

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY,
PENNSYLVANIA
CIVIL ACTION – LAW

BOROUGH OF MEDIA,
DELAWARE COUNTY

Plaintiff

v.

COUNTY OF DELAWARE

And

THE MEDIA SWIMMING AND
ROWING CLUB,
a Corporation, now known as
The Broomall's Lake Country Club

Defendants

No. 06-20475

STIPULATION

AND ORDER

AND NOW, this 26th day of MAY 2011, it is stipulated and agreed by and

between the parties hereto, and entered as an Order of Court as follows:

1. On or about December 28, 2006, Plaintiff Borough of Media (hereinafter the "Borough" or "Plaintiff") filed a Complaint requesting Declaratory Relief. In the Complaint, Plaintiff requested the Court to declare the Borough to be the sole owner of an easement upon the surface of a certain dam/bridge traversed by a roadway (now closed) commonly known as West Third Street. The dam in question is located along the title line between real property of the County of Delaware ("the County") and real property of the Media Swimming and Rowing (hereinafter "Swim Club") in Media


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Borough, Delaware County, Pennsylvania. Plaintiff requested that the Court declare the County and the Swim Club to be the owners of the subsurface including the dam/bridge under West Third Street with responsibility for maintenance to the dam/bridge both now and in the future. Plaintiff alleged in the Complaint that the Borough's sole responsibility was to maintain the roadway upon the surface of the dam/bridge.

2. On or about January 16, 2007, Defendant Swim Club filed an Answer and Counterclaim to Plaintiff's declaratory judgment action. On February 16, 2007, Defendant County filed an Answer and Counterclaim, which was subsequently amended. The Counterclaims of both Defendants asserted that the Plaintiff has exercised continuous control and maintenance of the dam and subsurface of West Third Street and thus asserted that Plaintiff owned the dam and subsurface by necessity and/or by adverse possession and/or by having effectuated a taking of the same. Defendants requested the Court to enter an Order declaring Plaintiff responsible for the maintenance and repair of the subsurface and dam of West Third Street both now and in the future.

3. The parties agree that the dam is in disrepair, and in fact, the portion of the West Third Street roadway atop the dam has been closed for many years as a result of such disrepair.

4. Prior to July 16, 2009, the parties understood that Borough had procured funding for the necessary repairs to the roadway and dam structure and that Borough intended to effectuate the necessary repairs to the same. On or about July 16, 2009, Plaintiff Borough publicly voted to abandon the roadway and prescriptive easement allegedly held by Plaintiff over West Third Street. No provisions were made to repair the damage to the dam surface and subsurface caused by and/or occurring during the period


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of the Borough's care, custody and control of the dam and structures in and upon the same. On or about July 27, 2009, Defendant County filed a Petition to Leave to File Amended Pleadings to assert a claim for trespass and monetary damages, allegedly the direct and immediate result of Plaintiff's alleged abandonment of West Third Street. In December 2009, the Court granted Defendant County leave to amend its Counterclaim and such counts were added to Defendant County's Counterclaim. Shortly thereafter, Defendant Swim Club joined in Defendant County's Counterclaim.

5. The parties hereto, including, desire to settle, discontinue and end the above-captioned matter, and for that purpose agree to enter into this Stipulation to set forth their agreements as responsibility for the undertaking of repairs to the dam and roadway structures and as responsibility for the ongoing maintenance and future repair of the dam and roadway structures.

6. The parties stipulate and agree as follows:

a. Plaintiff Borough will make the design, engineering, repairs and improvements to the dam structure consistent with articulated design standards as set forth in the report of Schnable Engineering dated September 25, 1998, contract number 985130, Alternative _____, or any amendments thereto (a copy of which is attached hereto as Exhibit "A" and incorporated herein) (hereinafter, the "Project") and will pay the costs of such Project design, engineering, repairs and improvements. As part of the Project, Plaintiff Borough will also make such improvements as is necessary to reestablish the West Third Street roadway across the dam as an open thoroughfare for vehicular and pedestrian traffic;


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b. Following completion of the Project, Defendants County and the Swim Club solely will be responsible for all future required periodic inspections, maintenance and repair of the dam portion of the completed structure, include the spillway (hereinafter collectively the "Dam Responsibilities"). The cost of all Dam Responsibilities shall be shared equally by the County and the Swim Club. Borough shall cooperate with County to the extent necessary to enforce construction contracts and agreements, warranties and rights with respect to the design and construction of the Project;

c. Following completion of the Project, Borough solely will be responsible for all future inspection, maintenance and repair of the roadway and road related improvements, including but not limited to roadway subsurface, roadway, storm sewer inlets and piping, lighting, pedestrian sidewalks and sidewalls (hereinafter collectively the "Roadway Responsibilities");

d. The parties acknowledge and agree that a more formal delineation between improvements relating to the Dam Responsibilities and improvements relating to Roadway Responsibilities must be made. The parties intend that engineers of the Borough and County will make such determination and reduce same to writing for the parties. In the event that the parties cannot agree on which improvements will be the subject of the Dam Responsibilities and which improvements will be the subject of the Roadway Responsibilities must be made, the engineers designated by the County and by the Borough shall select a third engineer who's decision on this matter shall be final and unappealable.


