

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

BARBARA RENNER, and JOHN L RENNER, Plaintiffs
Below, Appellees

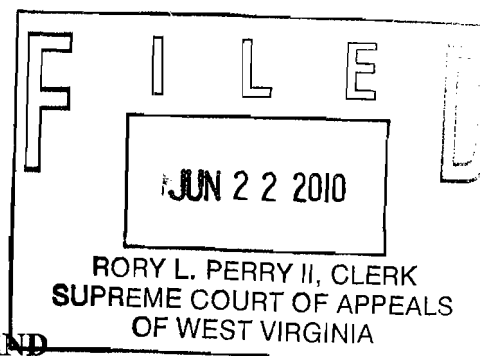
vs.

NO.: 35528
Tyler County Circuit Court No. 07-C-15K

EDGAR L.BONNER and HAZEL BONNER, MELISSA
COX FEISKE, ROSEMARY LANG, BRIAN TRUNK, MICHAEL
TRUNK, RYAN J. RENNER and DAVID RENNER, Defendants
Below

MELISSA COX FELSKE, ROSEMARY LANG, BRIAN TRUNK,
MICHAEL TRUNK, RYAN J. RENNER and DAVID RENNER,
Appellees

EDGAR L. BONNER, and HAZEL E. BONNER, Appellants



**BRIEF ON BEHALF OF EDGAR L. BONNER AND
HAZEL E. BONNER, APPELLANTS**

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**TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS
OF THE STATE OF WEST VIRGINIA**

Your Appellants, Edgar L. Bonner and Hazel E. Bonner, respectfully represent unto this Honorable Court that they are aggrieved by the decision and order entered on December, 15, 2009, by the Circuit Court of Tyler County, West Virginia. The December 15, 2009, Order confirmed the Report of Commissioners and ordered that the real estate, which was the subject of a partition suit, be sold.

Your Appellants assert that said Circuit Court order is unsupported by the pleadings and the evidence adduced through the hearings herein, and is directly contrary to the law of the State of West Virginia. Therefore, Petitioner prays for reversal of the order entered December 15, 2009.

I. SUMMARY OF PROCEEDING AND RULING OF THE LOWER TRIBUNAL

Barbara Renner and John L. Renner, the Plaintiffs below and Appellees herein, initiated this civil action against Edgar L. Bonner and Hazel E. Bonner, the Defendants below and Appellants herein, and Melissa Cox Felske, Rosemary Lang, Brian Trunk, Michael Trunk, Ryan Renner and David Renner, Defendants below and Appellees herein, before the Circuit Court of Tyler County, West Virginia, contending that the real estate which was the subject of this civil action was not susceptible of partition in kind and should be allotted to the Plaintiffs or sold. The Defendants/Appellants, Edgar L. Bonner and Hazel E. Bonner, filed an answer denying that the interests of all the parties would be promoted by an allotment or sale and alleging that Plaintiffs conduct was inequitable in that the claim by the Plaintiffs that the real estate was not susceptible to partition was due to sham real estate transactions which created

miniscule interests in the real estate. The Defendants/Appellees, Melissa Cox Felske, Rosemary Lang, Brian Trunk, Michael Trunk, Ryan Renner and David Renner, who were relatives of the Plaintiffs, all requested, in their answers, that the real estate be allotted to Plaintiffs and that said Defendants be awarded just compensation. The Defendants/Appellees Melissa Cox Felske, Rosemary Lang, Brian Trunk, Michael Trunk, Ryan Renner and David Renner made no other appearance in this proceeding.

On June 7, 2007, a hearing was held before the Circuit Court of Tyler County, West Virginia, upon the motion of Plaintiff's to appoint Commissioners to determine whether the property was subject to partition over the objection of the Defendants Edgar L. Bonner and Hazel E. Bonner that the Court should first determine whether the Plaintiffs were barred from bringing the action due to inequitable conduct.

