IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Blake Realty, L.L.C.,
Plaintiff Below, Petitioner

v.) No. 25-ICA-191

Sheila K. White,
Defendant Below, Respondent

BRIEF OF PETITIONER BLAKE REALTY, L.L.C.

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A. The Circuit Court erred in granting Respondent's motion to dismiss Petitioner's amended complaint for failure to state a claim pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

1. The Circuit Court erred in concluding that Petitioner's amended complaint contained no "well pleaded allegations" regarding the intent of the parties when the Blakes' executed the September 10, 1991 deed.
2. The Circuit Court erred in concluding that to overcome Respondent's Rule 12(b)(6) motion, Petitioner was required to "produce clear and convincing evidence" that the parties do not intend to modify the terms of the land contract.

B. The Circuit Court erred in concluding that the September 10, 1991 deed was unambiguous.

C. The Circuit Court erred in concluding that Petitioner was not entitled to relief under any set of facts.

II. STATEMENT OF THE CASE

Petitioner filed this action on April 30, 2024. J.A. p. 13. Petitioner's complaint sought reformation of a September 10, 1991 deed from Petitioner's predecessors in title, Lewis and Opal Blake, now deceased, to Respondent Sheila K. White and spouse Harold R. White. Harold R. White is also deceased. The complaint included a count requesting that the Court declare the parties' respective rights under said deed.

The deed concerns an 18.35 acre parcel located in Proctor District, Wetzel County. The Complaint averred that on January 1, 1984, Respondent and spouse, Harold R. White, and Lewis F. Blake and Opal M. Blake executed a land contract whereby the Blakes agreed to sell, and the Whites agreed to buy the surface of the 18.35 acre parcel. The land contract required the Whites to pay the Blakes $18,350.00 in installments of $300.00 per month. The land contract was recorded in Wetzel County Clerk's office on June 19, 1984. The land contract was prepared by Logan Hassig, an attorney practicing in New Martinsville, West Virginia. J.A. p. 22.

The Complaint alleged that having received all payments required by the land contract, the Blakes tendered a deed dated September 10, 1991, conveying the 18.35 acres to the Whites. While the land contract unambiguously provided that the Blakes and Whites agreed that only the surface was being sold to the Whites, the September 10, 1991 deed contains no language expressly excepting and reserving the minerals from the conveyance. However, the September 10, 1991 deed referenced the January 1, 1984 land contract, stating:

> This conveyance is made pursuant to the terms of a land contract by and between parties of the first part and parties of the second part dated the 1st day of January, 1984, and recorded in the Office of the Clerk of the County Commission of Wetzel County, West Virginia, in Volume 53 at Page 430 of the Miscellaneous Records.

J.A.p. 25. Despite conveying the surface and all minerals in the 18.35 acres, the deed stated the Whites gave consideration of $18,350.00 for the realty; that is, the same amount the Whites agreed to pay for only the surface of the 18.35 acres per the January 1, 1984 land contract. The land contract and the deed were attached as exhibits to the complaint. J.A. p. 18, 24. The deed was prepared by Timothy Haught,

an attorney then working in the law offices of Snyder and Hassig located in New Martinsville. J.A. p. 26. Petitioner's Complaint averred that Petitioner was successor in interest to Harold and Opal Blake, both deceased. J.A. p. 14.

Petitioner's complaint contained two claims for relief. Count I sought reformation of the September 10, 1991 deed to provide that the deed conveyed only the surface of the 18.35 acres. Pursuant to the West Virginia Uniform Declaratory Judgment Act, West Virginia Code §55-13-1 *et seq.*, Count II sought a declaration of the parties' respective rights under the September 10, 1991 deed and an order quieting title to the minerals in the 18.35 acre tract. J.A pp. 15, 16.

Respondent filed her answer on May 21, 2024. J.A. p. 30. On October 29, 2024, Petitioner noticed Respondent's deposition for November 12, 2024. J.A. p. 37. On November 10, 2024, Respondent filed a Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the West Virginia Rules of Civil Procedure. J.A. p. 45. On November 10, 2024, Respondent also filed a Motion for Protective Order requesting that Respondent's deposition be deferred pending resolution of Respondent's motion for judgment on the pleadings. J.A. p. 40. Before Petitioner responded to Respondent's motion for protective order, the motion was granted by order entered November 14, 2024. J.A. p. 57.

