

2003

Mi Vida Enterprises, a Utah corporation, Plaintiff,
Appellee and Mark A. Steen vs. Nancy Ciddio
Steen-Adams and Charles A. Steem III, Defendant,
Appellant : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Thomas J Finch.

Allen S Thorpe.

Recommended Citation

Brief of Appellee, *Mi Vida Enterprises v. Steen-Adams*, No. 20030022 (Utah Court of Appeals, 2003).
https://digitalcommons.law.byu.edu/byu_ca2/4144

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

MI VIDA ENTERPRISES, a Utah
corporation,

Plaintiff and Appellee,

and

MARK A. STEEN, individually
and as personal representative of
the Estate of M.L. Steen,

Defendant and Appellee,

vs.

NANCY CIDDIO STEEN-ADAMS
and CHARLES A. STEEN, III,

Defendant and Appellant.

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
K F U

50

.A10

DOCKET NO.

20030896-CA
20030022-CA

Appellate Nos.: 20030022-CA
and 20030896-CA

ADDENDUM TO BRIEF OF APPELLEE MARK A. STEEN

ON APPEAL FROM A FINAL ORDER
OF THE SEVENTH DISTRICT COURT
HONORABLE LYLE ANDERSON, PRESIDING

THOMAS J. FINCH, #14076 (Colorado)
885 Arapahoe Avenue
Boulder, Colorado 80302
Tel: (303) 449-7050
Fax: (303) 449-2316
Attorney for Mark A. Steen

ALLEN S. THORPE, #3254 (Utah)
P.O. Box 1238
Castle Dale, Utah 84513
Tel: (435) 381-5374
Fax: (435) 381-5644
Attorney for Mark A. Steen

ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

FILED
UTAH APPELLATE COURTS

NOV 17 2004

TABLE OF CONTENTS TO ADDENDUM

Document Title	Exhibit
Ruling on Motions for Preliminary Injunction (04/12/00)	A
Ruling on Motion to Certify Judgment as Final (12/03/02)	B

EXHIBIT A

THE SEVENTH DISTRICT JUDICIAL COURT IN AND FOR GRAND COUNTY
STATE OF UTAH

MI VIDA ENTERPRISES Plaintiff, vs MAXINE S. BOYD, CHARLES A. STEEN, SR., CHARLES A. STEEN, JR., ET AL Defendant,	RULING ON MOTIONS FOR PRELIMINARY INJUNCTION Case No.000700040 Judge Lyle R. Anderson
MAXINE BOYD Plaintiff, vs MI VIDA ENTERPRISES, ET AL. Defendant,	RULING ON MOTIONS FOR PRELIMINARY INJUNCTION Case No.990700145 Judge Lyle R. Anderson

The court conducted a hearing in these cases on April 10, 2000, addressing the request of Mi Vida Enterprises ("Mi Vida"), a corporation, plaintiff in Civil No. 0007-40, and the request of Maxine S. Boyd ("Boyd"), plaintiff in Civil No. 9907-145, for a preliminary injunction against the prosecution by Charles A. Steen, Jr. ("Charles, Jr."), Jayne Marie Steen, Nancy Ciddio Steen-Adams, Monica Lee Steen, Charles A. Steen III, Andrew Kirk Steen, Jr., Karen Steen and Jennifer Steen (collectively the "Dissident Shareholders") of Case No. 99-CV-1020 in the District Court of Boulder County, Colorado (the "Colorado Action"). Of

the Dissident Shareholders, only Charles, Jr. was represented at the hearing. William T. Jennings has previously made a general appearance for Charles, Jr. in Case No. 9907-145. He appeared specially for Charles, Jr. in Case No. 0007-40. Mr. Jennings asserted that the failure to perfect personal service on Charles, Jr. barred the court from taking any action in Case No. 0007-40. Case No. 0007-40 was filed on March 29, 2000. On that same day the court scheduled this hearing and ordered the consolidation of the two cases for the hearing. The court also ordered the time period for responding shortened and indicated that notice of the hearing should be given in the manner most likely to result in actual notice. It is evident from Exhibit R that Colorado counsel for the Dissident Shareholders received actual notice of this hearing. This court believes that notice of a preliminary injunction hearing need not necessarily be given in the same manner as service of a summons. The court accordingly elected to proceed subject to the right of the Dissident Shareholders to have the resultant injunction, if any, set aside because they did not receive actual notice. The court encourages the plaintiff in both cases to diligently pursue service of the complaints on all of the Dissident Shareholders.