The Commissioners filed their report on November 29, 2007, partitioning the real estate into two parcels with a right of way from the public highway to the real estate owned by Edgar L. Bonner as the dividing line of said parcels. The Commissioners did not allot the parcels to any party but rather stated that each parcel should be sold separately. The Commissioners further stated that if the Court did not agree with the partition and sale of both parcels then the Commissioners believed that the real estate could not be partitioned and that the real estate should be sold. The commissioners provided no facts or reasons why the real estate could not be partitioned.

On the 6th day of March, 2008, the parties were informed by the Court that the Commissioners had filed their report, provided the parties with copies of the report and gave the parties time to file objections to said report. The Defendants/Appellants, Edgar L. Bonner, and Hazel E. Bonner, filed objections to the report arguing (1) that the Commissions should have

allotted the smaller parcel to the Defendants/Appellants, Edgar L. Bonner and Hazel E. Bonner, with the larger parcel being allotted to Plaintiffs or sold, (2) that the Commissioner failed to state facts and reasons supporting their conclusion that the real estate could not be partitioned in kind, and (3) that the sale of said real estate would prejudice the interest of the Defendants/Appellants Edgar L. Bonner and Hazel E. Bonner, who used a right of way across the subject premises to reach the real estate of Edgar L. Bonner. Unless the sale would be made subject to said right of way, the Plaintiffs/Appellants adjoining real estate would be landlocked. The Plaintiffs/Appellees filed an objection to the report objecting to the partition of the real estate into two parcels before sale.

On July 31, 2009, the Court held a hearing upon the objections of the parties to the Commissioner's report. Although both parties had a number of witnesses present, the Court, without taking evidence, determined that the real estate should be sold as one parcel and appointed Fred Gardner and Keith White as Special Commissioners to sale said real estate. The order of this hearing was entered on December 15, 2009.

II. STATEMENT OF FACTS

The subject real estate is situate in Meade District, Tyler County, West Virginia, consisting of two contiguous parcels of 110 124/160 acres and 8 acres 104 poles respectively. The real estate was owned by Robert E. Amos who died testate and by his last will and testament of record in the Office of the Clerk of the County Commission of Tyler County, West Virginia, in Will Book 14, at page 331, devised his real estate to his nine grandchildren, namely, Anita J. Worden, Robert Rymer Amos, Ruth A. Worden, Russell A. Worden, Harry O. Worden, Robert G. Worden, James O. Worden, James H. Thorn and Mary K. Thorn. The said James O. Worden died intestate leaving Billie G. Worden as his sole heir at law.

The Plaintiff Barbara Renner began to purchase the interests in said real estate as follows:

(a) Deed to Barbara Trunk from Ruth Savage Campbell, dated March 30, 1999, and of record in said Clerk's Office in Deed Book 327, at page 452, for the sum of a \$6,000.

(b) Deed to Barbara Trunk from Rosemary E. Worden, dated February 28, 1999, and of record in said Clerk's Office in Deed Book 327, at page 455, for the sum of \$6,000.00.

(c) Deed to Barbara Trunk from Robert G. Worden, dated February 28, 1999, and of record in said Clerk's Office in Deed Book 327, at page 447, for the sum of \$6,000.00.

(d) Deed to Barbara Trunk Renner from Mary Thorn, dated April 6, 2000, and of record in said Clerk's Office in Deed Book 330, at page 467, for the sum of \$7,000.

(e) Deed to Barbara Trunk from Russell A. Worden, dated February 28, 1999, and of record in said Clerk's Office in Deed Book 327, at page 458, for the sum of \$6,000.00.

(f) Deed to Barbara Trunk from Ricky Amos, dated April 22, 1999, and of record in said Clerk's Office in Deed Book 327, at page 461, for a sum of \$7,150.00.

By the year 2000, as a result of the above described deeds, Plaintiff/Appellee, Barbara Renner, aka Barbara Trunk was the owner of 6/9 of said real estate. Barbara Trunk Renner filed a partition suit in the Circuit Court of Tyler County, West Virginia, being Civil

- Action No. 00-C-20M against Billie G. Worden, C. W. Anderson and Mary Thorn Anderson who owned 3/9 of the subject premises.

