

14-1110

NOTED DOCKET  
DATE: SEP 29 2014  
DAVID "BUGS" STOVER  
CLERK CIRCUIT COURT  
WYOMING COUNTY *he*

IN THE CIRCUIT COURT OF WYOMING COUNTY , WEST VIRGINIA

HEARTWOOD FORESTLAND FUND IV  
LIMITED PARTNERSHIP, a North Carolina  
limited partnership,

PLAINTIFF,

v.

Civil Action No. 10-C-34

BILLY HOOSIER, JR.

DEFENDANT.

ORDER GRANTING DEFENDANT'S MOTION FOR  
JUDGMENT AS A MATTER OF LAW  
ON EQUITABLE PRINCIPLES

On a former date, both parties filed competing motions seeking final judicial resolution of the matters pending in this action. The Defendant's motion relied upon principles in equity set forth primarily in Somerville v. Jacobs, 153 W.Va. 613, 170 S.E. 2d 805 (1969) (holding that, where an improver of real estate reasonably believed that he owned the land and acted in good faith when he erected a building which increased the value of the other's land, the owner of the land was required in equity to pay the value of the improvements). Defendant Billy Hoosier, Jr. argues that the equitable principles of Somerville v. Jacobs apply equally to this circumstance for the proposition that the land owner be required to transfer such land occupied by mistake, where requiring otherwise would work hardship on the Defendant who, in good faith, mistakenly occupied.

The Plaintiffs' arguments relied upon provisions of the restatement of restitution, none of which have been adopted by any decision of the West Virginia Supreme Court. Plaintiffs could not cite any West Virginia authorities during oral argument to support their position. The Court notes that Defendant properly argued that only one resident of the structure allegedly erected upon the land of Plaintiff was sued in this matter. The Court notes that there are persons residing

in that residence other than the Defendant who own property interests therein. Additionally, the Plaintiff argues that the lot in controversy is the only access to its other tract, while exhibits submitted (a map), clearly show access to the same tract only a few hundred feet away located off of the same public road which services the area.

Upon consideration of the pleadings, the nature of the action, the equitable principles pronounced and analyzed in Somerville v. Jacobs, the arguments of counsel, and the existence of other parties in interest who are not party to this action, it is **ORDERED, ADJUDGED, and DECREED** as follows:

Defendant is awarded ownership and title of the real estate upon which he mistakenly encroached, and Plaintiff is awarded fair market value of the same, which market value shall be assessed based upon the current use to which the Defendant has mistakenly put said real estate. Market value may be assessed by completion of an appraisal at the Defendant's expense, with said appraisal report delivered to the Court. Said appraisal is to consider the real estate only and not the improvements thereon.

Plaintiff's objections and exceptions are noted and preserved.

The Clerk of Court is directed to provide a copy of this Order, upon its entry, to counsel of record.

Entered this the 26 day of Sept. 2014.

  
The Honorable Warren R. McGraw  
Judge of the Circuit Court of Wyoming County, WV

A TRUE COPY, ATTEST.  
DAVID "BUGE" STOVER, CLERK  
this the SEP 29 2014  
  
Deputy.