The court took evidence at the hearing from which it is able to make some factual findings. Those findings, because of the

nature of the hearing, are necessarily preliminary and may change upon a more thorough airing of the evidence.

In 1974, Mi Vida was formed to receive real estate from the trustee for the bankruptcy of Charles A. Steen, Sr. (Charles, Sr.) and his wife Minnie L. Steen ("Minnie"). Boyd was an incorporator of Mi Vida. She was also a creditor of Charles, Sr. In fact, it appears that she held mortgage liens on most, if not all, of the property connected to Mi Vida to secure her loans granted in 1966 and 1967, totaling as much as \$540,000. Mi Vida granted a security interest in the real estate to secure an obligation to pay \$176,031.14 to John C. Steen, ("John") Charles, Jr., Andy Kirk Steen ("Andy") and Mark Ashby Steen ("Mark"). However, Mi Vida and its shareholders continued to recognize the existence of a debt to Boyd and the existence of encumbrances on Mi Vida's real estate securing that debt. In 1989 Mi Vida and Boyd (along with Charles Sr. and his wife) fixed the obligation at \$500,000, set up a payment schedule, and identified collateral. This agreement was modified in 1995 and the debt fixed at \$600,000.

In 1996, Charles, Jr., and Boyd signed an unusual agreement pursuant to which Boyd assigned all of her rights under the security instruments, in addition to other assets, to Charles Jr., in exchange for Charles, Jr.'s promise to pay Boyd \$1,500,000, plus interest. Charles, Jr. represented that he

would use the assignments to effect a breakup of Mi Vida which would result in Charles, Jr. and Andy owning the Utah real estate and the other shareholders owning the Colorado real estate. The agreement provided that Charles, Jr., and Boyd would be guided in their dealing by Chapter 12, verses 9-21 of the letter from Saint Paul to the Romans.

When Boyd decided that Charles, Jr., was not proceeding with his efforts to break up Mi Vida, she executed documents purporting to revoke the assignments. Charles, Jr., apparently made no payments to Boyd under the 1996 agreement.

Mi Vida is not without assets. It owns property in Grand County, Utah, valued by the county assessor at \$1.5 million. Mark, who is vice president and treasurer of Mi Vida, places the value of the Utah property at \$6.4 million. Mi Vida also owns patented mining claims in Boulder County, Colorado valued by the county assessor at \$92,000. Mark places the value of the Colorado property at \$750,000.

The Utah property generates gross rental income of \$46,000 per year, from which property taxes of about \$23,000 per year must be paid. The Colorado property generates no income. Very little of the real estate has been sold over the years, and Mi Vida has never had significant cash assets. Proceeds of a sale in 1994 have been deposited with the court and delinquent Utah property taxes have been paid.

The Dissident Shareholders own one-sixth of the shares of Mi Vida. They may also inherit a portion of Minnie's shares. ("Minnie") now deceased, owned one-sixth of the shares at her death. Minnie is the mother of John, Mark, Andy, and Charles, Jr.

The Dissident Shareholders filed the Colorado Action against Mi Vida, Mark, John, Charles, Sr., and certain businesses of Mark, asserting a breach of fiduciary duties, diversion of corporate opportunities, seeking an accounting of corporate assets, seeking review of corporate records and asking for appointment of a receiver and involuntary dissolution of Mi Vida.

None of the Dissident Shareholders resides in Colorado. However, Mark resides in Colorado and Mi Vida does have some corporate assets in Colorado, though more than 90% of Mi Vida's assets are in Utah.

Mi Vida asked the Colorado court to dismiss the Colorado action. The Colorado court declined to do so, noting that it was required to accept the pleadings at face value. The assertions in those pleadings differ significantly from the evidence presented to this court. The Colorado court determined that all actions requested by the Dissident Shareholders could be taken in Colorado, with the exception of dissolution of Mi Vida, which must occur in Utah. Utah law provides that shareholders seeking involuntary dissolution of a corporation can be bought out at a

price determined by the court. Utah law provides a relatively quick process for determining this price. It is not clear whether the Dissident Shareholders are willing to be bought out. Counsel for Charles, Jr. conceded, arguendo, that dissolution can only be pursued in Utah, and then noted that the Dissident Shareholders cannot be forced to file such an action in Utah. Mi Vida asserts that, by filing the Colorado Action seeking dissolution, the Dissident Shareholders triggered the buyout provision of Utah law, which can now be enforced in this action. The court should not resolve this question now, for it has not been thoroughly briefed by the parties. Moreover, for reasons stated hereafter, the value of the shares is largely dependent on adjudication of Boyd's claims, which should be done first.

