

State of Indiana, Greene County, SS:

In the Greene Superior Court,

Annual Term, 2007.

~~FILED
SEP 14 2007
Jesse Winston
GREENE SUPERIOR COURT CLERK~~

DANIEL RAY MILLER, TRUSTEE FOR THE
MILLER FAMILY REAL ESTATE TRUST,

Petitioner

vs.

Cause No. 28D01-0608-MI-335

MARK A. MORIN LOGGING, INC., MARK A.
MORIN, INDIVIDUALLY, AND
WESTERN SURETY COMPANY,

Respondents

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
JUDGMENT**

This cause came before the Court upon the Petitioners Petition for Judicial Review first filed on August 17, 2006. By prior order of the Court, the Petitioner and Respondents have tendered written briefs and proposed orders for the Court's consideration. The parties have also made oral arguments in the cause.

The Court having seen and considered the Record of Proceedings and the briefs of the parties now hereby makes its findings and conclusions as follows:

1. The cause was submitted to the Natural Resources Commission when the original Plaintiff, Daniel Ray Miller, Trustee for the Miller Family Real Estate Trust filed an Amended Complaint for Damages on June 8, 2005. The Respondents were among the original parties named as Defendants in the cause.

2. On January 13, 2006, one of the original Defendants, Doris Miller, filed her Motion for Summary Judgment alleging that the Life Estate holder met the definition of a "Timber Grower" under the terms of the Indiana Timber Buyers Act.

3. On February 17, 2006, the above-named Respondents also filed their Motion for Summary Judgment mirroring the contentions of Defendant, Doris Miller and challenging the jurisdiction of the Natural Resources Commission to hear this matter in the first instance.

4. The Petitioner herein filed responses to these Motions for Summary Judgment. Doris Miller, Morin and Western Surety replied to the responses.

5. Administrative Law Judge Stephen L. Lucas issued on March 31, 2006 Findings of Fact and Conclusions of Law and a Non-Final Order of Administrative Summary Judgment. In Judge Lucas' order, he determined that based upon the facts and legal precedent that apply in this case, summary judgment should be granted in favor of Miller, Morin and Western Surety Company and against Daniel Ray Miller, Trustee for the Miller Family Real Estate Trust.

6. As part of the findings and order entered by the Administrative Law Judge, the ruling granting summary judgment was specifically made without prejudice to all the parties to seek relief in a civil court based upon waste, contribution, indemnification or another legal theory other than the Timber Buyers Act.

7. On or about April 13, 2006, Petitioners herein filed their Objection to Findings of Fact, Conclusions of Law and Non-Final Order of Administrative Summary Judgment.

8. As a result of the April 13, 2006 filing by Petitioners, Judge Lucas' ruling was submitted to the Natural Resources Commission for review thereof. On July 19, 2006, the Natural Resources Commission affirmed the findings of Judge Lucas and made his entry a Final Order of Administrative Summary Judgment.

9. On August 17, 2006, the Petitioners filed their Verified Petition for Judicial Review challenging the final order entered by the Natural Resources Commission.

10. As a result of the Petitioner's filing of August 17, 2006, the Court finds that it has jurisdiction over the parties herein and the subject matter of this action.

11. Any finding of fact that is more properly a conclusion of law is hereby deemed a conclusion of law.

CONCLUSIONS OF LAW

1. Wherever appropriate or necessary herein, the above-stated Findings of Fact shall be construed and interpreted as Conclusions of Law.

2. This case is governed by the Administrative orders and Procedures Act ("the Act"), I.C. 4-21.5-5-1 et. seq.. The Act delineates procedural requirements for

judicial review as well as the scope of the trial court's review of an administrative decision.

3. Upon judicial review, the reviewing court may not try this case de novo, I.C. 4-21.5-5-11.

4. The Court, if it finds that a person has been prejudiced by an agency action, may set aside that action only if the Court finds that the person seeking judicial relief has been prejudiced by an agency action that is:

- (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
- (b) contrary to constitutional right, power, privilege or immunity;
- (c) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;
- (d) without observance of procedure required by law; or
- (e) unsupported by substantial evidence, I.C. 4-21.5-5-14.

5. The burden of demonstrating the invalidity of an agency action is on the party asserting its invalidity. I.C. 4-21.5-5-14.

6. The Administrative Law Judge herein made a detailed 12 page Findings of Fact and Conclusions of Law regarding the standing of the Petitioner to pursue a claim under the Timber Buyers Act. The Administrative Law Judge carefully reviewed the relevant proceedings that took place in the Natural Resources Commission. The Administrative Law Judge carefully considered the statutory authority the Commission had under the relevant state law. The Administrative Law Judge identified and interpreted, based upon the facts, the administrative precedent related to Petitioner's claim.

7. The Administrative Law Judge found that there was no Indiana State Court case that directly correlated the rights of a life estate holder in real property to the Timber Buyers Act. However, the Administrative Law Judge did directly identify and apply a relevant administrative precedent.

8. An arbitrary and capricious action is one constituting willful or unreasonable action, without consideration and in disregard of the facts and circumstances of the case or without some basis which would lead a reasonable and

honest person to such action. Indiana Board of Pharmacy v. Crick, 433 Ne2d 32 (Ind. App. 1982)

9. There has been no showing that the decision of the ALJ was an abuse of discretion.

10. There has been no showing that the decision of the ALJ was arbitrary and capricious or contrary to law.

11. The decision of the ALJ is wholly consistent with the administrative precedent which was directly related to the jurisdiction issue that was before the agency.

12. The ALJ applied valid Indiana rules and law to the facts before him in arriving at his decision.

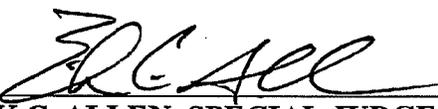
13. The Petitioners herein have available to them a remedy at law outside of the Timber Buyers Act where their claim can be adjudicated in a civil court.

14. Any conclusion herein that should be more properly found to be a finding of fact herein shall be deemed as such.

JUDGMENT

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the relief sought by the Petitioners is Denied and the decision of the Administrative Law Judge is Affirmed.

So ordered this 14 of Dec., 2007.



ERIK C. ALLEN, SPECIAL JUDGE
GREENE SUPERIOR COURT