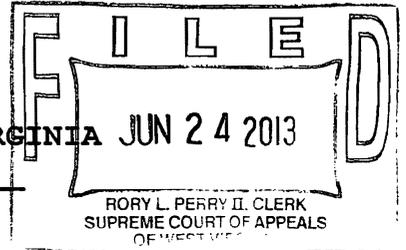


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
Docket No. 13-0562



STATE OF WEST VIRGINIA ex rel.  
SKYLINE CORPORATION and AAA  
MOBILE HOMES, INC. OF  
NEW MARTINSVILLE,

Petitioners and  
Defendants Below,

vs.

CIVIL ACTION NO. 12-C-28

THE HONORABLE TIMOTHY SWEENEY,  
Judge of the Circuit Court of  
Pleasants county, West Virginia;  
And THOMAS R. LIKENS and  
LORI LIKENS,

Respondents and  
Plaintiffs Below.

---

RESPONSE TO PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

---

I. QUESTIONS PRESENTED BY PETITIONERS

1. Does West Virginia Code § 21-9-11a, as amended, require a Plaintiff to file an administrative complaint with the West Virginia Manufactured Housing Construction and Safety Standards Board as a condition precedent to filing a civil action in Circuit Court when the Plaintiffs do not allege an imminent threat of property or personal injury?

2. Does a Complaint devoid of any meaningful allegations of fact satisfy the pleading requirements of the West Virginia Rules of Civil Procedure?

## **II. STATEMENT OF THE CASE**

The Court agrees with the general factual statement of the case as delineated by Petitioners. No additional statement of the case is necessary to correct any inaccuracy or omission in the Petition.

## **III. SUMMARY OF ARGUMENT**

1. The Circuit Court did not commit plain error nor exceed its lawful authority by ruling that the administrative remedy provisions of West Virginia Code § 21-9-11a are merely optional and not mandatory. The administrative remedies in West Virginia Code § 21-9-11a(b) provide for the exclusive jurisdiction of the board "...after the consumer or owner has filed a written complaint..." Therefore, absent an election by the owner to pursue such administrative remedy, the exclusive jurisdiction provisions of § 21-9-11a are not applicable.
2. Plaintiff's Complaint satisfies the pleading requirements of the West Virginia Rules of Civil Procedure, as it alleges cognizable claims under legal causes of action upon which relief may be granted in

satisfaction of Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

#### IV. ARGUMENT

1. The Circuit Court did not commit plain error nor exceed its lawful authority by ruling that the administrative remedy provisions of West Virginia Code § 21-9-11a are merely optional and not mandatory. The administrative remedies in West Virginia Code § 21-9-11a(b) provide for the exclusive jurisdiction of the board "...after the consumer or owner has filed a written complaint..." Therefore, absent an election by the owner to pursue such administrative remedy, the exclusive jurisdiction provisions of § 21-9-11a are not applicable.

The part of West Virginia Code § 21-9-11a(a) at issue states, "When a purchaser or owner of a manufactured home files a written complaint with the board alleging defects in the manufacture, construction or installation of the manufactured home ..." Subsection (b) expands on (a) stating, "The board has a period of ninety days, commencing with the date of filing of the complaint, to investigate and take administrative action ... A purchaser or owner of a manufactured home may not file any civil action ... until the expiration of ninety days after the consumer or owner has filed a written complaint with the board."

[emphasis added]

Plaintiff's allege in their Petition, that the Court interpreted the statutory language unnecessarily, that all the Circuit Court need do was apply West Virginia Code § 21-9-11a.

The Circuit Court agrees. The plain reading of § 21-9-11a indicates that once a purchaser or owner files a written complaint with the board, the board has exclusive jurisdiction thereafter for ninety (90) days, during which period the purchaser or consumer cannot seek relief in any other Courts, absent an immediate risk of personal injury or property damage. However, the code section does not make the initial filing of any and all complaints with the administrative board a prerequisite to filing a civil action. Filing a complaint with the administrative board is optional, per the plain meaning of the statutory language. Should the purchaser or owner opt for redress in Circuit Court or another venue, they are not constrained by the conditions in West Virginia Code § 21-9-11a.

The Circuit Court could not have erred in interpreting West Virginia Code § 21-9-11a, because no interpretation of the statute at issue was made. All the Court did was to apply the statute, as written. "[W]hen a statute is clear and unambiguous and the legislative intent is plain the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute." *Crockett v. Andrews*, 153 W.Va. 714, 718, 172 S.E.2d 384, 387 (1970) citing *State ex rel. Fox v. Board of Trustees of The Policemen's Pension or Relief Fund*, 148 W.Va. 369, 135 S.E.2d 262.

