RESIDENTIAL SERVICES,
STAR MANAGEMENT, and COMPLETE
DISASTER SERVICES, LLC.

ORDER OF COURT

AND NOW, to wit, this 8th day of May 2025, after careful consideration of the record, Defendants', Peter Cook and Glenda Cook, Motion for Judgment on the Pleadings is hereby **GRANTED**.

BY THE COURT:


CHARLES T. JONES, JR.

cc: Jason J. Schibinger, Esq. // 525 S. 8th St. Lebanon, PA 17042 | Prothy Mailbox
Joseph F. Murphy, Esq. // 960 B Harvest Drive, Bldg. B. Suite 100, Blue Bell, PA 19422 | Mailed
Christopher M. Reeser, Esq. // 200 Corporate Center Drive, Suite 300, Camp Hill, PA 17011 | Mailed
Stephanie E. DiVittore, Esq. // 213 Market Street, 12th Floor, Harrisburg, PA 17101 | Mailed
Gary Kunkle // 3 Charles Place, Brownstown, PA 17508 | Mailed

Pursuant to Pa. R. Civil P. 236
All parties are hereby notified
this date: 05/09/2025 SR
Prothonotary, Lebanon PA

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Docket No: 2023-0-1300

APPEARANCES:

Jason J. Schibinger, Esquire

For Plaintiffs

Joseph F. Murphy, Esquire

For Defendants,
Peter Cook and Glenda Cook

Stephanie E. DiVittore, Esquire

For Defendants,
Ted Kleinsasser and
Just For You Construction, LLC

Christopher M. Reeser, Esquire

For Defendants,
Wayne Zimmerman and
Complete Disaster Services, LLC

Gary Kunkle

Self Represented Litigant

Premier Residential Services

Self Represented Litigant

Star Management

Self Represented Litigant

OPINION BY JONES, JR. J.:

Before this Court is Defendants', Peter Cook and Glenda Cook, Motion for Judgment on the Pleadings regarding a civil action commenced by Plaintiffs against all Defendants.

FACTUAL/PROCEDURAL HISTORY

On October 3, 2023, Plaintiffs, Mark Fox and Thuong Fox, initiated this action against Defendant, Peter Cook, by filing a Praecipe for Writ of Summons. Subsequently, on March 4, 2024, Plaintiffs filed a Complaint adding Glenda Cook, and additional parties as Defendants. Plaintiffs live at 109 Mountain Lane, Lebanon, PA, 17042 (Fox Lot). Defendants, Peter Cook and Glenda Cook (herein "the Cooks") live at 292 Rexmont Road, Lebanon, PA, 17042 (Cook Lot). A portion of the Fox Lot is directly adjacent to the Cook Lot which consisted of mostly timber. Plaintiffs' Amended Complaint alleges the following facts pertaining to three distinct claims for Conversion of Timber, Negligence, and Trespass.

The Cooks hired Defendant Ted Kleinsasser, who is the owner of Just For You Construction, LLC to perform the timbering for the construction of their home. Defendant, Ted Kleinsasser, avers he hired a subcontractor, "Clearlot", who has not been added to this matter, to perform the actual timbering on the Cook Lot. Just For You Construction, LLC, was then hired by the Cooks to build a house on the Cook Lot. Star Management Group, Inc, which is owned by Defendant Gary Kunkle, was hired by Just For You Construction to survey the Cook Lot and the housing site. Defendant Gary Kunkle and Star Management Group, Inc. are also associated with Premier Residential Services. Just For You Construction hired Complete Disaster Services, LLC, which is owned by Defendant Wayne Zimmerman, to clear the Cook Lot as part of the construction for the Cooks' residence.

Furthermore, Plaintiffs' Amended Complaint alleges that on May 30, 2022, and/or May 31, 2022, Complete Disaster Services removed about one-quarter acre of trees on the Fox Lot. Plaintiffs claim that the Cook Lot was either incorrectly surveyed by Star Management Group or, if it was surveyed, Just For you Construction and/or Complete Disaster Services, did not properly follow the boundary lines. Plaintiffs contend that they wanted to keep their trees and did not give Defendants permission to enter their property or to remove trees and/or excavate their property. Plaintiffs also allege that Just For you Construction and/or Complete Disaster Services sold the lumber and trees that were removed from Plaintiffs' property and those funds were never refunded to Plaintiffs.

On March 18, 2024, the Cooks filed Preliminary Objections to the Complaint, requesting a demurrer to each of the causes of actions against the Cooks for failure to state a claim. The case was scheduled for Oral Argument on May 3, 2024. Plaintiffs did not file a response to the Cooks' Preliminary Objections. However, on May 1, 2024, Plaintiffs filed an Amended Complaint which removed the Cooks as defendants in the caption. On May 13, 2024, Defendants, Wayne Zimmerman and Complete Disaster Services, LLC, filed Answer to Plaintiffs Amended Complaint with New Matter and Crossclaims. In the New Matter filed by Wayne Zimmerman and Complete Disaster Services, LLC, the Cooks were relisted as defendants in the caption and crossclaims were asserted against "co-defendants".