Utah law is clear that shareholder derivative actions, and direct actions as well, may be pursued by shareholders where the cause of action arose. This court does not believe it has authority to prohibit pursuance of those claims in Colorado with respect to actions of Mi Vida or its officers or directors in Colorado. However, Mi Vida is itself a creation of the State of Utah. Appointment of a receiver to take charge of general corporate assets and records and to pursue litigation is an action that ought to be taken only by the court holding full authority to govern the corporation's conduct. This is especially true here, where it appears that the Dissident

Shareholders are seeking appointment of a receiver as a prelude to dissolution.

Boyd complains that she should not be required to go to Colorado to protect her rights as a creditor of Mi Vida and holder of a lien on Mi Vida assets. Boyd's age is advanced and she does not appear capable of extended travel. She has been patient, perhaps too patient, in waiting for her obligations to be satisfied.

The evidence presented to the court was limited, but the court questions whether the Dissident Shareholders will prevail on their derivative or direct claims. Mi Vida does not appear to be a corporation that has ever conducted an active business. Moreover, it does not appear that any of the real estate initially conveyed to Mi Vida has been disposed of under suspicious circumstances. Boyd's claims are murky. It appears that she has entered into numerous agreements, the enforceability of which could be debated. If her claims are ultimately upheld in a significant amount, she may end up with all of Mi Vida's assets. In fact, the validity and amount of her claims appears to be the most significant factor affecting the value of the shares of the Dissident Shareholders. Her claims may be worth nothing or they may exceed \$5 million. This court does not see how the buyout provisions of Utah law can be enforced without first adjudicating Boyd's claims.

This court grants the motions to the following extent;

1. The Dissident Shareholders will be barred from pursuing their dissolution claims in Colorado.

2. The Dissident Shareholders will be barred from seeking appointment of a receiver in Colorado to take charge of any assets of Mi Vida or pursue litigation on Mi Vida's behalf.

3. The Dissident Shareholders will be barred from seeking adjudication of Boyd's claims in Colorado.

4. The dissident Shareholders will be barred from pursuing derivative or direct actions against directors or officers of Mi Vida or on behalf of Mi Vida with respect to any Utah activities or property.

5. The Dissident Shareholders may proceed to adjudicate their derivative and direct actions in Colorado with respect to Colorado activities and property.

When Boyd's claims have been adjudicated in Utah, this court will determine whether the Dissident Shareholders have triggered the buyout provisions of Utah law.

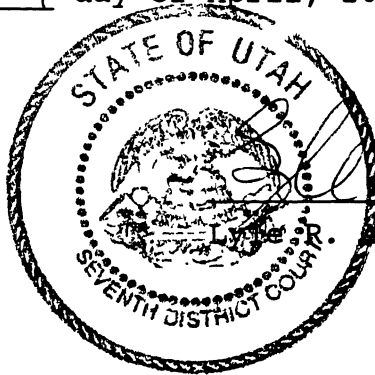
The parties have stipulated that there will be no sales of real estate without approval of this court. That will be incorporated in this court's order. Mi Vida has also sought authorization of this court to use its cash assets to defend these actions. The court will authorize expenditure of \$6,000 from the funds on deposit to pay for the accounting requested by

the Dissident Shareholders. The court imposes no restrictions on the use of current rental payments to Mi Vida, except that current property taxes be paid. Any further expenditures from the funds on deposit must be submitted for court approval.

When the Dissident Shareholders have been served, the court will entertain motions to set aside this order on a showing of lack of actual notice or upon presentation of authority that actual notice of a preliminary injunction hearing is legally insufficient.

Counsel for Mi Vida should submit a formal order pursuant to Rule 4-504.

Dated this 12th day of April, 2000.



