

21st April, 2010

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Fifth District Court of Appeals
Citizens Savings Building, Suite 320
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Canton OH 44702-1941

Ref: Civil Action Styled Dennison Rail Road Museum, Inc., vs. Nick Kallas (On Appeal: 2009-AP100051)

NOTICE

To whom it may concern;

On or about the 18th day of December, 2009, by United States Post, Certified Mail, Item Numbers 7001-2510-0000-0818-7448 and 7001-2510-0000-0818-7455 Return Receipts Acknowledged, Dr. William H. Dean and P. Michael Muncy, both, Pro Se Litigants, provided notice to the respective parties in the above styled case, with regard to our belief that the Dennison Rail Road Museum, through its agents or officers, have filed a civil action against the wrong parties. This notice was duly noted in the docket in the above styled case. To date we have had no constructive response from either side.

After reading the pleadings in this matter, we largely support the arguments made by the attorney for Mr. Nick Kallas. Our exception only occurs with regard to his perceived percentage of ownership interests. We understand that Mr. Kallas may have purchased some interest in the "City of St Albans" (2700 Steam Engine), at arms-length, for value, from David and Rebecca Bailey. We stipulate that it was impossible for Mr. Kallas to purchase property owned by the 2700 Preservation and Restoration Society, Inc., without the appropriate ratification by its officers and remuneration to that legal corporate entity.

We herein assert that we agree with the findings of fact, stipulated to on page 26 of 32 which is a copy of page 3 of 9 pages of a document stipulated to as the September 14th 2009, document titled INTRODUCTION OF PROCEDURAL HISTORY wherein it is disputed "that David Bailey and Rebecca Bailey were the sole owners". The court is correct that the property is owned by a not for profit corporation known as the 2700 Preservation and Restoration Society, Inc., of which we assert that Dean and Muncy control a 2/3rd interest.

Ostensibly the Dennison group is operating under the premise that they do not have "good title" to the 2700 C&O Steam Engine. Ergo the legal action cited hereinabove, in an effort to obtain "plausibly-good title."

In review of the Appeal Brief filed by the attorney for Dennison, on page 16, paragraph 2, "Moreover, Ms. Zucal testified that sometime after they moved to the Depot, two gentlemen

claimed to have ownership rights in the locomotive” (T. at p. 140 pp 4-5). We herein aver that this unresolved issue is an admission that they had constructive knowledge of our claim, if nothing more than a cloud in ownership would require any prudent person to further research chain of title and learn of the ownership history. Moreover, Dean has lived at the same address for nigh on 70 years. It is therefore inexcusable that Dennison made no attempt to contact an owner of the engine with vested interests.

During the meeting that Ms. Zucal is aware of, Dennison Depot Museum officials and Jerry Jacobson asserted that they could not determine, who the owners were. We assert that it was not then nor is it now their duty to police that issue. By their own admission, and from several sources and accounts including internet and published media, they “Dennison” appear to hide behind Jerry Jacobson and intended to keep the engine for “safe keeping.” Viewed in the light of their apparent long term intent and lack of reasonable notice to the owners that they intended to run debt against the personal property for the purpose of laying claim to the property. Moreover, the engine was never abandoned at any time. It was not abandoned by Mr. Kallas. It was not abandoned by us. The actions of Dennison in the way they acquired the engine to begin with, gives rise to criminal action. In most circles, if you take valuable property (in Ohio, over \$35,000), belonging to another, it is known as “grand theft”. To claim that property as your own and in point instant, is unlawful conversion.

Both of these hereinabove cited issues regarding the Dennison, admitted in their pleading, and their modus operandi, are “flies in the ointment” for the Dennison position. First, the fact that they wanted to preserve the engine in “safe keeping” does not give rise to encumbering our engine. Their pleadings do not even allege that they attempted to notify the West Virginia owners. We would proffer that we, the West Virginia interest owners were never noticed that Dennison intended to run any kind of debt or encumbrances against our property. Dennison never notified us or gave us an opportunity to defend. The fact that they may have attempted to notice Mr. Kallas appears to have never been perfected through constructive notice. Moreover, there exists a plethora of legal proceedings in West Virginia and Ohio which point to our ownership. Nothing exists which dilutes this ownership by the 2700 Preservation and Restoration Society, Inc., to-wit Dean and Muncy survive as interested parties.