On September 25, 2024, the Cooks filed a Motion for Judgment on the Pleadings. On December 20, 2024, Wayne Zimmerman and Complete Disaster Services, LLC, filed a Statement of Non-Opposition to the Cooks' Motion for Judgment on the Pleadings. Plaintiffs did not file a response to the Defendants' Motion for Judgment on the Pleadings. Oral Argument on this matter was heard on January 3, 2025. This matter is now ripe for disposition.

STANDARD OF REVIEW

Pursuant to Pa.R.C.P. 1034(a)(b), any party may move for judgment on the pleadings after the pleadings are closed but within such time as not to delay trial. **Pa.R.C.P. 1034(a)(b)**. A motion for judgment on the pleadings is similar to a demurrer. *Citicorp N. Am., Inc. v. Thornton*, 707 A.2d 536, 538 (Pa. Super. 1998). The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. *Donaldson v. Davidson Bros.*, 144 A.3d 93, 100 (Pa. Super. 2016) (citing *Tucker v. Philadelphia Daily News*, 577 Pa. 598, 848 A.2d 113, 131 (2004)). Grant of judgment on the pleadings is proper only when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law. *Front St. Dev. Assocs., L.P. v. Conestoga Bank*, 161 A.3d 302, 307 (Pa. Super. 2017). Upon review, a Court must accept as true all well-pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against whom the motion is filed, considering only those facts which were specifically admitted. *Id.* (citing *Angino & Rovner v. Jeffrey R. Lessin & Associates*, 131 A.3d 502, 507 (Pa. Super. 2016)).

DISCUSSION

Defendants Peter Cook and Glenda Cook argue that there are no factual allegations against the Cooks in any of the pleadings. Therefore, the Cooks contend that no cause of action under any theory of law has been established against them. No party in this matter filed a brief in opposition the Cooks' Motion for Judgment on the Pleadings.

Plaintiffs' Amended Complaint sets forth three separate causes of action for Conversion of Timber, Negligence, and Trespass. However, Plaintiffs do not state, in the Complaint nor in the Amended Complaint, any factual allegations against the Cooks. In fact no pleadings in the record allege any wrongdoing by the Cooks. As

to Plaintiffs' claim for conversion, Plaintiffs allege that Defendant, Complete Disaster Services took control of and sold their trees. The Complaint does not allege that the Cooks intentionally exercised control over the Plaintiffs' trees or that the Cooks deprived Plaintiffs of their right in the use or possession of the trees. Furthermore, the Plaintiffs do not allege that the Cooks entered their land at any time relevant to the claim for trespass. The Complaint only alleges that Complete Disaster Services entered their property and removed their trees.

As it related to the negligence claim, Plaintiffs only alleges that the Cooks hired a construction contractor to build a home for them. The general rule is that a landowner who engages an independent contractor is not responsible for the acts or omissions of such independent contractor or his employees. *See Beil v. Telesis Const., Inc.*, 11 A.3d 456, 466 (Pa.2011) ("For over 100 years, the accepted and general rule regarding liability in our Commonwealth has been that a landowner who engages an independent contractor is not responsible for the acts or omissions of such independent contractor or his employees.") (citing *Pender v. Solomon*, 178 Pa. 337, 35 A. 1135 (1896); *Hader v. Copley Cement Mfg. Co.*, 410 Pa. 139, 189 A.2d 271 (1963); **Restatement (Second) of Torts § 409** ("[T]he employer of an independent contractor is not liable for physical harm caused to another by an act or omission of the contractor or his servants."). This foundational law is based upon the long-standing notion that one is not vicariously liable for the negligence of an independent contractor, because engaging an independent contractor "implies that the contractor is independent in the manner of doing the work contracted for. How can the other party control the contractor who is engaged to do the work, and who presumably knows more about doing it than the man who by contract authorized him to do it? Responsibility goes with authority." *Silveus v. Grossman*, 307 Pa. 272, 278, 161 A. 362, 364 (1932). The Cooks, as landowners who hired Just For You Construction, LLC, as an independent contractor, are therefore protected, by the

general rule. Furthermore, the Complaint alleges that Defendants, Just For You Construction, LLC, Star Mangement Group, Inc., and Complete Disaster Services, LLC, collectively and individually failed to properly locate and follow the boundary lines between the Cook Lot and the Fox Lot prior to and during the excavation.

Upon review of the record, it does not appear that any factual allegations were set forth against the Cooks in Plaintiffs' Complaint or any subsequent pleading. Additionally, there are no disputed issues of material fact regarding the Cooks which pertain to any of the three causes of action in this matter. Therefore, Defendant's, the Cooks, Motion for Judgment on the Pleadings should be granted as a matter of law.

CONCLUSION

For the foregoing reasons, Defendants' Motion for Judgment on the Pleadings is granted and judgment shall be entered in their favor. An Order will be entered consistent with the foregoing.