

Steinbronn v. New Hope Farm, Inc.

**Richard A. Steinbronn, Defendant Below, Petitioner, v. New Hope Farm, Inc.,
Plaintiff Below, Respondent.**

Nos. 101272, 101345

Supreme Court of Appeals of West Virginia.

Filed September 23, 2011.

Memorandum Decision

These appeals arise from separate orders of the Circuit Court of Berkeley County and the Circuit Court of Jefferson County, respectively granting respondent's complaints to have *lis pendens* notices filed by petitioner expunged. The appeals are being considered together because they involve the same parties and the same issue. The instant appeals were timely filed by the *pro se* petitioner, a Virginia attorney proceeding in his own interest, with the entire records being designated on appeal. The Court has carefully reviewed the records and the written arguments contained in the *pro se* petitions and the responses thereto. The cases are mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that these related matters are appropriate for consideration under the Revised Rules. Having considered the petitions, the responses, and the relevant decisions of the lower tribunals, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. These cases do not present either a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner filed *lis pendens* notices against respondent's real estate in Berkeley and Jefferson Counties after he had filed an action in the Superior Court of the District of Columbia, styled as *Steinbronn v. Times Aerospace USA, LLC, et al.*, Civil Action No. 2009-09127 (hereinafter "the D.C. action"), which included derivative claims. In the D.C. action, petitioner alleged that he formerly held the positions of officer, director, and in-house counsel of respondent's parent company, Unification Church International, Inc., and certain of its subsidiaries. Among other claims, petitioner sought an in personam injunction from the Superior Court against the current directors and officers of the parent corporation, which would set a condition on any sale of respondent's real estate. The Superior Court, however, dismissed petitioner's derivative claims including the request for the injunction. Petitioner has stated that he intends to appeal the dismissal of his derivative claims when permitted to do so under the law of the District of Columbia.¹

Even before petitioner's derivative claims had been dismissed in the D.C. action, the Berkeley and Jefferson County Circuit Courts determined that the claims did not support the filing of *lis pendens* notices on respondent's real estate. In *State ex rel. Watson v. White*, 185 W.Va. 487, 408 S.E.2d 66 (1991), this Court applied West Virginia Code § 55-11-2 and held that the filing of a *lis pendens* notice is not appropriate where the underlying action does not directly affect the title to or the right of possession of the real estate in question. In the case *sub judice*, the in personam injunction sought by petitioner in the underlying D.C. action against the directors and officers of respondent's parent corporation did not directly affect respondent's title to, or right of possession of, its real estate in Berkeley and Jefferson

Counties. Petitioner did not in any sense contest respondent's present ownership of the real estate or its right to present possession of the real estate. Nor did petitioner seek to establish or enforce any other person's or entity's legal interest in the real estate in question. In fact, petitioner sought to ensure that both title to, and possession of, the real estate remain with respondent. Therefore, the relief petitioner seeks in the underlying D.C. action is not the type contemplated by West Virginia Code § 55-11-2. "When a formal notice of *lis pendens* is filed in a litigation that is not the type contemplated by W.Va. Code § 55-11-2 (1981), it is the duty of the court to expunge the improperly filed notice from the records." Syl. Pt. 3, *White, supra*. Accordingly, it was the duty of the Berkeley and Jefferson County Circuit Courts to expunge the improperly filed notices from the respective counties' records. The circuit courts did not err in expunging the *lis pendens* notices filed by petitioner.

For the foregoing reasons, we find no error in the separate decisions of the Circuit Court of Berkeley County and the Circuit Court of Jefferson County and their expungement of the respective *lis pendens* notices is affirmed.

Affirmed.

Margaret L. Workman, Chief Justice, Robin Jean Davis, Menis E. Ketchum and Thomas E. McHugh, Justices, concurred.

Brent D. Benjamin, Justice, Dissenting.

Footnotes

1. Petitioner cites to *In Re: Estate of Chuong*, 623 A.2d 1154 (D.C. 1993) (*en banc*), for the proposition that he may not appeal the dismissal of his derivative claims until final judgment has been entered on his remaining causes of action.