Respondent's motion for judgment on the pleadings consisted of 55 numbered paragraphs. Respondent's motion was not supported by a legal memorandum. Distilled down, Respondent's motion argued that Petitioner's complaint failed to state a claim upon which relief could be granted; that Petitioner's claim was barred by the

doctrine of laches; and that any mistake that resulted in the issuance of the September 10, 1991 deed was not a mutual mistake of fact. J.A. pp. 46, 48, 50. Respondent's argument that Petitioner's complaint failed to state a claim for reformation was based in part on the contention that the complaint did not aver that between the execution of the land contract on January 1, 1984 and delivery of the September 10, 1991 deed, the Blakes and the Whites had not agreed to modify the term of the land contract limiting the conveyance to the surface of the 18.35 acres. J.A. p. 47. Respondent argued that absent such averment, the Circuit Court could not consider the terms of the land contract in determining the parties' intent. Rather, Respondent argued that the September 10, 1991 expressed the intent of the Blakes and the Whites; that intent being that despite the terms of the January 1, 1984 land contract, the Blakes had decided to convey all their interests in the 18.35 acres to the Whites. J.A. p. 47.

In support of the contention that Petitioner's deed reformation action was barred by the doctrine of laches, Respondent argued that since receiving the September 10, 1991 deed, the surface of and minerals in 18.35 acres had been assessed in Respondent's name and that Respondent would be "disadvantaged" if the September 10, 1994 deed was reformed to provide that Respondent owned only the surface of the 18.35 acres. J.A. pp. 48-9. Respondent further contended that laches barred Petitioner's reformation claim because of the deaths of grantors Mr. and Mrs. Blake. J.A. p. 49. Finally, Respondent's motion contended that the mistake in the preparation of the September 10, 1991 deed was not mutual but rather the result of

an error by Mr. and Mrs. Blake's attorney. J.A. p. 50.[1] Petitioner filed its memorandum opposing Respondent's motion for judgment on the pleadings on November 26, 2024. J.A. p. 59. Respondent filed her reply memorandum on December 6, 2024. J.A. p. 76.

No hearing was scheduled or held on Respondent's motion for judgment on the pleadings. Rather, on January 8, 2025, the Judge's law clerk advised the parties that the Court would grant Respondent's motion and directed that Respondent's counsel prepare a proposed order. J.A. p. 82. On January 9, 2025, Petitioner filed a notice of intent to move for leave to amend its complaint. J.A. p. 84.

On January 13, 2025, Respondent tendered a proposed order granting her motion for judgment on the pleadings. On that date, Petitioner filed its motion for leave to amend its complaint. J.A. p. 97. Petitioner's motion for leave to amend was granted by order entered January 22, 2025. J.A. p. 144. Petitioner filed and served its Amended Complaint on January 23, 2025. J.A. p. 148.

The Amended Complaint addressed the shortcomings the Circuit Court concluded were present in Petitioner's complaint. The amended complaint added averments describing the series of conveyances that led to the creation of the 18.35 acre parcel at issue. Amended complaint, ¶5-8. J.A. 149. The Amended complaint averred that in addition to the January 1, 1984 land contract, the Blakes and the Whites entered into land contracts concerning two other tracts owned by the Blakes.

[1]. Petitioner's complaint contained no averment regarding the preparer of the land contract or the deed. The attorneys who prepared those documents are identified in the land contract and deed attached as exhibits to the Complaint. There is no averment in the complaint regarding who engaged the services of those attorneys.

Like the January 1, 1984 land contract, these other agreements provided that the Blakes agreed to sell the surface of those tracts to the Whites. J.A. pp. 150-51. The Amended Complaint specifically averred that the failure to include language in the September 10, 1991 deed limiting the conveyance to the surface estate or, conversely explicitly reserving the oil, gas and other minerals from the conveyance was the result of a scrivener's error. Amended Complaint, ¶28. J.A. p. 154. Addressing Respondent's contention that the complaint contained no averments stating that the Blakes and Whites had not modified the terms of the January 1, 1984 land contract, Paragraph 26 of the amended complaint stated: "[t]hat after its execution, the Blakes and the Whites did not, either expressly or by implication, modify the terms of the January 1, 1984 land contract." Paragraph 30 of the amended complaint stated:

> That given the course of dealings between the Blakes and the Whites, Respondent knows that the September 23, 1991 deed mistakenly conveyed all of the Blakes' interest in the 18.35 acres to Respondent and her then spouse.

