

Blanche S. March Inter Vivos Trust v. Efthim, No. 338-5-07 Wrcv (Eaton, J., Sept. 19, 2008)

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STATE OF VERMONT
WINDSOR COUNTY, SS

Blanche S. March Inter Vivos Trust, et al Plaintiffs	SUPERIOR COURT Docket No. 338-5-07 Wrcv
v. William Efthim, Roberta Efthim, James Field Dorothy Field, Burton McGillivray, Maragaret McGillivray, William Pezzoni, Lisa Pezzoni Louis Scibetta and Rosemary Scibetta. Defendants	

DECISION ON MOTION TO CANCEL LIS PENDENS

This litigation concerns a dispute over the subdivision and potential sale of land in the Quechee Lakes development in Hartford, Vt. Plaintiffs have brought an action seeking to quiet title concerning adverse claims relating to the property owned by Plaintiffs at [address redacted] in Quechee. Objections have been raised by neighboring landowners concerning the proposed sale by Plaintiffs of lot [number redacted], a portion of Plaintiff's premises which was apparently subdivided. The neighbors claim the subdivided lot does not meet the requirements of the Quechee Lakes Master Plan and can not be sold. Plaintiffs disagree and brought this action, naming many of the neighboring landowners as defendants.

In connection with their action, Plaintiffs have allegedly filed notice of lis pendens against some or all of the Defendants. These notices have apparently been recorded in the Hartford land records but have not been provided to the Court. Defendants object to the filing of lis pendens against their property and seek cancellation of the notices. Plaintiffs insist the lis pendens filings are proper and object to their cancellation.

The doctrine of lis pendens is an historical one, provided for in the common law. It stems from the concept that everyone should be charged with the knowledge of actions

taken by courts. Lis pendens places persons on notice of an action pending against property and works to defeat any argument that a purchaser bought the property without notice of the pending claim. It allows for a court to keep property which is the subject of litigation within the power of the court pending resolution of the dispute. *Cole v. Cole*, 117 Vt. 354 (1952). The filing of lis pendens creates a cloud on the title of the affected property. Given the ease with which a cloud upon title may be created, it is not a favored remedy and is a doctrine of strict necessity. *Id.*

At common law, the elements of lis pendens are that an action be brought in good faith and that it be addressed to title or other interests in a specific and identifiable parcel of land. *DiSabatino v. Salicete*, 695 A. 2d 1118 (Del. Super 1997). Plaintiffs claim that their quiet title action involves the neighboring properties, thus entitling them to file lis pendens against those properties.

The issues involved in this litigation concern the rights of subdivision and sale of Plaintiffs' lot in Quechee Lakes. Defendants have been named in this action by Plaintiff as a result of their ownership of neighboring properties. Defendants have objected to the attempted sale of the Plaintiffs' lot(s) by virtue of their ownership of neighboring property.

That Defendants have standing to challenge the actions of Plaintiffs by virtue of their ownership of neighboring land does not call into question the title or specific property rights to their lands. Whether the Plaintiffs may sell or develop their lot may have an impact on the value of some or all of the Defendants property, but the outcome of this litigation does not affect a third parties' rights pertaining to Defendants' property. The same is not true with respect to Plaintiffs' property. The quiet title action involves rights in a specific and identified parcel of land (Lot [number redacted] and perhaps Lot [number redacted] as well). Lis pendens might lie against Plaintiffs' property, but it does not against the lands of Defendants, especially having in mind that lis pendens is a doctrine of strict necessity. No such necessity exists here.

For the reasons stated herein, it is hereby **ORDERED**:

1. All lis pendens filed against Defendants properties shall be cancelled.
2. Plaintiffs shall file an affidavit of cancellation and a copy of this order with the Hartford Town Clerk, and any other location where the lis pendens are recorded within 10 days of this order.
3. All recording costs of the affidavit(s) and court order are to be borne by Plaintiffs.
4. Defendants are to receive a copy of the recorded filings within 10 days of recording by copy to their counsel.

Dated at Woodstock this 19th day of September, 2008.

Harold E. Eaton, Jr.
Superior Court Judge