Plaintiff/Appellant Edgar L. Bonner is the owner of a tract of real estate which lies contiguous to the subject premises. His sister, Janelle Perkins, owns a tract of real estate above the Edgar L. Bonner real estate. Both the Bonner tract and the Perkins tract were part of a family farm. Mr. Bonner and Ms. Perkins lived on these tracts of real estate during their childhood. Both tracts had access to the main road by a prescriptive easement across the Robert E. Amos farm which is the subject of this partition action. During the pendency of civil action No. 00-C-20M, Edgar L. Bonner and Hazel E. Bonner obtained an undivided one-ninth (1/9) interest in the property by virtue of a deed from Billie G. Worden dated January 30, 2001, and of record in the Office of the Clerk of the County Commission of Tyler County, West Virginia, in Deed Book 332, at page 524. As a result of this purchase of a 1/9 interest, Edgar L. Bonner and Hazel Bonner intervened as third party defendants in Civil Action No. 00-C-20M. Barbara Trunk Renner, filed suit against Edgar L. Bonner and Hazel E. Bonner, Civil Action No. 02-C-19K, claiming that they illegally interfered with a contract between Barbara Trunk Renner and Billie G. Worden, seeking to have the conveyance to the Bonners set aside and damages. Civil Action 02-C-19K was consolidated with 00-C-20M. During the pendency of Civil Action No. 00-C-20M, Barbara Trunk Renner and John L. Renner obtained a 2/9 interest in the subject premises by deed from Mary Kay Thorn Anderson and Wallace Anderson, her husband, dated February 2, 2005, and of record in said Clerk's Office in Deed Book 345, at page 313. As a result of motions for summary judgment, on February 3, 2005, Judge John Madden granted a partial

summary judgment in favor of Defendants Edgar L. Bonner and Hazel Bonner which in essence resolved the issue that the Defendants Edgar L. Bonner and Hazel E. Bonner were the lawful owners of the 1/9 interest formerly owned by Billie G. Worden. See Exhibit A attached hereto.

On April 11, 2005, Barbara Trunk Renner filed a motion to dismiss Civil Action No. 00-C-20M (See Exhibit B attached hereto) and began to transfer miniscule interests in the subject real estate to her relatives as follows:

(a) Melissa Cox Felske is the owner of an one twenty-fifth (1/25) undivided interest of a one-ninth (1/9) undivided interest in the property by virtue of a deed from Barbara Renner to Melissa Cox, dated April 24, 2005, and of record in said Clerk's Office in Deed Book 346, page 613

(b) Rosemary Lang is the owner of an undivided one-hundredth (1/100) of an undivided one-ninth (1/9) interest in said property by virtue of a deed from Barbara Renner to Rosemary Lang, dated May 11, 2005, and of record in said Clerk's Office in Deed Book 347, page 137.

(c) That Brian Trunk is the owner of an undivided one twenty-fifth (1/25) interest of an undivided one-ninth (1/9) interest in and to said property by virtue of a deed from Barbara Renner to Brian L. Trunk, dated April 21, 2005, and of record in said Clerk's Office in Deed Book 346, at page 615.

(d) That Michael Trunk is the owner of an undivided one-fifth (1/5) interest of an undivided one-ninth (1/9) interest in said property by virtue of a deed from Barbara Renner to Michael Trunk, dated April 28, 2005, and of record in said Clerk's Office in Deed Book 347, at page 146.

(e) That Ryan J. Renner is the owner of an undivided one sixty-fourth (1/64) interest of an undivided one-ninth (1/9) interest in said property by virtue of a deed from John L. Renner, II, to Ryan J. Renner, dated May 11, 2005, and of record in said Clerk's Office in Deed Book 346, page 745.

(f) That David Renner is the owner of an undivided one seventy-fifth (1/75) interest of an undivided one-ninth (1/9) interest in said property by virtue of a deed from John L. Renner, II, to David Renner, dated May 5, 2005, and of record in said Clerk's Office in Deed Book 346, page 728.