J.A. p. 154. To forestall Respondent's laches defense, Paragraphs 31 and 32 of the amended complaint stated:

> 31. That since receiving the September 23, 1991 deed, Respondent has not attempted to extract minerals from said tract, attempted to lease said minerals for production, attempted to sell said minerals or otherwise engage in activity regarding the disputed minerals such that she cannot be restored to the state of affairs that should exist had Respondent received a deed conveying only the surface of the 18.35 acre tract as had been agreed to by the parties.
>
> 32. To the extent Respondent has paid ad valorem taxes assessed on the value of the coal, oil, gas and minerals within the 18.35 acres and further that Respondent claims to have been prejudiced or otherwise injured as a result of such payment, such injury can be remedied by an order requiring that Petitioner reimburse Respondent for such taxes.

J.A. pp. 154-55.

Petitioner's amended complaint contained two claims for relief. Count I sought reformation of the September 10, 1991 deed to indicate that the deed conveyed only the surface of the 18.35 acres. Count II sought a declaration of the parties' respective rights under the September 10, 1991 deed pursuant to West Virginia Code §55-13-1 *et seq.* and an order quieting title to the minerals in the 18.35 acre tract.

On January 31, 2025, Respondent filed its motion to dismiss the Amended Complaint pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. J.A. p. 189. Like her Rule 12(c) motion for judgment on the pleadings, Respondent's Rule 12(b)(6) motion to dismiss consisted of numerous numbered paragraphs containing little legal analysis. Respondent did not offer a memorandum in support of her Rule 12(b)(6) motion.

Respondent's motion to dismiss Petitioner's amended complaint largely restated the arguments contained in Respondent's motion for judgment on the pleadings addressed to Petitioner's complaint. Despite inclusion of an averment in the amended complaint explicitly stating that the Blakes and the Whites had not modified the terms of the January 1, 1984 land contract, Respondent's motion to dismiss stated:

> 24. Petitioner has still not pleaded any allegations regarding the intention of the parties at the time of the execution of the Deed. *See, generally,* Compl.
>
> 25. Petitioner has still not pleaded any allegations that the parties did not intend to modify the terms of the Land Contract at the time the agreement was consummated by Deed. *See, generally,* Compl.

J.A. p. 192. Respondent's 12(b)(6) motion characterized the averments regarding the intent of the Blakes and the Whites as a "conclusory" and not "well pleaded factual

allegations that the parties did not intend to modify the terms of their agreement at the time of the execution of the Deed." Respondent's motion to dismiss, ¶28. J.A. p. 193.

Regarding Respondent's laches defense, Respondent's Rule 12(b)(6) motion abandoned the argument that Respondent's payment of *ad valorem* taxes barred Petitioner's reformation claim. Instead, Respondent argued that the deaths of the grantors Lewis and Opal Blake prejudiced Respondent sufficiently to invoke the doctrine of laches as a bar to Petitioner's deed reformation claim. Respondent's motion to dismiss, ¶¶48-51. J.A. pp.195-96. On February 24, 2025, Petitioner filed its memorandum opposing Respondent's motion to dismiss. J.A. 201. Respondent filed a reply memorandum on March 3, 2025. J.A. 217.

No hearings were scheduled or held on Respondent's motion to dismiss Petitioner's amended complaint. Rather, by March 24, 2025 email, the Judge's law clerk advised counsel that the Court would grant Respondent's Rule 12(b)(6) motion, stating "[t]he plaintiff fails to state a claim upon which relief (Reformation) may be granted." J.A. p. 225. The Court directed Respondent's counsel to prepare a proposed order. *Id.* Respondent's counsel tendered a proposed order on April 15, 2025. The Court entered the order without modification later that day. The order contained the following conclusions of law:

> 57. There is no set of facts which the Plaintiff could prove with strong, clear and convincing evidence which would entitle it to relief on Count I of the Amended Complaint, the reformation of the unambiguous Deed.
>
> 58. Plaintiff's second count, seeking Declaratory Relief, thus also fails as it is wholly dependent upon Plaintiff establishing its claim under Count I.

