*Hambleton v. Selden*, 163 Pa. Super. 259, 60 A.2d 369 (1948).

> "A promise to pay a commission if the broker 'effects a sale' or 'negotiates a sale' ordinarily subjects the principal to liability not only if a transfer of title is effected but also if an enforceable contract of sale is executed or if a suitable customer is produced who is ready, willing and able to execute such a contract." *Andrien v. Bennett*, 191 Pa. Super. 150, 155 A.2d 206 (1959), *quoting* Restatement, Agency 2d, Sec. 445(e).

Upon the procurement of a ready, willing and able buyer, sale is treated as constructively consummated. *Shumaker v. Lear*, 235 Pa. Super. 509, 345 A.2d 249 (1975). And if the seller, by his own actions, is responsible for his failure to receive the purchase price, he cannot take advantage of his own wrong doing to escape liability for the broker's commission. *Herr v. Stumpf*, supra, citing cases.

While it is true that the parties to a brokerage contract may take themselves out of the ordinary rule that a broker earns his commission by producing a purchaser ready, willing and able to buy on terms satisfactory to the vendor by providing otherwise in the contract, whether these parties did presents a question of contract interpretation to be determined at trial and not at the preliminary objection stage.

In ruling on a demurrer, we are required, at this point, to construe all doubts in favor of the plaintiff. *Strock v. York Bank and Trust Co.*, 94 York L.R. 105 (C.P., 1980). A demurrer should only be sustained in clear cases where it is certain there can be no recovery. 2 Goodrich-Amram 2d Sec. 1017(b):11; *Pike Co. Hotels Corp. v. Kiefer*, 262 Pa. Super. 126, 396 A.2d 677 (1978).

We believe Plaintiff's complaint as stated adequately sets forth a cause of action against Defendant. Accordingly, Defendant's demurrer is overruled and Defendant is given twenty days to respond to the complaint.

## ORDER OF COURT

January 26, 1982, the demurrer is overruled. The Defendant is granted twenty (20) days from this date to file an Answer to the Complaint.



## DIEHL v. REED, C.P. Franklin County Branch, No. 298 of 1980-C

*Equity - Judgment on the Pleadings - Pa. R.C.P. 1029(c)*

**1. A motion for judgment on the pleadings shall not be granted unless the case is clear and free from doubt and there are no facts contraverted or in dispute.**

**2. Where Plaintiff's denial of Defendant's new matter used the exact language of Pa. R.D.P. 1029(c), the denial is not an admission in that Plaintiff's are entitled to ask for proof of a property's status as unenclosed woodlands.**

*James M. Schall, Esq.*, Counsel for Plaintiffs

*Ronald Keeler, Esq.*, Counsel for Defendants

## OPINION AND ORDER

KELLER, J., January 29, 1982:

This case was commenced by Plaintiffs' filing of a Complaint in equity on September 30, 1980. Defendants' Answer with New Matter was filed on October 22, 1980, the Plaintiffs' Reply followed on December 24, 1980. Defendants' Motion for Judgment on the Pleadings was served by mail on November 2, 1981, and the matter was listed for argument. Counsel for both sides presented their arguments to the Court on December 22, 1981, and the matter is now ripe for disposition.

It has long been the rule in this Commonwealth that judgment shall not be entered on a motion for judgment on the pleadings unless the case is clear and free from doubt, *Vrabel v. Scholler*, 369 Pa. 235 (1952), and only where there are no facts contraverted or in dispute. *Richards v. Schuylkill County*, 399 Pa. 552 (1960) and *Potts Manufacturing Company v. Loffredo*, 235 Pa. Super. 294 (1975).

The defendants contend in support of their motion that plaintiffs should be deemed to have admitted paragraphs 12, 13 and 14 of their new matter due to the evasive answers given in their reply, and therefore no factual disputes exist. In each of these three paragraphs, plaintiffs have specifically denied defendants' corresponding allegations "for the reason that the means of proof are within the exclusive control of the defendants and proof thereof is demanded." This is the exact language suggested by Pa. R.C.P. 1029(c). Although plaintiffs are obviously familiar with defendants' lands since they are pre-

cisely the subject matter of this suit, plaintiffs are entitled to ask for proof of the property's status as unenclosed woodlands and they cannot be deemed to have admitted this crucial fact by their rule-abiding reply.

The cases cited by defendants in support of their proposition that plaintiffs' answers should be construed as admissions can be readily distinguished from the factual situation presented by the pleadings in this case. In *First National Bank of Minersville v. Laughlin*, 75 Schuylkill Leg. Rec. 67 (1979), defendants alleged in their answer that they could not determine whether they had executed a mortgage to plaintiffs. The court held that such a fact could readily be determined by defendants since all mortgages are of public record and that such a gross misuse of Rule 1029 warranted all of defendants' answers being construed as admissions. The determination of what is and what is not unenclosed woodlands is not as easily disposed of as would be the determination of whether or not a mortgage had been executed. In *Boyle v. O'Hara*, 29 Bucks L.R. 321 (1976), plaintiff completely failed to reply to defendant's new matter. As a result, all the material facts averred in the new matter were deemed to be admitted. We perceive neither of these cases as supporting defendants' contention that plaintiffs' answers constitute admissions.

Had it been uncontraverted that defendants' lands over which plaintiffs claim an easement are indeed unenclosed woodlands, defendants would have been successful in their motion due to the Act of 1850, 68 P.S. Sec. 411, which provided that an easement could not be acquired over such lands. Since this was the law of the Commonwealth until December 10, 1974, when the Act was repealed, plaintiffs' claim would fall far short of the 21-year requirement for adverse possession. However, since there clearly is a dispute over whether the lands in question are unenclosed woodlands, defendants' motion for judgment on the pleadings must be denied.

ORDER OF COURT

NOW, this 29th day of January, 1982, the motion for judgment on the pleadings is denied.

Exceptions are granted the defendants.



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