[Signature]
Anderson, District Judge

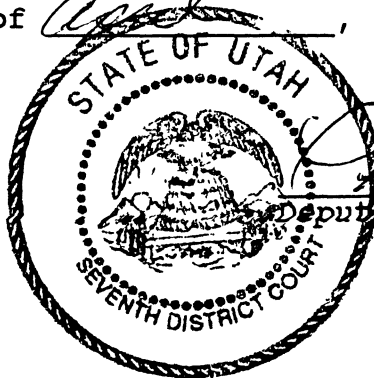
CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 990700145 by the method and on the date specified.
and 000700040

METHOD NAME

Mail	KEITH CHIARA ATTORNEY P.O. BOX 955 PRICE UT 84501
Mail	TRAVIS R. CHRISTIANSEN ATTORNEY P. O. BOX 386 55 SOUTH 300 WEST, SUITE 1 HURRICANE UT 84737
Mail	WILLIAM T JENNINGS ATTORNEY 584 SOUTH STATE STREET Orem UT 84058
Mail	CYNTHIA T. KENNEDY ATTY 811 S PUBLIC ROAD LAFAYETTE CO 80026

Dated this 12th day of April, 2000.



[Signature]
Deputy Court Clerk

EXHIBIT B

SEVENTH DISTRICT COURT
Grand County

FILED DEC 03 2002

CLERK OF THE COURT

THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR GRAND COUNTY
STATE OF UTAH

MI VIDA ENTERPRISES, Inc., Plaintiff, v. MAXINE S. BOYD, et al., Defendants.	RULING ON MOTION TO CERTIFY JUDGMENT AS FINAL Case No. 0007-40 Judge Lyle R. Anderson
--	--

On July 10, 2002, this court issued its ruling on the motion to dismiss claims of Nancy Ciddio Steen-Adams ("Nancy"). A judgment based on that ruling was filed on September 16, 2002. The judgment dismissed Nancy's claims that Mi Vida Enterprises, Inc. ("Mi Vida") had an interest in a number of other business entities, mineral interests and various items of personal property. The judgment did not dismiss Nancy's claim that valuation of her shares in Mi Vida should include consideration of Mi Vida's rights under a 1998 agreement (the "ITEC Agreement") between ITEC Environmental Colorado, Inc. and Golden Tontine, L.L.C., a limited liability company of which Mi Vida is a member.


Determining whether to certify the judgment as final requires analysis of whether the adjudicated claims are based on the same operative facts as the claims yet to be adjudicated. This court concludes that they are not. The adjudicated claims were dismissed because they arose well before June 8, 1996. The

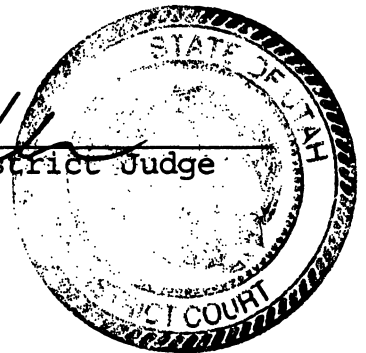
ITEC Agreement was made in 1998. The only facts common to both claims are the identities of the litigants and that the other members of the limited liability company are the business entities Nancy unsuccessfully attempted to include in Mi Vida.

Nancy also claims that she has asserted other breaches of fiduciary duties by Mi Vida's officers. She did not mention any such claims when the motion for summary judgment was briefed. The court believes those "claims" are not separate claims at all, but allegations underlying her dismissed claims. Even if these claims exist separately, they involve conduct of Mi Vida's officers during a distinctly different time period (after June 8, 1996) than the adjudicated claims (well before June 8, 1996).

The motion to certify the judgment as final is granted. The court has signed the submitted formal order.

DATED this 3rd day of ^{December}~~November~~, 2002.


Lyle R. Anderson, District Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 000700040 by the method and on the date specified.

METHOD	NAME
Mail	THOMAS J FINCH ATTORNEY DEF 885 ARAPAHO BOULDER, CO 80302
Mail	JAMES M HULT ATTORNEY DEF 2338 BROADWAY BOULDER CO 80304
Mail	CYNTHIA T. KENNEDY ATTORNEY PLA 308 EAST SIMPSON ST., STE. 102 LAFAYETTE CO 80026
Mail	RANDAL L MEEK ATTORNEY 935 EAST 7220 SOUTH SUITE D-100 MIDVALE UT 84047-0000
Mail	KRISTINE M ROGERS ATTORNEY DEF 712 JUDGE BLDG 8 EAST BROADWAY SALT LAKE CITY UT 84111
Mail	ALLEN THORPE ATTORNEY DEF P.O. Box 1238 Castle Dale UT 84513
Mail	RICHARD G SANDER ATTY Bostrom Sands & Sander 1625 Broadway, Suite 2100 Denver CO 80202

Dated this 3 day of Dec, 2002.

Case No: 000700040
Date: Dec 03, 2002

L. Butchilde
Deputy Court Clerk