59. Because the Court finds that the Amended Complaint fails to state a claim upon which relief may be granted, the Court need not consider Defendant's argument that Plaintiff's claims are barred by laches.

60. Plaintiff has not included any well-pleaded allegations which, if proved, would entitle it to the reformation of the deed under Count I of the Amended Complaint or to Declaratory Relief under Count II of the Amended Complaint.

J.A. p. 8.

III. SUMMARY OF ARGUMENT

Petitioner's amended complaint plainly states a claim in equity for reformation of the September 10, 1991 deed. The Circuit Court did not convert Respondent's motion to dismiss to a Rule 56 motion for summary judgment. As such, Petitioner was not required to produce evidence in response to Respondent's Rule 12(b)(6) motion. Rather, the Circuit Court was required to consider all averments in Petitioner's amended complaint as true and in the light most favorable to Petitioner. The Circuit Court's conclusion that the averments in the amended complaint that the parties did not modify the terms of the January 1, 1984 land contract did not constitute a "well-pleaded allegation" and justified the granting of Respondent's motion to dismiss was an error of law requiring reversal.

The Circuit Court's conclusion that the September 10, 1991 deed was unambiguous is both factually and legally erroneous. Ambiguity appears on the face of the deed. Thus, the Circuit Court's conclusion that Petitioner is not entitled to declaratory relief was an error of law requiring reversal.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

This appeal involves assignments of error in application of settled law and a narrow of issue of law making oral argument appropriate pursuant to Rule 19(a)(1) and (4) of the Rules of Appellate Procedure.

V. ARGUMENT

A. STANDARD OF REVIEW

Appellate review of a circuit court's grant of a Rule 12(b)(6) motion is the *de novo*. *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.* 194 W.Va. 770, 461 S.E.2d 516 (1995), syl. pt. 2. When considering a Rule 12(b)(6) motion, the Court must consider factual averments contained as true. *Lodge Distrib. Co., Inc. v. Texaco, Inc.,* 161 W.Va. 603, 245 S.E.2d 157 (1978). Regarding the standard applicable to Rule 12(b)(6) motions, in *Dimon v. Mansy,* 198 W. Va. 40, 479 S.E.2d 339 (1996), our Supreme Court stated:

> Under Rule 12(b)(6), the circuit court must consider the pleadings in the light most favorable to the Petitioner…More significantly, a circuit court should not dismiss a complaint for failure to state a claim "unless it appears beyond doubt that the Petitioner can prove no set of facts in support of his claim which would entitle him to relief." Thus, the singular purpose of a Rule 12(b)(6) motion is to seek a determination whether the Petitioner is entitled to offer evidence to support the claims made in the complaint. (citations omitted)

Id. n.5. When ruling on a Rule 12(b)(6) motion, a circuit court may consider exhibits attached to the complaint without converting the motion to a Rule 56 motion for summary judgment. *Forshey v. Jackson*, 222 W. Va. 743, 671 S.E.2d 748 (2009).

B. THE CIRCUIT COURT ERRED IN GRANTING RESPONDENT'S MOTION TO DISMISS PETITIONER'S AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM MADE PURSUANT TO RULE 12(B)(6) OF THE WEST VIRGINIA RULES OF CIVIL PROCEDURE

Count I of the amended complaint asserts an equitable claim for reformation of the September 10, 1991 deed. Under West Virginia law, the elements of a cause of action for equitable relief in the form of reformation of a deed or contract are as follows:

> To justify the reformation of a clear and unambiguous deed for mistake, the mistake must be one of fact, not of law; the mistake must be mutual and common to both parties to the deed; the unambiguous deed must fail to express the obvious intention of the parties; and the mutual mistake must be proved by strong, clear and convincing evidence.

Smith v. Smith, W. Va. 619, 639 S.E.2d 711 (2005) syl. pt. 5. West Virginia law provides that a scrivener's error in preparing an erroneous deed is a mutual mistake by the parties to the deed. *Edmiston v. Wilson*, 146 W. Va. 511, 120 S.E. 2d 511 (1961).