By 2007, Edgar L. Bonner and Hazel E. Bonner owned 1/9 of the subject premises. Barbara Renner and John Renner owned 8/9 of said real estate subject to the following interests: (1) Brian Trunk 1/25 of 1/9 (2) Ryan Renner 1/64 of 1/9 (3) David Renner 1/75 of 1/9 (4) Melissa Cox Felske 1/25 of 1/9 (5) Rosemary Lang 1/100 of 1/9 (6) Michael Trunk 1/50 of 1/9.

In 2007, Barbara Renner and John L. Renner, the Plaintiffs below and Appellees herein, initiated this civil action against Edgar L. Bonner and Hazel E. Bonner, the Defendants below and Appellants herein, and Melissa Cox Felske, Rosemary Lang, Brian Trunk, Michael Trunk, Ryan Renner and David Renner, Defendants below and Appellees herein before the Circuit Court of Tyler County, West Virginia, contending that the real estate which was the subject of this civil action was not susceptible of partition in kind and should be allotted to the Plaintiffs or sold. The Defendants/Appellants, Edgar L. Bonner and Hazel E. Bonner, filed an answer denying that the interests of all the parties would be promoted by an allotment or sale and alleging that Plaintiffs conduct was inequitable in that the claim by the Plaintiffs that the real estate was not susceptible to partition was due to sham real estate transactions which created miniscule interests in the real estate. The Defendants/Appellees, Melissa Cox Felske, Rosemary

Lang, Brian Trunk, Michael Trunk, Ryan Renner and David Renner, who were all relatives of the Plaintiffs/Appellees, all requested that the real estate be allotted to Plaintiffs and that said Defendants be awarded just compensation. These Defendants all used the same language in their Answer to Plaintiffs' complaint although they live in various locations through the United States. The Defendants Melissa Cox Felske, Rosemary Lang, Brian Trunk, Michael Trunk, Ryan Renner and David Renner made no other appearance in this proceeding.

On June 7, 2007, a hearing was held before the Circuit Court of Tyler County, West Virginia, upon the motion of Plaintiff's to appoint Commissioners to determine whether the property was subject to partition over the objection of the Defendants Edgar L. Bonner and Hazel E. Bonner that the Court should first determine whether the Plaintiffs were barred from claiming that the property could not be partitioned in kind due to the above sham transactions. See Transcript of said hearing attached hereto as Exhibit D. .

The Commissioners filed their report on November 29, 2007, partitioning the real estate into two parcels with a right of way from the public highway to the real estate owned by Edgar L. Bonner as the dividing line of said parcels. The Commissioners did not allot the parcels to any party but rather stated that each parcel should be sold separately. The Commissioners further stated that if the Court did not agree with the partition and sale of both parcels then the Commissioners believed that the real estate could not be partitioned and that the real estate should be sold. The commissioners provided no facts or reasons why the real estate could not be partitioned. (See Exhibit C)

On the 6th day of March, 2008, the parties were informed by the Court that the Commissioners had filed their report provided the parties with copies of the report and gave the parties time to file objections to said report. The Defendants/Appellants, Edgar L. Bonner, and

Hazel E. Bonner, filed objections to the report arguing (1) that the Commissioners should have allotted the smaller parcel to the Defendants/Appellants, Edgar L. Bonner and Hazel E. Bonner, with the larger parcel being allotted to Plaintiffs or sold, (2) that the Commissioner failed to state facts and reasons supporting their conclusion that the real estate could not be partitioned in kind, and (3) that the sale of said real estate would not promote the interest of the Defendants/Appellants Edgar L. Bonner and Hazel E. Bonner, who used a right of way across the subject premises to reach the real estate of Edgar L. Bonner. Unless the sale would be made subject to said right of way, their real estate adjoining the subject real estate would be landlocked. The Plaintiffs/Appellees filed an objection to the report objecting to the partition of the real estate into two parcels before sale.

