

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

CAROLYN MASTEN HUMES,
DANIEL R. MASTEN, and
ARTHUR ROBERT MASTEN,

Plaintiffs,

v.

CHARLES H. WEST FARMS, INC.,
a Delaware corporation,

Defendant/Third Party
Plaintiff,

v.

WILLIAM CHASANOV, ESQUIRE,
ROY S. SHIELS, ESQUIRE,
A. RICHARD BARROS, ESQUIRE, and
BROWN SHIELS & O'BRIEN, LLC,
as successor in interest to the law firm of
BROWN SHIELS & BARROS,

Third Party Defendants/
Fourth Party Plaintiffs,

v.

ESTATE OF RAYMOND W. MASTEN
and CAROLYN M. HUMES, as Executrix
and all Beneficiaries thereof, and the
ESTATE OF MILDRED M. BACH and all
EXECUTORS/ADMINISTRATORS/
BENEFICIARIES thereof,

Fourth Party Defendants.

C.A. No. 05C-08-042 WLW

Humes and Masten v. Charles H. West Farms, Inc.
C.A. No. 05C-08-042 WLW
February 28, 2007

Submitted: November 1, 2006
Decided: February 28, 2007

ORDER

Upon Defendant's Motion for Appointment of Judge
as Vice Chancellor by Designation. Denied.

Robert A. Penza, Esquire and Peter M. Sweeney, Esquire of Gordon Fournaris & Mammarella, P.A., Wilmington, Delaware; attorneys for the Plaintiffs/Fourth Party Defendants.

R. Brandon Jones, Esquire and Sean M. Lynn, Esquire of Hudson Jones Jaywork & Fisher, Dover, Delaware; co-counsel for the Defendant/Third Party Plaintiff Charles H. West Farms, Inc.

Collins J. Seitz, Jr., Esquire, Gregory J. Weinig, Esquire and Scott E. Swenson, Esquire of Connolly Bove Lodge & Hutz, LLP, Wilmington, Delaware; co-counsel for the Defendant/Third Party Plaintiff Charles H. West Farms, Inc.

Jeffrey M. Weiner, Esquire of Law Offices of Jeffrey M. Weiner, P.A., Wilmington, Delaware; attorneys for Third Party Defendants/Fourth Party Plaintiffs.

WITHAM, R.J.

Defendant Charles H. West Farms, Inc. (“West Farms”)¹ filed a Motion for Appointment of the assigned Superior Court Judge, Resident Judge William L. Witham, Jr., as a temporary Vice Chancellor by Designation pursuant to Article IV § 13(2) of the Delaware Constitution.² The Defendant’s Motion is opposed by Plaintiffs Carolyn Masten Humes, Daniel R. Masten and A. Robert Masten.³

Plaintiffs filed an ejectment action in this Court arguing that they are entitled to legal title (and immediate possession) of the 15/36ths Interest in the Masten Farm at issue in this case (“Masten Farm” or “the property”). Generally, Plaintiffs argue that the last will and testament of Daniel Burton Masten, Plaintiffs’ Grandfather, conveyed a Life Interest in the Masten Farm to the Testator’s children, Raymond W. Masten and Mildred

¹Defendant West Farms is also a Third Party Plaintiff. For the sake of simplicity West Farms will be referred to as the Defendant for purposes of the present Motion.

²Delaware Constitution Article IV § 13(2) empowers the Chief Justice of the Delaware Supreme Court, upon written request by the Chancellor or by the President Judge of the Superior Court, to designate one or more of the state judges “to sit in the Court of Chancery [or] the Superior Court..., as the case may be, and to hear and decide cases in such Court and for such period of time as shall be designated.” *Wal-Mart Stores, Inc. v. AIG Ins., Co.*, 2006 WL 3742596, *4 FN 27 (Del. Ch.). This Judge cannot unilaterally appoint himself Vice Chancellor in this proceeding, yet this Court heard the motion on November 1, 2006. It can be argued that the present Motion directed to this Judge could be procedurally improper in light of the fact that the request for designation must come from the President Judge or the Chancellor, yet based on the Court’s ruling on this matter, the issue does not need to be addressed at this juncture.

³Plaintiffs are also certain Third-Party and Forth-Party Defendants. For the sake of simplicity, Carolyn Masten Humes, Daniel R. Masten and A. Robert Masten will be referred to as Plaintiffs for purposes of the present Motion.

S. Bach.⁴ Plaintiffs further argue that the will conveyed a 1/3 Remainder Interest in the property to each of the three Plaintiffs. Therefore, when Raymond and Mildred conveyed their interest in the Masten Farm to Defendant West Farms, they only conveyed a Life Interest in the Property, and upon the deaths of Raymond and Mildred, the Plaintiffs' Remainder Interest in the Masten Farm became possessory.

Defendant West Farm raises the defense of *res judicata* in their Amended Answer concerning Plaintiffs' ejectment action. Generally, West Farms argues that a 1964 Court of Chancery Order approved (1) the future sales by the estate's executors, Raymond and Mildred, of other estate real property, including the future sale of the Masten Farm; and (2) Raymond and Mildred's deposit of the proceeds from such future sales into a trust. The Defendant claims that Plaintiffs were the remainder beneficiaries of two trusts created pursuant to the Chancery Court Order and sale of the property, and upon the deaths of Raymond and Mildred, Plaintiffs were paid their remainder interests therein. Therefore, Plaintiffs have been fully compensated for their remainder interest in the Masten Farm.

