



Anthony O'Connell <anthonymineroconnell@gmail.com>

Nader v. O'Connell, et al.

1 message

Betty Van Morrogh <bvmorrogh@bklawva.com>
To: Anthony O'Connell <anthonymineroconnell@gmail.com>

Fri, Sep 28, 2012 at 11:47 AM

Please see attached.

Elizabeth ("Betty Van") Chichester Morrogh

Partner



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Motion for Temporary Injunction.pdf
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B&K this same 5 page
document bt regulae mail on
September 28, 2012.

VIRGINIA: IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Jean Mary O'Connell Nader

Plaintiff vs.

Civil Action No. CL 2012-13064

Anthony Miner O'Connell, Individually and in his capacity as Trustee

Previous Chancery No. CH

Defendant

SERVE:

FRIDAY MOTIONS DAY - PRAECIPE/NOTICE

Moving Party: [X] Plaintiff [] Defendant [] Other

Title of Motion: Motion for Temporary Injunction [X] Attached [] Previously Filed

DATE TO BE HEARD: October 5, 2012 Time Estimate (combined no more than 30 minutes): 10 minutes

Time to be Heard: [] 9:00 a.m. with a Judge [] 9:00 a.m. without a Judge

[X] 10:00 a.m. (Civil Action Cases) Does this motion require 2 weeks notice? [] Yes [X] No

[] 11:30 a.m. (DOMESTIC/Family Law Cases) Does this motion require 2 weeks notice? [] Yes [] No

Case continued from: (Date) continued to: (Date)

Moving party will use Court Call telephonic appearance: [] Yes [X] No

Judge must hear this motion because (check one reason below):

- [] The matter is on the docket for presentation of an order reflecting a specific ruling previously made by that Judge.
[] This Judge has been assigned to this entire case by the Chief Judge; or,
[] The Judge has advised counsel that all future motions, or this specific motion, should be placed on this Judge's Docket; or,
[] This matter concerns a demurrer filed in a case where that Judge previously granted a demurrer in favor of demurrant.

PRAECIPE by: Elizabeth Chichester Morrogh Blankingship & Keith, P.C.
Printed Attorney Name/ Moving Party Name Firm Name

4020 University Drive, Suite 300, Fairfax, VA 22030
Address

(703) 691-1235 (703) 691-3913 25112 BVMorrogh@bklawva.com
Tel. No. Fax No. VSB No. E-Mail Address (optional)

CERTIFICATIONS

I certify that I have in good faith conferred or attempted to confer with other affected parties in an effort to resolve the subject of the motion without Court action, pursuant to Rule 4:15(b) of the Rules of the Supreme Court of Virginia; and, I have read, and complied with, each of the Instructions for Moving Party on the reverse side of this form.

Signature of Elizabeth C. Morrogh
Moving Party/Counsel of Record

CERTIFICATE OF SERVICE

I certify on the 28th day of Setpember, 2012, a true copy of the foregoing Praecipec was

[X] mailed [] faxed [] delivered to all counsel of record pursuant to the provisions of Rule 4:15(e) of the Rules of the Supreme Court of Virginia.

Signature of Elizabeth C. Morrogh
Moving Party/Counsel of Record

INSTRUCTIONS FOR MOVING PARTY

DATE/TIME: All motions should be noticed for the 10:00 a.m. Civil Action Docket or the 11:30 a.m. Domestic/Family Law Docket (All Divorce cases, adoptions and Juvenile & Domestic Relations Court Appeals) unless the moving party believes the motion will be uncontested. All motions believed to be uncontested should be noticed for 9:00 a.m. All motions noticed for 9:00 a.m. should be set without a judge, unless evidence will be required (e.g., *Ex Parte* Proof, Infant Settlements, Fiduciary Matters), or if it is necessary for the order to be entered that morning rather than in chambers at a later time. A **minimum of two weeks' notice is required for all motions for Summary Judgment, Demurrers, Pleas in Bar, motions pertaining to discovery disputes and other motions for which any party desires to file a memorandum.** A memorandum of points and authorities of five pages or less must accompany any of these pleadings and any other motion placed on the Two Week Docket. If either party believes it necessary to file a memorandum exceeding five double-spaced pages, then the parties must utilize the Briefing Schedule procedure: contact opposing counsel or the opposing party and by agreement conduct a telephone conference call with the Calendar Control Judge, (703) 246-2221; or, if agreement is not possible, give advance notice of an appearance before the Calendar Control Judge to establish a Briefing Schedule.

Each side should bring a draft proposed order to Court on the day of the hearing, as the ruling must be reduced to an order that day, absent leave of Court. Cases may only be removed from the docket by the Court or by counsel for the moving party or the moving party. One Week Motions may be removed from the docket up until 4:00 p.m. on the Thursday preceding the hearing date, by contacting the Motions Clerk: (703) 246-4355. Two Week Motions may not be continued or removed from the docket after 4:00 p.m. on the Friday preceding the hearing date, without leave granted by the Judge assigned to hear the motion, for good cause shown.

If a hearing on any motion must take longer than thirty (30) minutes, the moving and responding parties, or their counsel, should appear before the Calendar Control Judge to request a hearing for a day other than a Friday. See, "Motions Requiring More than 30 Minutes" in "Friday Motions Docket Procedures" on the Court's website at <http://www.fairfaxcounty.gov/courts/circuit/CCR-E.htm>

MOTIONS TO RECONSIDER: Do not set a Motion to Reconsider for a hearing. (See Friday Motions Docket Procedures, available from the Clerk's Office, the Bar Association office or on the Court's website at the address above.

