

E, F AND F, INC., Plaintiff v. CHAMBERSBURG HOTEL COMPANY, L.L.C., Defendant, C.P. Franklin County Branch, Civil Action - Law, No. A.D. 1999 - 20118

E, F and F, Inc. v. Chambersburg Hotel Company

lis pendens - action does not involve interest to real property

1. Purpose of a lis pendens is to give notice to third parties that the real estate is subject to litigation and that any interest which they may acquire in the real estate will be subject to the result of the action.

2. A lis pendens applies only in situations which involve the adjudication of rights in specific property and may not be entered unless title of real estate is involved.

3. Lis pendens must be stricken where the litigation involves breach of contract of an agreement for the sale of real estate where the sale has been completed and the aggrieved party does not seek to rescind the contract but merely seeks to recover money damages for the breach of contract.

Joseph Leibowicz, Esquire, Attorney for Plaintiff

George E. Wenger, Jr, Esquire, Attorney for Defendant

J. Dennis Guyer, Esquire, Attorney for Defendant

OPINION AND ORDER

WALKER, P.J., May 17, 1999:

Factual and Procedural Background

The facts in the underlying case are as follows. On November 12, 1998, Plaintiff E, F and F, Inc. conveyed to Defendant Chambersburg Hotel Company the property formerly known as the Chambersburg Holiday Inn. The sales contract contained an indemnification clause, whereby defendant agreed to pay to plaintiff certain damages which might result from an early termination of the Holiday Inn franchise agreement, for a maximum amount of \$250,000. Following the settlement, plaintiff sought reimbursement for \$160,000 in damages incurred due to the early termination of the franchise agreement. After having provided proof of plaintiff's payment of the damages to Holiday Inn and after having made several requests for reimbursement, defendant informed plaintiff on February 3, 1999, that it would not reimburse plaintiff for those damages.

Plaintiff filed a complaint on March 8, 1999, requesting that a judgment be entered against defendant in the amount of \$160,000. At the same time, plaintiff also requested the Prothonotary to index this action as a lis pendens against the defendant. A lis pendens was subsequently indexed against the former Chambersburg Holiday Inn property, the only real estate owned by defendant in Franklin County.

Defendant filed a motion to strike the lis pendens on the basis that the underlying action does not involve any interests of plaintiff in the former Holiday Inn property. Argument on the issue was held on May 6, 1999.

Discussion

A lis pendens does not establish a lien on the property affected; rather, its purpose is merely to give notice to third parties that the real estate is subject to litigation and that any interest which they may acquire in the real estate will be subject to the result of the action. *Psaki v. Ferrari*, 377 Pa. Super. 1, 3, 546 A.2d 1127 (1988). Lis pendens has no application except in cases involving the adjudication of rights in specific property. *Id.* Thus, a party is not entitled to have his case indexed as lis pendens unless title to real estate is involved in the litigation. *Id.* Lis pendens may not be predicated upon an action seeking to recover a personal demand. *Id.* For example, the Pennsylvania Supreme Court upheld the lower court's decision to strike the lis pendens where the plaintiffs' real claim was for the recovery of the fair cash value of the property. *McCahill v. Roberts*, 421 Pa. 233, 219 A.2d 306 (1966). The court noted that it would be harsh and inequitable to remove property from the market until the litigation was terminated where the plaintiffs could be fairly compensated for any determined rights with cash. *McCahill*, 421 Pa. at 239. The Court of Common Pleas of Bucks County, citing *McCahill*, struck the lis pendens on the same grounds. *Archibald v. General Construction Associates, Inc.*, 7 D.& C. 3d 427 (1978). In *Archibald*, plaintiffs brought an action against the contractor who had built their homes because of his failure to complete the construction as agreed upon. The contractor did not renege on his obligations until after the plaintiffs had already completed the settlement on their homes. They then brought suit seeking damages for the incomplete construction. The court held that because the subject matter of the suit did not involve specific property, the docketing of the matter as lis pendens was inappropriate. *Archibald*, 7 D.& C. 3d at 436-437.

Counsel for defendant filed a very short brief in support of his motion to strike, full of legal conclusions which he failed to apply to the facts of the underlying case. He appears to argue that the suit brought by plaintiff against defendant does not involve plaintiff's interests in the real estate and therefore that, according to the cases cited by him, the lis pendens must be stricken. After having analyzed the facts of the case, this court must agree. The sale of the former Chambersburg Holiday Inn has been completed. The suit is based on defendant's alleged failure to comply with a provision of the sales contract. Similarly to the situation involving the construction contract in *Archibald*, plaintiffs here also do not seek to rescind the sale on the basis of defendant's breach of contract. Rather, they merely seek to recover money damages incurred by defendant's breach. Thus, the subject of the suit is not the former Holiday Inn property but rather the contract for its sale. Plaintiff will have an adequate remedy for defendant's breach of contract in the form of a money judgment. Upon having obtained a judgment against defendant, it will become a lien on the former Holiday Inn as the property owned by the judgment debtor. *See Psaki*, 377 Pa. Super. at 3. If defendant will attempt to sell the property prior to end of the litigation in an attempt to become "judgment proof", as plaintiff argues, plaintiff can petition the court to hold the proceeds of the sale in escrow or can seek a remedy pursuant to the fraudulent conveyances provisions. Thus, this court finds that the lis pendens is not appropriate in the underlying case and it must be stricken.

ORDER OF COURT

May 17, 1999, after consideration of defendant's motion to strike the lis pendens indexed against defendant's property, this court finds that the underlying suit seeks to recover a money judgment for breach of contract and does not involve any interests plaintiff may have in defendant's property. The lis pendens is therefore inappropriate and must be stricken.

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