West Farms requests the appointment of this Judge to sit as Vice Chancellor, in order to promote judicial economy, so the Court can hear all Claims and Defenses set forth in the Defendant's Amended Answer, which may be equitable in nature.⁵ The

⁴The Court does not need to address the substance of Plaintiffs' claim or the Defendant's defense at this juncture.

⁵West Farms argues that their following Defenses may be equitable in nature: unjust enrichment, payment, detrimental reliance, estoppel, waiver, acquiescence and laches. Also, the following Claims may be equitable in nature: unjust enrichment against Plaintiffs, claims for the imposition of constructive trusts upon those assets of the Plaintiffs that are rightfully West Farm's

Defendant seeks to avoid a possible stay of the judgment in this Court followed by a second trial in the Court of Chancery. West Farms expressly articulates, in the present Motion, that the Defendant's Claims and Defenses become relevant and critical only to the extent (and if), this Court declines to rule in West Farm's favor on the *res judicata* defense.

Plaintiffs oppose the Motion to appoint this Judge as Vice Chancellor, because the Court of Chancery has already denied jurisdiction of the Defendant's equitable claims in this case.⁶ Further, Plaintiffs claim that the Motion is procedurally improper, because there is no cause of action pending in the Court of Chancery. Plaintiffs argue that pursuant to their research, the only situations where Article IV §13(2) is properly invoked is when a Superior Court Judge or Vice Chancellor has moved from one court to another, or when there are pending actions in both Courts and the Section is invoked for purposes of consolidation. The situations where Article IV § 13(2) can be properly invoked does not need to be addressed at this time.

Based on the reasons set forth below, the Defendant's Motion for Appointment of Resident Judge William L. Witham, Jr. as Vice Chancellor by Designation is *denied*.

property; and in the alternative, similar claims for the imposition of constructive trusts upon the estates of Raymond and Mildred (Fourth Party Defendants).

⁶West Farms previously pursued against Plaintiffs' declaratory relief regarding ownership of the property in the Court of Chancery. By Court Order, the Court of Chancery granted Plaintiffs' Motion to Dismiss West Farms' Complaint on May 30, 2006 for lack of subject matter jurisdiction (but permitted transfer to this Court). The Chancery Court set forth its reasons in a May 28, 2006 bench ruling. In the present Motion, the Defendant acknowledges that the Court of Chancery observed such equitable claims or defenses could be maintained in the Court of Chancery **after** the ejectment action was decided in the Superior Court. (Emphasis added).

Discussion

All ancillary claims and defenses in this matter are stayed pending outcome of Plaintiffs' ejectment action against Defendant West Farms. The Defendant's Counter Claims against Plaintiffs and a majority of their Defenses only become relevant *if* the Court rules in favor of Plaintiffs on the ejectment action. Further, whether the Third and Fourth Party Defendants are needed in this action is also contingent on the Court's decision concerning the underlying ejectment action.⁷ The presence of the Non-West Farm Defendants only becomes relevant *if* the Court finds in favor of Plaintiffs on the ejectment action.

The promotion of judicial economy, by addressing everything at once, is outweighed by the benefit of simplifying the issues in the case *sub judice*.⁸ Also, judicial economy may be hindered by addressing claims and defenses that may not even become relevant, depending on the what the Court decides concerning the underlying ejectment action. Consequently, the Court finds it prudent to stay all matters pending outcome of Plaintiffs' ejectment action against Defendant West Farms. Ancillary claims and/or defenses that become relevant only *after* (and if) there is a decision in favor of Plaintiffs on the ejectment action are therefore stayed.

⁷The Estate of Raymond W. Masten and Carolyn M. Humes as executrix (et. al.) and the Estate of Mildred S. Bach et. al. are Third and Fourth Party Defendants in this action. William Chasanov, Esquire, Roy S. Shiels, Esquire, A Richard Barros, Esquire and Brown Shiels & Barros are Third Party Defendants and Fourth Party Plaintiffs in this action.

⁸The Court notes that there is not an action pending in the Court of Chancery at this time, and the Court of Chancery apparently stated that equitable claims and defenses could be brought by the Defendant in the Court of Chancery after the Superior Court decided the ejectment action.

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A Court's jurisdiction is determined by examining the Plaintiff's Complaint.⁹ An ejectment action is within the common law jurisdiction of the Superior Court.¹⁰ It is an action to determine legal title to property.¹¹ As discussed above, the Court will stay all other contingent matters pending resolution of Plaintiffs' ejectment action. Therefore, at the present time, the Defendant's Motion for Appointment of Resident Judge William L. Witham, Jr. as Vice Chancellor by Designation is *denied*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution

⁹*Monsanto Co. v. Aetna Casualty and Surety Co.*, 1989 WL 997183, *2 (Del. Super.).

¹⁰*Humes v. Charles H. West Farms, Inc.*, 2006 WL 337038, *1 (Del. Super.).

¹¹*Id.*