CERTIFICATIONS OF MOVING PARTY/COUNSEL: Rule 4:15(b) of the Rules of the Supreme Court of Virginia provides in pertinent part that "Absent leave of court, and except as provided in paragraph (c) of this Rule, reasonable notice shall be in writing and served at least seven days before the hearing. Counsel of record shall make a reasonable effort to confer before giving notice of a motion to resolve the subject of the motion and to determine a mutually agreeable hearing date and time."

CERTIFICATE OF SERVICE: Pursuant to Rule 4:15 (e), a motions pleading shall be deemed served when it is actually received by, or in the office of, counsel of record through delivery, mailing, or facsimile transmission; not when it is mailed or sent.

INFORMATION FOR MOVING PARTY

COURTCALL TELEPHONIC APPEARANCE: In most cases, Virginia attorneys may appear by phone in lieu of appearing in Court for the hearing. To set up a telephonic appearance, you must call (888) 882-6878. For information, please visit the Court's website at <http://www.fairfaxcounty.gov/courts/circuit/CCR-E-60-70.htm> The Clerk's Office prefers that you notify it that you have set up a telephonic appearance by calling (703) 246-2880 no later than 4:00 p.m. on Thursday prior to the hearing date. The Court encourages use of this procedure, and either party may appear by phone.

NOTE: Telephonic appearance is only for members of the Virginia State Bar and licensed attorneys allowed to practice *pro hac vice* in the Fairfax County Circuit Court (with a member of the Virginia State Bar present over the phone or in person)

CONCILIATION PROGRAM: The Fairfax Circuit Court strongly encourages use of conciliation procedures to resolve motions. The Fairfax Bar Association's Conciliation Program conducts conciliation without charge by experienced litigators, who meet in person or by telephone with all interested parties. To request conciliation, fax a Request for Conciliation form to the Fax Hotline, (703) 273-1274; e-mail a request for conciliation to: ffxconciliation@aol.com or leave a voice mail message at (703) 627-1228. You will be contacted before the hearing date by a representative of the Conciliation Program.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JEAN MARY O'CONNELL NADER,)
)
 Plaintiff,)
)
 v.)
)
 ANTHONY MINER O'CONNELL,)
 Individually and in his capacity as)
 Trustee under a Land Trust Agreement)
 Dated October 16, 1992 and as)
 Trustee under the Last Will and)
 Testament of Harold A. O'Connell, *et al.*)
)
 Defendants.)

Case No. 2012-13064

MOTION FOR TEMPORARY INJUNCTION

COMES NOW the Plaintiff, Jean Mary O'Connell Nader, by counsel, and moves this Court pursuant to Va. Code § 8.01-629 for a temporary injunction for the purpose of continuing the term of the Land Trust pending a Final Order in this action. In support of her motion, Plaintiff states the following.

1. This is an action by which Plaintiff seeks to, *inter alia*, remove Defendant Anthony M. O'Connell as trustee under a Land Trust Agreement dated October 16, 1992 (the "Land Trust"). The beneficiaries under the Land Trust are Plaintiff and her siblings, Defendants Sheila O'Connell and Anthony M. O'Connell, individually.

2. As alleged in the Complaint, the Land Trust holds title to certain real property (the "Property") consisting of approximately 15 acres located near the Franconia area of Fairfax County, Virginia.

3. The terms of the Land Trust Agreement provide for the termination of the trust on October 16, 2012 and, upon the termination date, the trustee is directed to convey record title of the Property to the beneficiaries or sell the Property at a public sale.

4. A conveyance of the Property to the beneficiaries or a public sale of the Property before a Final Order has been entered in this case would result in irreparable harm to the Plaintiff, as a beneficiary of the Land Trust.

5. As of the date of the filing of this Motion, Defendant Sheila O'Connell has been served with the Complaint and the time period for her to file an answer is pending. Upon information and belief, Defendant Anthony M. O'Connell has filed a response to the Complaint, which consisted of a one-page letter directed to the Clerk of Court, and the filing of numerous documents and records containing his annotations.

6. By his own admission, Defendant Anthony M. O'Connell, as trustee, has not paid the real estate taxes on the Property or sold the Property, contrary to the terms in the Land Trust agreement.

7. Under the circumstances, the likelihood of success on the merits and the balance of equities favor the Plaintiff.

8. It is in the public interest to allow the Trust to continue in order for Plaintiff to pursue a remedy that will allow for the orderly sale of the Property for the benefit of the beneficiaries of the Trust.

WHEREFORE, Plaintiff Jean O'Connell Nader, by counsel, respectfully requests the entry of an Order as follows:

- A. Providing injunctive relief in the form of continuing the term of the Land Trust until such time as a Final Order has been entered in this case;

- B. Enjoining Anthony M. O'Connell, as trustee under the Land Trust Agreement, from conveying record title of the Property to the beneficiaries or selling the Property at a public sale; and
- C. For all such further relief as this Court deems reasonable and appropriate.

JEAN MARY O'CONNELL NADER
By Counsel

BLANKINGSHIP & KEITH, P. C.
4020 University Drive
Suite 300
Fairfax, VA 22030
(703) 691-1235
FAX: (703) 691-3913

By: Elizabeth Chichester Morrogh
Elizabeth Chichester Morrogh
VSB No. 25112
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2012, a true and correct copy of the foregoing Motion for Temporary Injunction was sent as follows:

By regular and electronic mail to:

Anthony Miner O'Connell
439 S. Vista Del Rio
Green Valley, AZ 85614

By regular mail to:

Sheila Ann O'Connell
663 Granite Street
Freeport, ME 04032

Elizabeth Chichester Morrogh
Elizabeth Chichester Morrogh