

13-0926

Y. Hunter

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AUG 13 2013

IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA

ST. JOSEPH'S HOSPITAL
OF BUCKHANNON, INC.,

Plaintiff,

v.

JERRY N. BLACK, M.D.,

Defendant.

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Civil Action No. 12-C-52
Judge Henning

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

On the 21ST day of June, 2012, came the Plaintiff, St. Joseph's Hospital of Buckhannon, Inc., ("Plaintiff"), by counsel, and presented its Motion for Summary Judgment with Supporting Memorandum of Law. The Defendant, Jerry N. Black, M.D., ("Defendant"), by counsel, appeared and formally opposed the motion. The issues have been fully briefed and analyzed, the parties have been presented with the opportunity to be heard, and the Court finds that this matter is ripe for decision, as follows:

PROCEDURAL POSTURE

1. Plaintiff filed a Complaint for Declaratory Judgment on April 20, 2012. Therein, Plaintiff requested a legal declaration of rights associated with an *Option to Repurchase* dated June 3, 1982 and entered into between the parties to this action.
2. Specifically, Plaintiff requested that the *Option to Repurchase* be deemed an Option Contract under West Virginia Law. The *Option to Repurchase* was submitted with and incorporated into Plaintiff's Complaint for Declaratory Judgment.

3. Defendant timely responded with a Motion to Dismiss pursuant to W. Va. R. Civ. P. 12(b). This motion was heard on October 1, 2012 and the Court entered its Order Denying the Motion to Dismiss on October 9, 2012. This Order declared that the June 3, 1982 *Option to Repurchase* was an Option Contract. That Order is incorporated herein.

4. Defendant answered the Complaint for Declaratory Judgment on October 22, 2012. Therein, Defendant denied taking the position that Plaintiff does not possess an Option Contract and confirmed that a legal conclusion is necessary to determine whether Plaintiff possesses an Option Contract.

5. Plaintiff moved for Summary Judgment on the basis that there was no dispute as to a material fact; the June 3, 1982 Option to Repurchase was an Option Contract as a matter of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

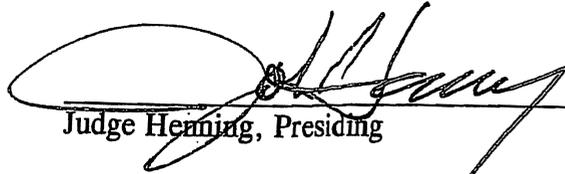
1. Defendant entered into an Option Contract with Plaintiff dated June 3, 1982. This option contract has been recorded at Book 306 Page 140-143.

2. The June 3, 1982 Option Contract is a valid Option Contract under West Virginia law.

As such, the **COURT HEREBY GRANTS** Plaintiff's Motion for Summary Judgment. This action is **HEREBY DISMISSED WITH PREJUDICE**. This is a **FINAL APPEALABLE ORDER**. Each party to pay its own costs and fees associated with this action.

It is so ORDERED this the 8th day of August, 2013.

c 8/12/13
Ashcraft
Hunter



Judge Henning, Presiding

SIRICHI CLEI

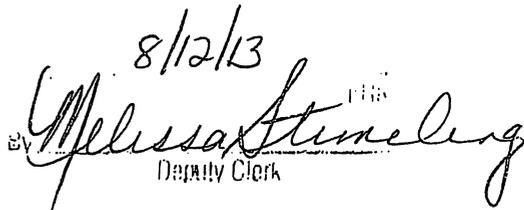
UPSHUR COUNTY, W. VA.
FILED

Submitted Per T.C.R. 24.01 by:



Robert Sellards, Esquire (WV Bar # 9104)
Ryan Ashworth, Esquire (WV Bar #10451)
Nelson Mullins Riley & Scarborough LLP
P.O. Box 1856
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ATTEST: A true copy from the records of the Court is hereby certified to the undersigned.

8/12/13
by 
Deputy Clerk

ENTERED 8/8/13
Civil BOOK 53
PAGE 695-698

IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA

	:	
ST. JOSEPH'S HOSPITAL	:	
OF BUCKHANNON, INC.,	:	
	:	
Plaintiff,	:	Civil Action No. 12-C-52
	:	
v.	:	
	:	
JERRY N. BLACK, M.D.,	:	
	:	
Defendant.	:	
	:	

UPSHUR COUNTY, W. VA.
 JUNE 27 2013
 CIRCUIT CLERK

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the foregoing "*Order Granting Motion for Summary Judgment*" was served upon the following individuals via facsimile and by mailing true copies thereof by regular manner in the United States mail, postage prepaid, at Huntington, West Virginia, on the 27th day of June, 2013 to:

J. Burton Hunter, III
One West Main Street
Buckhannon, WV 26201
Counsel for Defendant, Jerry N. Black, M.D.



G. Keadle

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IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA

**ST. JOSEPH'S HOSPITAL
OF BUCKHANNON, INC.,**

Plaintiff,

v.