Petitioner's amended complaint adequately pleads the elements of a cause of action for reformation of a deed. The amended complaint averred that the Blakes and the Whites entered into a land contract dated January 1, 1984 whereby the Blakes agreed to convey the surface of the disputed 18.35 acres to the Whites. The amended complaint further averred that having made the payments provided for in the land contract, the Whites were entitled to receive a deed conveying the surface of the 18.35 acres. The amended complaint averred that, as a result of a scrivener's error, the Blakes executed a deed dated September 10, 1991 conveying all their interest in the 18.35 acres to the Whites. The amended complaint further avers that said scrivener's error constituted a mutual mistake of fact under West Virginia entitling Petitioner reformation of the September 10, 1991 deed.

1. THE CIRCUIT COURT ERRED IN CONCLUDING THAT PETITIONER'S AMENDED COMPLAINT CONTAINED NO "WELL PLEADED ALLEGATIONS" REGARDING THE INTENT OF THE PARTIES WHEN THE BLAKES EXECUTED THE SEPTEMBER 10, 1991 DEED

The Circuit Court did not find that the amended complaint failed to adequately plead the elements of a cause of action for reformation. Rather, the Circuit Court's order granting Respondent's Rule 12(b)(6) motion made numerous findings and conclusions, the effect of which resulted in the Circuit Court's disregarding of the January 1, 1984 land contract. Citing *Smith v. Smith, supra,* the Circuit Court recognized that West Virginia law allows consideration of parol evidence to determine whether an unambiguous deed fails to express the intent of the parties. Order, ¶32. J.A. p. 5.[2] However, the Circuit Court then concluded "[l]ogically and legally, the Land Contract itself cannot serve as evidence that the parties did not subsequently intend to modify the Land Contract at the time it was consummated by the Deed." Order, ¶40. J.A. p. 6. Paragraph 26 of the amended complaint stated:

> That after its execution, the Blakes and the Whites did not either expressly or by implication, modify the terms of the January 1, 1984 land contract.

Despite this averment, the Circuit Court concluded, as a matter of law, "Plaintiff's Complaint does not include any well-pleaded allegations that the parties did not intend to modify the terms of the Land Contract at the time the agreement was consummated by deed." Order ¶42. The Court further found, as a matter of law:

> The conclusory averment that the parties "did not" modify the land contract is not a well-pleaded factual allegation that the parties did not intend to modify the terms of their agreement at the time of the execution of the Deed.

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[2]. As discussed *infra*, Petitioner argues that when read with the January 1, 1984 land contract, the September 10, 1991 deed is ambiguous.

Order, ¶45. The Circuit Court further found, as a matter of law:

> Because Petitioner has failed to include any well-pleaded factual allegations that the parties did not intend for the Deed to modify the terms of the Land Contract, and because no relief could be granted under any set of facts that could be proven consistent with the allegations of the Amended Complaint, Petitioner has failed to state a claim for Reformation upon which relief can be granted.

Order, ¶53. J.A. p. 7.

The phrase "well-pleaded" allegation appears eight times in the order granting Respondent's 12(b)(6) motion. There is no citation to authority in either Respondent's Rule 12(b)(6) motion or in the Court's order granting the same defining the meaning of this phrase. To the extent the phrase appears in West Virginia appellate decisions, it typically arises in the context of whether a complaint contains a claim implicating federal question jurisdiction. *See, e.g. General Motors Corp. v. Smith,* 216 W. Va. 78, 602 S.E.2d 521 (2004); *Bailey v. Norfolk & Western Railway Co.* 206 W. Va. 654, 527 S.E.2d 516 (1999). Petitioner asserts that to determine what constitutes a well-pleaded complaint, consideration must be given to other Rules of Civil Procedure and to cases defining the criteria applicable to Rule 12(b)(6) motions.

Rule 8 of the West Virginia Rules of Civil Procedure states:

> a) Claims for relief. A pleading that states a claim for relief shall contain:
>
> (1) a short and plain statement of the claim showing that the pleader is entitled to relief.