On July 31, 2009, the Court held a hearing upon the objections of the parties to the Commissioner's report. Although both parties had a number of witnesses present, including the Commissioners appointed herein, the Court, without taking evidence, determined that the real estate should be sold as one parcel and appointed Fred Gardner and Keith White as Special Commissioners to sale said real estate. The order of this hearing was entered on December 15, 2009. See Transcript of said hearing attached hereto as Exhibit E. Had the Defendants/Appellants been allowed to proceed with witnesses they would have produced testimony as to the existence of the right of way by prescriptive easement, the fact that the tract of real estate owned by Edgar L. Bonner would be landlocked if the real estate were sold, the value of the subject premises, the manner in which the premises could have been equitably partitioned in kind, evidence concerning why the Commissioners believed the real estate could not be partitioned in kind and that the conveyances to the Plaintiffs relatives were for the purpose of defeating a partition in kind.

III. ASSIGNMENTS OF ERROR

Defendants/Appellants, Edgar L. Bonner and Hazel E. Bonner respectfully submit the following assignments of error:

1. The Circuit Court of Tyler County, West Virginia (the "circuit court") erred in ordering a sale of the subject premises when the Commissioner's Report did not contain facts to support a conclusion that the subject premises could not be partitioned in kind and where no evidence was presented to the Court showing that the real estate could not be partitioned in kind.

2. The circuit court erred in ordering a sale of the subject real estate where there was no evidence presented to the Court or facts stated in the Commissioners' Report that said sale would not prejudice the interests of the Defendants/Appellants where Edgar L. Bonner's real estate, which adjoined the subject real estate, would be landlocked if the subject real estate were sold

3. The circuit court erred in ordering a sale of the subject real estate where Plaintiffs' conveyed small interests in said real estate for the purpose of defeating a partition in kind.

IV. TABLE OF AUTHORITIES

WEST VIRGINIA CODE

Chapter 37, Article 4, Section 314, 15, 18

WEST VIRGINIA CASES

Ark Land Co. v. Harper, 215 W. Va. 331, 599 S.E.2d 754, 2004 W. Va. LEXIS 24 (2004).14, 15

Bracken v. Everett, 95 W. Va. 550, 121 S.E. 713, 1924 W. Va. LEXIS 36 (1924).....16

Loudin v. Cunningham, 82 W. Va. 453, 96 S.E. 59, 1918 W. Va. LEXIS 106 (1918).....14, 16

Murredu v. Murredu, 160 W. Va. 610, 236 S.E.2d 452, 1977 W. Va. LEXIS 283,
98 A.L.R.3d 1136 (1977).....17

V. DISCUSSION OF LAW

1. The Circuit Court of Tyler County, West Virginia (the "circuit court") erred in ordering a sale of the subject premises when the Commissioner's Report did not contain facts to support a conclusion that the subject premises could not be conveniently partitioned in kind and where no evidence was presented to the Court showing that the real estate could not be partitioned in kind.

West Virginia Code Chapter 37, Article 4, Section 3 provides in part:

When partition cannot be conveniently made, the entire subject may be allotted to any party or parties who will accept it, and pay therefor to the other party or parties such sum of money as his or their interest therein may entitle him or them to; or in any case in which partition cannot be conveniently made, if the interests of one or more of those who are entitled to the subject, or its proceeds, will be promoted by a sale of the entire subject, or allotment of part and sale of the residue, and the interest of the other person or persons so entitled will not be prejudiced thereby, the court, notwithstanding the fact that any of those entitled may be an infant, insane person, or convict, may order such sale, or such sale and allotment...

This section requires that the advocate of a sale must show (1) that the property cannot be conveniently made and (2) that the interest of other parties will not be prejudiced by the sale or allotment. Ark Land Co. v. Harper, 215 W. Va. 331, 599 S.E.2d 754, 2004 W. Va. LEXIS 24 (2004). The most usual method of ascertaining whether the land is susceptible of convenient partition is by the report of commissioners, but when their report simply states that the land is not susceptible of convenient and equitable partition, and mentions no facts justifying their conclusion, it does not warrant a decree of sale. Loudin v. Cunningham, 82 W. Va. 453, 96 S.E. 59, 1918 W. Va. LEXIS 106 (1918).

