

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

CHRISTINE BIROS, AN INDIVIDUAL	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
AMERICAN HARNESS TRACKS, LLC.,	:	No. 1219 WDA 2022
A PENNSYLVANIA LIMITED LIABILITY	:	
COMPANY, CHARLES J. LONG, JR.,	:	
AN INDIVIDUAL, EDWARD LONG, AN	:	
INDIVIDUAL, JAMES CARNA, AN	:	
INDIVIDUAL, CHARLES NANNICOLA,	:	
AN INDIVIDUAL, ARMAND	:	
NANNICOLA, AN INDIVIDUAL, AND	:	
FRANK NANNICOLA, JR., AN	:	
INDIVIDUAL	:	

Appeal from the Order Entered September 19, 2022
In the Court of Common Pleas of Lawrence County Civil Division at
No(s): 70066-2022 MD

BEFORE: MURRAY, J., McLAUGHLIN, J., and PELLEGRINI, J.*

MEMORANDUM BY McLAUGHLIN, J.: **FILED: January 23, 2024**

Christine Biros appeals from the order striking a *lis pendens* on a parcel of land in Lawrence County. We affirm.

Biros filed a praecipe for a *lis pendens* in Lawrence County, asserting that title to a parcel of land there was subject to her pending litigation in Allegheny County. That suit is against American Harness Tracks, LLC (“AHT”) and its individual members (collectively, “Defendants”). It is currently stayed, pending arbitration.

* Retired Senior Judge assigned to the Superior Court.

Defendants moved to strike the *lis pendens*, arguing the Allegheny County litigation does not implicate title to the property, which is owned by a AHT's subsidiary, AHT Land, LP ("AHT Land"). Defendants attached to the motion a copy of the complaint Biros had filed in the Allegheny County action. The complaint brought three counts. First, it requested the court declare which of two operating agreements for AHT is controlling. **See** Mot. to Strike Lis Pendens, 6/9/22, Ex. C, at ¶¶ 12, 18-21, 63-68. Second, the complaint alleged Biros had been involuntarily dissociated from AHT because she was ineligible for gaming licensure, which had become a requirement for AHT's individual members. It asked the court to "declare [Biros's] equity interests in AHT and to declare [her] right to receive compensation[.]" **Id.** at ¶¶ 47-52, 69-84. Third, the complaint asked the court to determine "the amount of an award of compensation and damages to which [Biros] is entitled from AHT and the individual defendants under the terms of [the] applicable [o]perating [a]greement and after discovery [of] AHT's financial documents." **Id.** at ¶¶ 85-88.

The Allegheny County complaint also mentioned the property at issue. It stated that AHT Land had purchased the property and then transferred the oil, gas, and mineral rights to AHT. **Id.** at ¶¶ 31, 37.

After Biros's counsel failed to appear for a hearing on the motion to strike, the trial court entered an order on June 9, 2022, striking the *lis pendens*.

Biros moved for reconsideration, claiming that counsel had been unable to appear for the hearing due to a scheduling conflict. On the merits, Biros argued that while her Allegheny County suit seeks monetary damages, “she is also seeking declaratory relief with respect to her interest in AHT.” Mot. for Reconsideration, 6/16/22, at ¶ 19. She asserted that the Allegheny County court might determine that she owns more than 34 percent of AHT, and alleged that if that happens, AHT Land, which is completely controlled by AHT, cannot convey an interest in the property without her consent. ***Id.*** at ¶ 15. She also argued that before AHT Land purchased the property, the individual members of AHT agreed to assign the mineral rights of the property to the individual members of AHT at closing on the property. ***Id.*** at ¶ 22 and Ex. 5, ¶ 1.2. Biros therefore argued she had a direct interest in the mineral rights to the property.

The court granted reconsideration and held a second hearing on the motion to strike. Afterward, it issued an opinion explaining it found that Biros’s suit against Defendants did not involve title to the property. The court entered an order on September 19, 2022, again striking the *lis pendens*.

Biros appealed. This panel determined the appeal was timely, rejecting Defendants’ argument that Biros should have appealed from the June 9 order striking the *lis pendens* rather than the September 19 order reaffirming its decision following its grant of reconsideration. However, we remanded the case for the trial court to determine whether Biros had waived all issues by

failing to file a timely Rule 1925(b) statement, or whether Biros's counsel had not received notice of the court's order to file a statement.