"The virtues of a well-pleaded complaint are set forth in Rule 8(e) of the West Virginia Rules of Civil Procedure: each averment of a pleading shall be 'simple, concise and direct". *E.B. v. W. Va. Reg'l Jail & Corr. Auth., No. 16-0090, No. 16-0092* (W. Va. S. Ct. App. Jan 27, 2017), n. 5 (memorandum decision)

Mountaineer Fire & Rescue Equip., LLC v. City Nat'l Bank of W. Va., 854 S.E.2d 870 (W. Va. 2020) contains a lengthy exposition regarding the interrelationship between Rule 12(b)(6) and other Rules of Civil Procedure, stating, in relevant part:

> Rule 12(b)(6) of the West Virginia Rules of Civil Procedure permits a party responding to a pleading asserting an entitlement to relief to file a motion asking the circuit court to dismiss all or part of the pleading for "failure to state a claim upon which relief can be granted." (citation omitted) A motion under Rule 12(b)(6) tests the adequacy of the claims and the notice provided by the allegations in the pleading. *Newton v. Morgantown Mach. & Hydraulics of W. Virginia, Inc.,* 242 W. Va. 650, 653, 838 S.E.2d 734, 737 (2019) ("[T]he purpose of a motion under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure is to test the sufficiency of the complaint."). When a Rule 12(b)(6) motion is made, the pleading party has no burden of proof. Rather, the burden is upon the moving party to prove that no legally cognizable claim for relief exists…
>
> Rule 8(f) of the West Virginia Rules of Civil Procedure dictates that courts liberally construe pleadings so "as to do substantial justice." (citation omitted)

854 S.E.2d at 882. *Mountaineer Fire* further states:

> Rule 12(b)(6) is not to be read or applied in a vacuum; it is intermeshed with numerous other rules. For instance, Rule 8(a)(1) requires that a pleading set forth nothing more than "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" The Rules of Civil Procedure eschew "technical forms of pleading" and require only that " [e]ach averment of a pleading shall be simple, concise, and direct." Rule 8(e)(1). A party may plead "two or more statements of a claim ... alternatively or hypothetically[.]" Rule 8(e)(2)...

Id. at 882-83. *Mountaineer Fire's* analysis of Rule 12(b)(6) concludes:

> Stated simply, when Rule 12(b)(6) is viewed in the context of these other intermeshing rules, [t]he intent and effect of the rules is to permit the claim to be stated in general terms; the rules are designed to discourage battles over mere form of statement and to sweep away the needless controversies which the [common law] codes permitted that served either to delay trial on the merits or prevent a party from having a trial because of mistakes in statement…. (citation omitted)
>
> In light of the purpose behind the Rules of Civil Procedure, this Court has steadfastly held that, to survive a motion under Rule 12(b)(6), a pleading need only outline the alleged occurrence which (if later proven to be a recognized legal or equitable claim),would justify some form of relief. "The complaint must set forth enough information to outline the

> elements of a claim or permit inferences to be drawn that these elements exist." *Fass v. Nowsco Well Serv., Ltd.* , 177 W. Va.50, 52, 350 S.E.2d 562, 563 (1986).

Id. at 883-84.

Taken together, for purposes of a Rule 12(b)(6) motion, a well pleaded complaint is a complaint that contains sufficient averments to place a defendant on notice of the circumstances giving rise to the complaint. The complaint must contain a short and plain statement of the facts giving rise to the claim, preferably with averments addressing the elements of the causes of action relied upon by the plaintiff for recovery. A plaintiff is not required to anticipate and parry potential defenses that might be raised by a defendant. *Gable v. Gable,* 858 S.E.2d 838 (W. Va. 2021)

Petitioner's amended complaint more than satisfies the requirements of Rule 8. It contains averments regarding each element of a cause of action for reformation under West Virginia law. While West Virginia law does not require that a complaint contain averments anticipating defenses that might be raised in an answer, Petitioner's amended complaint nevertheless included averments intended to address Respondent's laches defense. The amended complaint also contained averments addressing the primary factual defense raised by Respondent; namely that between the execution of the January 1, 1984 land contract and tender of the September 10, 1991 deed, the Blakes and the Whites decided the Whites would receive the 18.35 acres in fee.

