

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RICHARD KOLENO and SANDRA KOLENO,	:	NO. 08 – 02,506
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
ROBERT LEWIS, DVM and MARY CATHERINE LEWIS,	:	
and SIT HAPPENS, INC.,	:	
Defendants	:	

OPINION IN SUPPORT OF ORDER OF NOVEMBER 6, 2009,  
IN COMPLIANCE WITH RULE 1925(A) OF  
THE RULES OF APPELLATE PROCEDURE

Defendant Sit Happens, Inc. (hereinafter Defendant) appeals from this Court’s Order of November 6, 2009, which granted Plaintiffs’ request for injunctive relief. In its Statement of Matters Complained of on Appeal, Defendant challenges the Court’s award for several reasons.

First, Defendant contends the Court erred in finding as a fact “that the videos showed dogs at Sit Happens, Inc. barking nearly constantly for lengthy periods of time”. Defendant misunderstands the Court’s finding. The Court did not find that nearly constant barking was shown by the videos. As the Court explained in the last full paragraph of the discussion portion of the opinion, Finding of Fact No. 8, that “[t]he dogs’ barking is nearly constant for lengthy periods of time”, was based on “the testimony of Plaintiffs and all of their neighbors regarding the frequency and duration of the barking”. The video simply showed the nature of the barking in a more effective way than would have testimony alone.

Next, Defendant contends the Court should have found as a fact that Defendant had less than one year left on their five year lease and would be vacating the property at the end of that lease. Defendant does not indicate how such would be relevant to the issue at hand, however, and the Court believes it is not relevant.

Next, Defendant contends the Court should have balanced the harm to Defendant against the harm to Plaintiffs, arguing that harm to Defendant should have been found based on the investment made in the business, the dependence of its employees on the business for income, and the financial obligations of Defendant which necessarily require income from the business. The ordinance in question does not provide any exception to its requirement of

effective screening based on the amount of investment or dependence of employees, however. Indeed, the ordinance specifically applies to kennels, and thus it may be assumed that such factors (which would be true of all commercial kennels) have been considered but found to be subordinate to the neighboring landowners' right to quiet enjoyment of their property. Therefore, while the Court must find that the operation of the kennel is "detrimental" to the abutting use before it can be enjoined, and certainly cannot enjoin it if there is no harm to the abutting use, it is not required to permit it simply because the kennel owners would be harmed by its prevention.

Finally, Defendant contends the Court should have considered Plaintiffs' "lessened expectation" of quiet enjoyment by virtue of the fact their home is adjacent to commercial and agricultural zones. Again, the ordinance in question speaks to this issue by requiring effective screening "from all adjacent *residential* properties". Because of this ordinance, there is no lessened expectation of quiet enjoyment when it comes to kennels.

While the Court understands that the owners of Sit Happens, Inc. have invested time and money into their business, and appreciates the difficulties the instant injunction poses for them, such does not provide a basis to ignore the clear directive of the Woodward Township Zoning Ordinance.

Dated: March 17, 2010

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: Christopher Williams, Esquire  
Patricia Shipman, Esquire  
Gary Weber, Esquire  
Hon. Dudley Anderson