The trial court held a hearing, after which it entered an order stating it found, "whether there was a breakdown in the functioning of the [c]ourt system or a breakdown in the functioning of the United States Post Office," counsel did not receive the Rule 1925(b) order. Order, 12/1/23, at 1. The court thus found that Biros's Rule 1925(b) statement was timely and Biros had not waived any issues. We therefore turn to the merits of the appeal.

Biros raises one issue:

Whether the trial court committed an error of law when it concluded that title to real estate was not sufficiently implicated and [Biros] was not entitled to a *lis pendens* where [Biros] filed a civil suit in which she alleged a personal interest in the oil, gas and mineral rights in the subject real estate pursuant to a Unit Purchase Agreement and an Investment Agreement with the parent company which is the sole partner and manager of the subsidiary which held title to the subject real estate.

Biros's Br. at 4.

Biros argues her Allegheny County action affects the title to the Lawrence County property for two reasons: (1) it will determine if she still has voting rights in AHT, which wholly controls AHT Land, which in turn owns the property; and (2) it will determine if she is partial owner of the mineral, oil, and gas rights to the property.

We review a decision on a request to strike a *lis pendens* for an abuse of discretion or error of law. ***In re Foremost Indus., Inc.***, 156 A.3d 318, 322 (Pa.Super. 2017). *Lis pendens* is subject to equitable principles, and

“[t]he scope of review of a final decree in equity is limited and will not be disturbed unless it is unsupported by the evidence or demonstrably capricious.” **Id.** (citation omitted).¹

“*Lis pendens* is construed to be the jurisdiction, power, or control which courts acquire over property involved in a suit, pending the continuance of the action, and until final judgment.” **Id.** (citation omitted). Its purpose is to notify any third parties that a piece of real estate is subject to litigation, the outcome of which will affect any interest the third party acquires in the property. **Id.** Thus, “[i]f title to the property is not subject to the result of the litigation, then there is no reason to provide notice to a third party about the litigation.” **Id.**²

Courts must conduct a two-part analysis to determine whether a *lis pendens* is appropriate. First, a court should “ascertain whether title is at issue in the pending litigation.” **Id.** Where the plaintiff does not dispute ownership of the property or seek return of real estate, but only seeks to enforce a contract of sale through money damages, a *lis pendens* is inappropriate. **Id.** at 323-24.³ Second, the court should “balance the equities to determine

¹ An order striking a *lis pendens* is a final, appealable order. **See Iron City Constr., Inc. v. Westmoreland Wooded Acres, Inc.**, 288 A.3d 528, 530 n.6 (Pa.Super. 2023).

² While providing notice, a *lis pendens* does not establish a lien on the property or prevent its transfer. **Iron City Constr., Inc.**, 288 A.3d at 530; **see also Barak v. Karolizki**, 196 A.3d 208, 222 (Pa.Super. 2018).

³ **Cf. Barak**, 196 A.3d at 222-23 (holding a quiet title action involved title to real estate and therefore met first part of *lis pendens* test).

whether the application of the doctrine is harsh or arbitrary and whether the cancellation of the *lis pendens* would result in prejudice to the non-petitioning party.” ***Id.*** at 322-23 (citation omitted).

The court did not abuse its discretion in striking the *lis pendens* because title to the property is not at issue in the Allegheny County litigation. Biros asked the court there to determine her rights in AHT and whether she is owed monetary damages from her involuntary disassociation from AHT. She does not seek title to the property or reinstatement in AHT. Even if Biros’s voting rights in AHT are re-established as a result of her suit, this would not directly affect the title to the property.

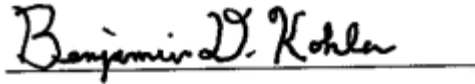
Biros’s claim that the litigation could establish her individual partial ownership of the mineral rights to the property is not well founded. The complaint alleges that AHT Land conveyed the mineral rights to AHT. According to the complaint, therefore, AHT is the current owner of the mineral rights. The complaint does not allege that the mineral rights were ever conveyed to AHT’s individual members pursuant to any agreement and does not ask the court to specifically enforce any agreement to this end. At best, the complaint seeks a declaration of Biros’s rights and monetary damages flowing from an alleged breach of a contract to convey the mineral rights to the individual owners.

Because the pending litigation does not implicate title to the property, the *lis pendens* was not appropriate. In view of this conclusion, we need not proceed to the second step of the analysis and balance the equities.

Order affirmed.

Judge Pellegrini did not participate in the consideration or decision of this case.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

1/23/2024