Given the foregoing, it is difficult to understand how the Circuit Court concluded that the averments in the amended complaint that the January 1, 1984 land contract was not modified by the Blakes and the Whites was a "conclusory

allegation" and not a "well pleaded averment". Again, in considering Respondent's Rule 12(b)(6) motion, the Circuit Court **was required to assume this averment was true**. Per *Gable*, *supra*, Petitioner was not obligated to anticipate and address this factual defense in its amended complaint. Petitioner can discern no basis under West Virginia law that justifies the Circuit Court's conclusion that the amended complaint did not adequately plead a cause of action for reformation.

2. THE CIRCUIT COURT ERRED IN CONCLUDING THAT TO OVERCOME RESPONDENT'S RULE 12(B)(6) MOTION, PETITIONER WAS REQUIRED TO "PRODUCE' CLEAR AND CONVINCING EVIDENCE THAT THE PARTIES HAD NOT MODIFIED THE LAND CONTRACT

The Circuit Court's order granting Respondent's Rule 12(b)(6) motion contain the following findings of fact and conclusions of law:

> 33. "To justify a court of equity in decreeing reformation of a deed, the evidence produced on the part of one seeking such reformation must be strong, clear and convincing." Syl. Pt. 5, *Edmiston v. Wilson,* 146 W. Va. 511, 511–12, 120 S.E.2d 491, 492–93 (1961).
>
> 35. Here, the existence of a mutual mistake by virtue of a scrivener's error depends upon the intent of the parties at the time of the signing of the Deed in 1991 and must be proved by strong, clear and convincing evidence
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> 39. The law in West Virginia, then, requires that Plaintiff produce "clear and convincing" evidence that the parties did not intend to modify the terms of the Land Contract at the time of the execution of the Deed.

J.A. pp. 5-6. If matters outside the pleadings are presented, a circuit court may convert a Rule 12(b)(6) to a motion for summary judgment made pursuant to Rule 56 of the Rules of Civil Procedure. W.V. R. Civ. P. 12(d). In that event, the parties must be given a reasonable opportunity to present all material pertinent to the motion. *Id.*

Here, the Circuit Court did not convert Respondent's Rule 12(b)(6) motion to a motion for summary judgment. When opposing a Rule 12(b)(6) motion, **a plaintiff has**

no burden of proof. *Mountaineer Fire & Rescue Equip., LLC, supra*.[3] The Circuit Court's conclusion that Plaintiff failed to "produce" evidence thereby justifying the granting of Respondent's Rule 12(b)(6) motion was an error of law requiring reversal.

C. THE CIRCUIT COURT ERRED IN CONCLUDING THAT THE SEPTEMBER 10, 1991 DEED WAS UNAMBIGUOUS

The Circuit Court concluded that the September 10, 1991 was unambiguous. Order, ¶29. J.A. 5. This conclusion was erroneous as a matter of fact and law.

The January 1, 1984 land contract states that the Blakes are agreeing to sell and the Whites are agreeing to purchase "the surface only" of the 18.35 acres. J. A. 158. The granting clause in the September 10, 1991 deed did not limit the conveyance to the surface of the 18.35 acres. Nor did the deed contain language explicitly excepting and reserving the minerals from the conveyance. However, the deed states:

> This conveyance is made pursuant to the terms of a land contract by and between parties of the first part and parties of the second part dated the 1st day of January, 1984, and recorded in the Office of the Clerk of the County Commission of Wetzel County, West Virginia, in Volume 53 at Page 430 of the Miscellaneous Records.

The deed also states that $18,350.00 was given in consideration for the Blakes' entire interest in the realty conveyed by the deed. J. A. p. 165. The land contract provided that the Whites agreed to pay $18,350.00 for the surface of the 18.35 acres. J. A. 159.

A deed or other written document is deemed to be ambiguous when the words in the document are susceptible to two or more meanings. *Paxton v. Benedum-Trees Oil Co.*, 80 W.Va. 187, 94 S.E. 472 (1917). The inclusion of language in the September

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[3]. It bears noting that the Circuit Court granted Respondent's motion for protective order preventing Petitioner from deposing Respondent. As a party to both the land contract and the deed, Respondent would presumably possess knowledge regarding the modification to the land contract that will evidently form the basis of Respondent's defense.