The fact that Dennison did not make an attempt to provide us with the opportunity to defend our position in the action is grounds (alone) to set aside the ruling of the lower court.

The Dennison group has no document or evidence that supports any issue where we relinquished any of our interest (s) in the Alco 2700 steam engine. We stipulate herein that in the certain meeting held at the Depot, and testified about by Ms. Zucal, they (Dennison), wanted us to sign our interests over, just in case we had a claim. We refused.

Our records indicate that Mr. Elmer Braun, father of the late Michael Braun, Esq., attended the meeting alluded to above, because he held an “unsatisfied judgment” against David B. Bailey, personally and also against the 2700 Preservation and Restoration Society, Inc, for services his son previously rendered in preserving our title interests in, the Kanawha County, West Virginia, civil action in Judge Paul Zakaib’s court. Mr. Braun was not vocal during the meeting but was simply interested in preserving his claim against the asset of the corporation.

If Dennison intended to take the engine through a legal action, a prudent person in the position of Dennison, should have “pulled their head out of their self serving sand” by performing some due diligence and at least notified parties who might have an interest.

After study of this situation, we believe that this matter should be “Reversed and Remanded” to the lower court under Federal Rule 60 (b) and similarly found in the Ohio Rules of Civil Procedure. We believe that Dennison “knew or should have known” that there were other interested parties. We further believe that Dennison intended to defraud us out of our interests by sliding a case through in their jurisdiction in hopes that we would not catch the action until it had latched.

Rule 60 (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. *Id.*

In addition and most importantly, we believe that this case works as a “Fraud Upon the Courts” by manipulating the court to serve their purposes when justice is not properly served by its use of the courts to strip rightful owners (including Kallas) and convert ownership interests to their own purposes. It is obvious that Dennison was not forthcoming in the lower court, with known facts surrounding the engine.

I intend to observe the hearings for “oral argument”, set for the 4th day of May, 2010, at 9:30AM, at Lake High School, 1025 Lake Center Street, Uniontown, Stark County, Ohio.

Dr. Dean is a professor at West Virginia University and has a conflict with this date because he is required to administer final examinations to his students at that time.

We would ask the court for an indulgence with regard to notifying us if there is any change in date or time. In light of the fact that this case is muddled with regard to the issues stipulated to hereinabove, we do not necessarily wish to bring a separate or new action against all of the parties and create more clouds and confusion. Please be advised that we are in the process of becoming familiar with the courts procedures in the State of Ohio. If the court has any preference with regard to our need to file an Injunction, Motion for Joinder, a new civil action in the lower

court regarding issues of Replevin and Conversion or other legal direction that this honorable court would wish we follow, please advise. If allowed, I will be prepared to protect my interests as they therein lie and argue a motion to set aside the lower courts ruling based of Rule 59 and Rule 60 (b) of the Ohio Rules of Civil Procedure.

In our opinion, your honorable court is hearing an issue that could be summed up as “two dogs fighting over a bone that they, neither of them, owns”.

Our notice and action is timely filed following our discovery of the activities of the parties and this appeal.

We intend to protect our vested rights in this matter.

An unsigned copy of this document can be found online at: www.alco2700.com

Sincerely,

P. Michael Muncy, Pro Se

Attested: _____ Date: _____

William H. Dean

CERTIFICATION

I, William H. Dean, herein certify that I have mailed copies of the forgoing document to the Fifth District Court of Appeals, Attention: Cindy, Appeals Clerk, 125 East High Avenue New Philadelphia, Ohio 44663 by Certified Mail, Postage Prepaid, Return Receipt Requested and to Bradley Hillyer, Esquire, attorney for Dennison Depot, Joseph Golian, Esq., attorney for Nick Kallas, Rockney Clark, Tuscararus Clerk, and the Fifth District Court of Appeals, 110 Central Plaza South, Canton, Ohio, 44702 by regular US Post. Done this _____ day of April, 2010.