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e. The parties shall grant to each such easements, rights of way and/or licenses to allow each party to carry out the duties and responsibilities contemplated hereby.

f. The parties' agreement will be reduced to a writing in recordable form.

7. The parties each acknowledge that the above-captioned action and counterclaims filed therein were filed as a result of differing interpretations of the rights and responsibilities of the parties under Pennsylvania law. It is hereby further provided that this Stipulation and Order shall constitute a full, final and unappealable resolution of the facts and legal issues raised in or encompassed by, or that could have been raised in or encompassed by the above-captioned matter, and that the above-captioned action is hereby marked SETTLED, DISCONTINUED and ENDED.

8. The parties each acknowledge that the resolution of this matter by this Stipulation and Order shall not be used by any party hereto in any other presently pending or future transaction, interaction or litigation by or between them or any of them other than as may be necessary to enforcement of the conditions of, or compliance with this Stipulation and Order.

9. The parties each acknowledge that each of them has participated in the drafting of this Stipulation and Order, and that each of them has had the assistance and advice of legal counsel and, after consultation with legal counsel, each is entering into this Stipulation and Order with the full and complete understanding of the terms and provisions hereof. Any claimed ambiguities of this Stipulation and Order shall not be

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construed for or against any party hereto on the grounds that one party hereto was the drafter of this Stipulation or any portion thereof.

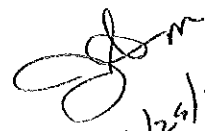
10.. This Stipulation and Order shall constitute the entire agreement and understanding of the parties hereto and no prior or contemporaneous communications, discussions or prior unsigned drafts of this Stipulation and Order shall be relevant or admissible for any purpose, including but not limited to, determining the meaning or extent of any of the provisions of this Stipulation and Order.

11. The attorneys signing this Stipulation and Order on behalf of the parties hereto represent and warrant that they have the full power and authority to execute this Stipulation and Order, thereby binding the Borough, the County and the Swim Club hereto.

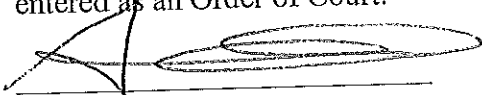
12. This Stipulation and Order may not be amended except by a writing executed by each of the parties hereto, or, as applicable, their respective successors or assigns.

13. This Stipulation and Order and the agreements made herein shall run with the land and shall be obligations of and binding upon the successors and assigns of each of the parties hereto.

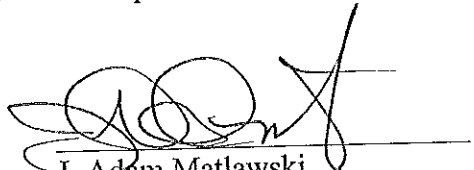
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IN WITNESS WHEREOF, the parties, by and through their undersigned counsel and intending to be legally bound hereby enter into this Stipulation and Order, and it is so entered as an Order of Court.




Guy A. Donatelli
Attorney for Borough of Media



J. Adam Matlawski
Attorney for the County of Delaware

Eugene A. Bonner
Attorney for the Media Swimming and
Rowing Club, a Corporation, now known as
The Broomall's Lake Country Club

And it is so entered as an ORDER.

By the Court:


Proud J.

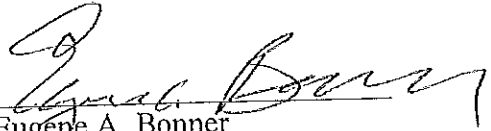
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JUDICIAL SUPPORT
DELAWARE CO., PA.

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Guy A. Donatelli
Attorney for Borough of Media

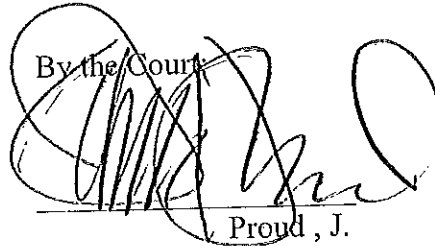
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