10, 1991 deed that the conveyance was made pursuant to the terms of the January 1, 1984 land contract would cause a reader of those documents to question whether the 1991 deed erroneously conveyed the entirety of the Blakes' interest in the property to the Whites. Thus, the intent of the parties as expressed in the September 10, 1991 deed is ambiguous. The Circuit Court therefore erred in concluding that the September 10, 1991 deed was unambiguous.

D. THE CIRCUIT COURT ERRED IN CONCLUDING THAT PETITIONER WAS NOT ENTITLED TO DECLARATORY RELIEF

Count II of the amended complaint contained a claim for declaratory relief pursuant to West Virginia's Uniform Declaratory Judgments Act, West Virginia Code §55-13-1 *et seq.* West Virginia Code §55-13-2 provides for the construction of deeds and provides:

> Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Relying on authority granted by section 55-13-2, West Virginia courts routinely interpret deeds. *See, e.g. Faith United Methodists Church and Cemetery of Terra Alta v. Morgan,* 241 W. Va. 423, 745 S.E.2d 461 (2013); *Harrell v. Cain*, 242 W. Va. 194, 832 S.E.2d 120 (2019).

When called upon to interpret a deed, contract or other writing, a court must first determine whether the document is ambiguous. *Berkeley County Public Service Dist. v. Vitro Corp. of America,* 152 W.Va. 252, 162 S.E.2d 189, (1968). If ambiguity is found in a deed, a court must consider evidence outside the four corners of the deed

to ascertain the intent of the parties. "[W]hen a deed is inconsistent, confusing or ambiguous on its face, a court must look to extrinsic evidence of the parties' intent to construe the deed." *Gastar Exploration Inc. v. Rine,* 239 W. Va. 792, 799; 806 S.E.2d 448, 455 (2017).

In its order granting Respondent's Rule 12(b)(6) motion, the Circuit Court held "Plaintiff's second count, seeking Declaratory Relief, thus also fails as it is wholly dependent upon Plaintiff establishing its claim under Count I. Order, ¶58. J. A. p. 8. In so concluding, the Circuit Court erred as a matter of law. The West Virginia Rules of Civil Procedure authorize and indeed encourage a plaintiff to plead multiple or alternative claims. In this regard, Rule 8(d)(2) of the West Virginia Rules of Civil Procedure states:

> A party may set out two or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

Rule 57 of the West Virginia Rules of Civil Procedure governs declaratory judgment actions and provides, in relevant part:

> The procedure for obtaining a declaratory judgment pursuant to the West Virginia Uniform Declaratory Judgments Act, Code chapter 55, article 13 [§55-13-1 et seq.], shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate…

A circuit court's authority to grant declaratory relief concerning the parties' intent as expressed in an ambiguous deed pursuant to West Virginia Code §55-13-2 is wholly separate from a court's authority to grant equitable relief in the form of reformation of a deed. While the results may be similar, the theories of liability and

proofs required differ. A claim for reformation might fail for the lack of clear and convincing evidence that the deed in question was the result of a mutual mistake of fact. Such a conclusion does not preclude a court's interpreting a deed that, while not the result of a mutual mistake of fact, was ambiguous, requiring the court to employ well-known rules of construction to determine the intent of the parties. *See, e.g., Meadows v. Belknap,* 199 W.Va. 243, 483 S.E.2d 826 (1997).

VI. CONCLUSION AND PRAYER FOR RELIEF

Petitioner's amended complaint stated a cause of action in equity for reformation of the September 10, 1991 deed and, in addition or in the alternative, declaratory relief in the form of interpretation of said deed and the parties' respective rights thereunder. The Circuit Court erred in granting Respondent's motion to dismiss Petitioner's amended complaint. Petitioner respectfully requests that the Circuit Court's April 15, 2025 order granting Respondent's motion to dismiss Petitioner's amended complaint be reversed; that this case be remanded to the Circuit Court of Wetzel County; and for such other and further relief as the Court deems appropriate.

Respectfully submitted.
Blake Realty, L.L.C., Petitioner,
by counsel

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CERTIFICATE OF SERVICE

I certify that I served the attached Amended Complaint via the Court's electronic filing system upon counsel for Defendant whose address is listed below on July 12, 2025.

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