In the present case, the Defendants/Appellants denied in their answer that the real estate could not be partitioned in kind. No evidence was produced before the Court indicating that the real estate could not be partitioned in kind. At the July 31, 2009, hearing the

Defendants/Appellants were prepared to go forward by the presentation of evidence that the subject real estate could be partitioned in kind. The Commissioners' Report was silent in regard to any facts which would support the finding that the subject real estate could not be conveniently partitioned in kind. The Commissioners' Report merely contained the unsubstantiated finding that the real estate could not be partitioned. See Exhibit C. As a result, the Court had no basis for ordering the sale of the subject real estate.

2. The circuit court erred in ordering a sale of the subject real estate where there was no evidence presented that said sale would not prejudice the interests of the Defendants/Appellants where Edgar L. Bonner's real estate, which adjoined the subject real estate, would be land locked if the subject real estate were sold.

West Virginia Code Chapter 37, Article 4, Section 3 provides in part:

When partition cannot be conveniently made, the entire subject may be allotted to any party or parties who will accept it, and pay therefore to the other party or parties such sum of money as his or their interest therein may entitle him or them to; or in any case in which partition cannot be conveniently made, if the interests of one or more of those who are entitled to the subject, or its proceeds, will be promoted by a sale of the entire subject, or allotment of part and sale of the residue, and the interest of the other person or persons so entitled will not be prejudiced thereby, the court, notwithstanding the fact that any of those entitled may be an infant, insane person, or convict, may order such sale, or such sale and allotment...

This section requires that the advocate of a sale must show (1) that the property cannot be conveniently made and (2) that the interest of other parties will not be prejudiced by the sale or allotment. Ark Land Co. v. Harper, 215 W. Va. 331, 599 S.E.2d 754, 2004 W. Va. LEXIS 24 (2004). The most usual method of ascertaining whether the land is susceptible of convenient partition is by the report of commissioners, but when their report simply states that

the land is not susceptible of convenient and equitable partition, and mentions no facts justifying their conclusion, it does not warrant a decree of sale. Loudin v. Cunningham, 82 W. Va. 453, 96 S.E. 59, 1918 W. Va. LEXIS 106 (1918). The report is not evidence of facts not stated therein; so that if it fails to state facts showing that the interest of the owners will be promoted by a sale, and such facts do not otherwise appear from the record, a decree of sale is unwarranted and will be reversed. Bracken v. Everett, 95 W. Va. 550, 121 S.E. 713, 1924 W. Va. LEXIS 36 (1924).

In the present case, the Defendants/Appellants asserted that their interest would be prejudiced if a sale of the real estate would be ordered. The prejudice to the Defendants/Appellants, in the event of sale, would be the fact that their adjoining tract would be landlocked. No evidence was produced before the Court indicating that the interests of the Defendants/Appellants would not be prejudiced by a sale of said real estate. At the July 31, 2009, hearing the Defendants/Appellants were prepared to go forward by the presentation of evidence that their interests would be so prejudiced. This evidenced would have demonstrated that a right of way existed to their real estate and that there was no reasonable alternative access to their real estate. The Court denied the Defendants/Appellants to produce said evidence. The Commissioners' Report was silent in regard to any facts which would support the finding that the interests of the Defendants/Appellants would not be prejudiced by said sale. In fact, the Report indicates that the Commissioners were concerned about the right of way by partitioning the subject real estate into two parcels to be sold. See Exhibit C. As a result, the Court had no basis for ordering the sale of the subject real estate.

3. The circuit court erred in ordering a sale of the subject real estate where Plaintiffs' conveyed small interests in said real estate for the purpose of defeating a partition in

kind.

