

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000601-MR

LUKE KEITH, JR.

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 07-CI-00255

JACOB C. CARR, JR.

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, CHIEF JUDGE; DIXON, JUDGE; BUCKINGHAM,¹
SENIOR JUDGE.

DIXON, JUDGE: Luke Keith, Jr., *pro se*, appeals the Laurel Circuit Court's order of summary judgment rendered in favor of Jacob C. Carr, Jr. Finding no error, we affirm.

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

In March 2006, Keith, his wife, and their two daughters executed general warranty deeds conveying three condominium units they owned in the Post Road Inn Condominium Motel, to MIG Management, LLC, of which Carr is a member. The deeds reflect that MIG paid \$11,000.00 per unit.

In February 2007, Keith filed a complaint against Carr alleging breach of contract.² Keith claimed that Carr had agreed to pay the outstanding utility bills for the three condominium units Keith sold to MIG. As the basis for his claim, Keith relied on a two-page letter he allegedly faxed to Carr. The letter delineates numerous items of furniture Keith and his family planned to remove from the motel. The final paragraph of the letter states,

We can sell for \$11,000.00 per room for the three (3) rooms we can sell. We would NOT be responsible for the back utilities. I have called, and they are about \$9,000.00.

Carr denied Keith's claim and responded to Keith's discovery requests. Thereafter, Keith moved for partial summary judgment, which the court denied. In January 2009, Carr moved for summary judgment, over Keith's objection. On February 19, 2009, the court granted summary judgment in favor of Carr. This appeal followed.

On appeal of a summary judgment, we consider whether the trial court correctly found that "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *Steelvest, Inc. v.*

Scansteel Service Center, Inc., 807 S.W.2d 476, 480 (Ky. 1991) (quoting Kentucky

² Carr was the only defendant named in Keith's complaint.

Rules of Civil Procedure (CR) 56.03). Furthermore, we are mindful that “a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial.” *Id.* at 482.

Keith argues that issues of fact exist relating to Carr’s liability for the utility bills. We disagree.

To establish a breach of contract claim, Keith was required to show that a contract existed and that Carr breached a duty imposed upon him by the contract. *Strong v. Louisville & N. R. Co.*, 240 Ky. 781, 43 S.W.2d 11, 13 (1931). Keith contends that the attorney who prepared the deeds advised him and his family that Carr would pay the utilities. In support of this assertion, Keith tendered the affidavit of his daughter.

We note that, “[t]he party opposing summary judgment cannot rely on their own claims or arguments without significant evidence in order to prevent a summary judgment.” *Wymer v. JH Properties, Inc.*, 50 S.W.3d 195, 199 (Ky. 2001). Despite Keith’s arguments, we are not persuaded that Keith set forth sufficient affirmative evidence to defeat summary judgment. Indeed, in his appellate brief, Keith characterizes the correspondence as a “counteroffer” and concedes that Carr did not sign the document. Based on the evidence of record, we conclude that Keith failed to establish that a contract existed and that Carr refused to perform a contractually obligated duty. Accordingly, we find no error in the court’s decision to grant summary judgment in favor of Carr.

For the reasons stated herein, the judgment of the Laurel Circuit Court
is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Luke Keith, Jr., *Pro Se*
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BRIEF FOR APPELLEE:

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