

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001816-MR

STAPLETON, L.L.C.,
SHILLALAH DEVELOPMENT, L.L.C., AND
SHILLALAH MOUNTAIN RESORT AND GOLF CLUB, L.L.C. APPELLANTS

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 00-CI-00086

BINGHAM RECLAMATION CORPORATION APPELLEE

OPINION
AFFIRMING
** **

BEFORE: JOHNSON, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: Stapleton, L.L.C., Shillalah Development, L.L.C., and Shillalah Mountain Resort and Golf Club, L.L.C. bring this appeal from a "Final Judgment and Order of Sale" entered in the Bell Circuit Court on July 7, 2000. We affirm.

It appears from the record that appellants undertook to develop a golf course and accompanying airport, and a housing community, including condominiums, upon a large tract of land in Bell County, Kentucky. The total project encompassed approximately 2,000 acres. Apparently, because they were not residents of Bell County, Appellants operated through a local

agent, J. Christopher Gibbs. Gibbs contracted with Bingham Reclamation Corporation (Bingham) to perform work on the development. The work consisted largely of road construction. For some reason, checks payable to Bingham were not honored by the bank. On February 2, 2000, Bingham filed a mechanic's and materialmen's lien to protect its interest. Kentucky Revised Statutes (KRS) 376.010 et. seq. On February 23, 2000, the instant action to foreclose the lien was filed. It resulted in the judgment and order of sale from which this appeal is prosecuted.

Although appellants' brief is deficient in several respects, we attempt to ascertain their arguments on this appeal. Appellants' first arguments seem to be that the property owned by Stapleton, L.L.C. should not have been subjected to the lien as Bingham provided no enhancement to this property. If there were enhancement, it was not provided pursuant to direct contact with Stapleton. Stapleton, as owner, was entitled to notice under KRS 376.010. The circuit court answered these assertions by concluding that the entire development consisted of 2,000 acres and that all of same was subject to the lien. The circuit court further concluded that appellants' agent, Gibbs, dealt directly with Stapleton. We find no basis for disturbing this decision.

The second argument raised by appellants surrounds the billing which Bingham rendered for his services. This, of course, presented a factual issue, which the circuit court determined adversely to appellants. This matter was tried without a jury. Our review of the factual determination is under

the clearly erroneous rule set forth in Ky. R. Civ. P. (CR) 52.01. We do not believe the circuit court's approval of the billing submitted by Bingham was clearly erroneous inasmuch as there is substantial evidence to support the claim. Evidence is deemed substantial:

[W]hen taken alone or in the light of all the evidence it has sufficient probative value to induce conviction in the minds of reasonable men.

Kentucky State Racing Commission v. Fuller, Ky., 481 S.W.2d 298, 308 (1972), *citing* Blankenship v. Lloyd Blankenship Coal Company, Inc., Ky., 463 S.W.2d 62 (1970).

In conclusion, we are of the opinion the circuit court was correct in concluding that the development was a single project of 2,000 acres encompassing the property of Stapleton, L.L.C., and that appellants were jointly and severally liable to Bingham for the indebtedness asserted. The amount of the claim was adequately supported by the testimony of Bingham that he had completed the road work on the project according to his bids and contract and actually performed an excess amount of work. This testimony was confirmed by the testimony of William Parsons, a licensed engineer and land surveyor.

Upon the whole of the case, we find no error.

For the foregoing reasons, the judgment of the Bell Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Maxie Higgason
Corbin, Kentucky

BRIEF FOR APPELLEE:

Gerald L. Greene
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