The Circuit Court did not commit plain error nor exceed its lawful authority by ruling that the administrative remedy provisions of West Virginia Code § 21-9-11a were merely optional and not mandatory. The administrative remedies in West Virginia Code § 21-9-11a(b) provide for the exclusive jurisdiction of the board "...after the consumer or owner has filed a written complaint..." Absent an election by the owner to pursue such administrative remedy, the exclusive jurisdiction provisions of § 21-9-11a are not applicable.

2. **Plaintiff's Complaint satisfies the pleading requirements of the West Virginia Rules of Civil Procedure, as it alleges cognizable claims under legal causes of action upon which relief may be granted in satisfaction of Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.**

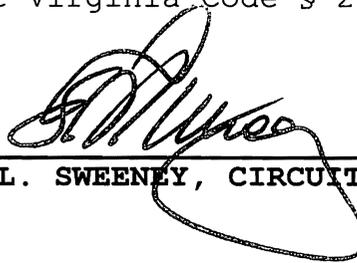
The policy of Rule 12 of the West Virginia Rules of Civil Procedure is to permit the Court to decide cases upon their merits. Under notice pleading standards, all the Complaint is required to do is set forth sufficient information to outline the elements of a recognized cause of action. *John W. Lodge Distrib. Co. v. Texaco, Inc.*, 161 W.Va. 603, 245 S.E.2d 157 (1978). In the instant case, the Complaint alleges cognizable claims upon which the Court may grant legal relief. Any evaluation of the factual basis supporting such claims is a matter for further proceedings upon the merits of the case.

Furthermore, pursuant to long standing case law, the Complaint must be construed in a light most favorable to the plaintiff. In this instance, the Court construed the Complaint in a light most favorable to the Plaintiffs, Thomas and Lori Likens. *Id.* It does not appear to the Circuit Court, in appraising the sufficiency of the Complaint, that there is no set of facts which may entitle Plaintiffs to relief. *Chapman v. Kane Transfer Co.*, 160 W.Va. 530, 236 S.E.2d 207 (1977) citing *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99 (1957).

Therefore, the Circuit Court held the Complaint satisfied the notice pleading requirements of the West Virginia Rules of Civil Procedure. The Plaintiffs allege cognizable claims under legal causes of action upon which relief may be granted.

**V. CONCLUSION**

For the reasons discussed herein, the Circuit Court of Pleasants County respectfully request that this Court deny the Rule to Show Cause, Dismiss the Writ of Prohibition/Mandamus and find that the Court acted with appropriate discretion in applying the plain meaning of West Virginia Code § 21-9-11a.



---

TIMOTHY L. SWEENEY, CIRCUIT COURT JUDGE

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA  
Docket No. \_\_\_\_\_

STATE OF WEST VIRGINIA ex rel.  
SKYLINE CORPORATION and AAA  
MOBILE HOMES, INC. OF  
NEW MARTINSVILLE,

Petitioners and  
Defendants Below,

vs.

CIVIL ACTION NO. 12-C-28

THE HONORABLE TIMOTHY SWEENEY,  
Judge of the Circuit Court of  
Pleasants county, West Virginia;  
And THOMAS R. LIKENS and  
LORI LIKENS,

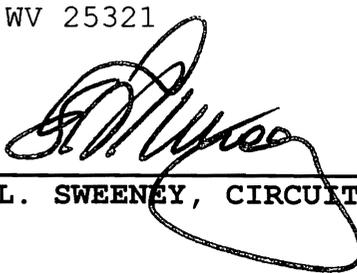
Respondents and  
Plaintiffs Below.

CERTIFICATE OF SERVICE

I, Timothy L. Sweeney, Judge of the Circuit Court of Pleasants County, West Virginia, do hereby certify that on the 19<sup>th</sup> day of June, 2013, I have serve the foregoing "Response to Petition for Writ of Mandamus and/or Prohibition" by First Class Mail, postage prepaid, upon the following addressed as follows:

M. Paul Marteney  
P.O. Box 157  
St. Marys, WV 26170

John R. Teare, Jr.,  
Spilman Thomas & Battle, PLLC  
300 Kanawha Boulevard, East  
P.O. Box 273  
Charleston, WV 25321

  
\_\_\_\_\_  
TIMOTHY L. SWEENEY, CIRCUIT COURT JUDGE