JERRY N. BLACK, M.D.,

Defendant.

OCT 10 2012

Civil Action No. 12-C-52
Judge Keadle

**ORDER DENYING DEFENDANT, JERRY N. BLACK'S MOTION
TO DISMISS PLAINTIFF'S COMPLAINT**

On the 1ST day of October, 2012, came the Defendant, Jerry N. Black, M.D., ("Defendant"), by counsel, and presented his Motion to Dismiss to the Court. The Plaintiff, St. Joseph's Hospital of Buckhannon, Inc., ("Plaintiff") by counsel, appeared and formally opposed the motion. The issues have been fully briefed and analyzed, the parties have been presented with the opportunity to be heard, and the Court finds that this matter is ripe for decision, as follows:

PROCEDURAL POSTURE

1. Plaintiff filed a Complaint for Declaratory Judgment on April 20, 2012. Therein, Plaintiff requested legal declaration of rights associated with an *Option to Repurchase* ("the Option") entered into between the parties. The Option contract was submitted with and incorporated into Plaintiff's Complaint for Declaratory Judgment.

2. Defendant responded by filing a Motion to Dismiss pursuant to W. Va. R. Civ. P. 12(b). In support, Defendant asserted that Paragraph 5 of the Option Contract prevents

Plaintiff from exercising the Option until one year prior to June 3, 2081. Paragraph 5 of the Option states as follows:

This first option will be exercised by giving written notice as set forth in paragraph 3 herein which notice can only be given at any time within one year prior to [June 3, 2081].

See "Option," at ¶ 5. Based upon the language cited above from Paragraph 5 of the Option, Defendant requested dismissal of the current action as untimely filed.

3. Plaintiff responded in opposition by asserting that the language of Paragraph 5, cited above, is ambiguous as written. In support, Plaintiff submitted Paragraph 3 of the Option for the Court's review. Paragraph 3 of the Option states:

This option shall be exercised by written notice signed by St. Joseph's and sent by registered mail at least one year prior to [June 3, 2081].

See "Option," at ¶ 3. As set forth in Paragraph 3 of the Option, Plaintiff can exercise the Option at any time prior to June 3, 2080.

4. For these reasons, as well as the reasons stated in Plaintiff's Response in Opposition to Defendant's Motion to Dismiss, Plaintiff requests an Order denying Defendant's Motion and for any such further relief this Court finds warranted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Dr. Black entered into an option contract with St. Joseph's dated June 3, 1982. This option contract has been recorded at Book 306 Page 140-143.

2. The language of Paragraph 3 of the Option Contract allows St. Joseph's to exercise the Option at any time prior to June 3, 2080. Therefore, Paragraph 5 of the Option Contract is ambiguous as a matter of law and fact.

For the reasons stated herein as well as in Plaintiff's Reply in Opposition to Defendant's Motion to Dismiss, the **COURT HEREBY HOLDS** as stated above and **DENIES DEFENDANT'S MOTION TO DISMISS**. The Defendant shall have 20 days from the date of this ruling to submit his Answer to the Plaintiff's Complaint.

It is so ORDERED this the 9 day of October, 2012.

*10/16/12
Sellards
Hunter*

[Signature]

Judge Keach, Presiding

Submitted Per T.C.R. 24.01 by:

[Signature]

Robert Sellards, Esquire (WV Bar # 9104)
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UPSHUR COUNTY, W. VA.
CLERK
02 OCT 16 AM 9:06
CIRCUIT CLERK

TEST: A true copy from the records located in the office of the Clerk of the Circuit Court of Upshur County, West Virginia.

Given under my hand 10/16/12
BRIAN P. GAUDET, CLERK
By *[Signature]*
Deputy Clerk

ENTERED 10/16/12
Civil BOOK 53
PAGE 245-247

IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA
ST. JOSEPH'S HOSPITAL OF BUCKHANNON, INC.,

Plaintiff,

vs.

Civil Action No: 12-C-52

JERRY N. BLACK, M.D.,

Defendant.

CERTIFICATE OF SERVICE

I, J. Burton Hunter, III, attorney for Jerry N. Black, M.D., do hereby certify that I served the foregoing **Supreme Court of Appeals of West Virginia – Notice of Appeal** upon the following counsel and clerk, by delivering a true copy thereof in the US Mail or by hand delivery, in an envelope addressed as follows:

Robert M. Sellards
Nelson Mullins Riley & Scarborough LLP
Post Office Box 1856
949 Third Avenue, Suite 200
Huntington, WV 25701
Via US Mail

Brian Gaudet
Upshur County Circuit Clerk
Upshur County Courthouse Annex
Buckhannon WV 26201
Via Hand Delivery

Dated this 30th day of August, 2013.



J. Burton Hunter, III
Counsel for Defendant
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WV State Bar ID: 1827