The Defendant/Appellants sought to argue that the Plaintiffs/Appellees be barred from seeking a sale of the subject real estate due to the fact that by a series of transactions, they sought to make a partition in kind impossible. In 2005, the Defendants/Appellants, Edgar L. Bonner and Hazel E. Bonner and the Plaintiffs/Appellees were the sole remaining owners of the subject real estate. Edgar L. Bonner and Hazel E. Bonner owned a 1/9 interest and Barbara Trunk Renner and John Renner owned 8/9 interest. The said Plaintiffs and Defendants were all parties in a partition suit, Civil Action No. 00-C-20, concerning the subject premises. The subject premises could have easily been partitioned at that time. Instead, the Plaintiff/Appellee filed a motion to dismiss and began a series of conveyances which created the following interests: (1) Brian Trunk 1/25 of 1/9 (2) Ryan Renner 1/64 of 1/9 (3) David Renner 1/75 of 1/9 (4) Melissa Cox Felske 1/25 of 1/9 (5) Rosemary Lang 1/100 of 1/9 (6) Michael Trunk 1/50 of 1/9. What could have possibly been the motive to dismiss a partition suit and make such transactions other than to insure that a partition could not conveniently be made? If Barbara Renner wished to raise money, she could have done so by the use of promissory notes and deeds of trust, instead of making conveyances of dubious value. The fact that Defendants Melissa Cox Felske, Rosemary Lang, Brian Trunk, Michael Trunk, Ryan Renner and David Renner all filed the same answers, using identical language, is further evidence that their ownership interests were for the sole purpose of defeating a partition of the real estate. At least, the Defendants/Appellants should have had the opportunity to prove such motivation.

A partition suit is equitable in nature and it must be shown that the interest of the persons owning the land would be promoted by the sale. Murredu v. Murredu, 160 W. Va. 610, 236 S.E.2d 452, 1977 W. Va. LEXIS 283, 98 A.L.R.3d 1136 (1977). As a result, a partition suit

should be subject to equitable defenses. To allow conduct such as that demonstrated by the Plaintiff/Appellee would mean any party could stop a partition of real estate and force a sale by conveying ridiculously small interests in a parcel of real estate.. This result would place ordinary individuals at the mercy of powerful and/or rich interests who could always force the sale of any real estate in which they may obtain an interest. The intention of the legislature, in West Virginia Code Chapter 37, Article 4, Section 3 to favor partition of real estate in kind and the paramount importance of the ownership of real estate would be rendered null and void.

VI. PRAYER FOR RELIEF

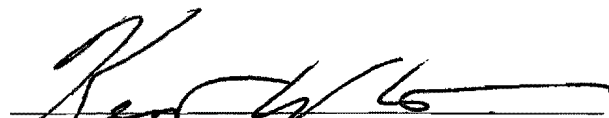
WHEREFORE, your Appellants herein pray that after hearing by this Honorable Court, the order of December 15, 2009. of the Circuit Court of Tyler County, West Virginia be vacated, that the order of sale be overturned, and that this matter be remanded to the Circuit Court of Tyler County for further hearing on the merits of Appellants' defenses and claims and such other relief as to this Court seems just.

Dated: June 21, 2010.

Respectfully submitted,

EDGAR L. BONNER and HAZEL E
BONNNER

By Counsel



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WV State Bar ID No. 4008

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

BARBARA RENNER, and JOHN L RENNER, Plaintiffs
Below, Appellees

vs.

NO.: 35528
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EDGAR L. BONNER and HAZEL BONNER, MELISSA
COX FEISKE, ROSEMARY LANG, BRIAN TRUNK, MICHAEL
TRUNK, RYAN J. RENNER and DAVID RENNER, Defendants
Below

MELISSA COX FELSKE, ROSEMARY LANG, BRIAN TRUNK,
MICHAEL TRUNK, RYAN J. RENNER and DAVID RENNER,
Appellees

EDGAR L. BONNER, and HAZEL E. BONNER, Appellants

CERTIFICATE OF SERVICE

I, KEITH WHITE, Counsel for Defendants/Appellants, EDGAR L. BONNER and
HAZEL E. BONNER, hereby certify that on the 21st day of June, 2010, a true and correct copy
of the foregoing BRIEF ON BEHALF OF EDGAR. L. BONNER and HAZEL E. BONNER
upon the following by mailing, postpaid, through the United States Postal Service to:

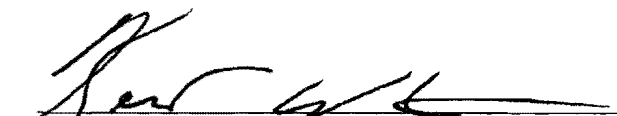
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EXHIBITS

ON

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CLERK'S OFFICE