

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000565-MR

GLENDAMAZURKA AND
MAZURKA COMMERCIAL REALTY

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ERNESTO M. SCORSONE, JUDGE
ACTION NO. 08-CI-05291

BYRON COOPER, CAROL COOPER,
AND KINGDOM PURPOSE MINISTRIES, INC.

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: LAMBERT AND STUMBO, JUDGES; WHITE,¹ SENIOR JUDGE.

STUMBO, JUDGE: Glenda Mazurka appeals from a Fayette Circuit Court order dismissing Byron Cooper and Carol Cooper, in their individual capacities, from a breach of contract suit. The Coopers argue that when they signed the contract at

¹ Senior Judge Edwin M. White sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

issue, they were acting in their corporate capacities on behalf of Kingdom Purpose Ministries and are, therefore, not personally liable for any breach of the contract. Ms. Mazurka claims that the Coopers did not enter into the contract on behalf of Kingdom Purpose Ministries and should be held individually liable. We agree with Appellant's arguments and therefore reverse and remand this case to the trial court for further proceedings.

Byron Cooper is the President of Kingdom Purpose Ministries and Carol Cooper is the Vice-President. On December 22, 2006, the Coopers signed an Offer to Purchase Contract which concerned five properties owned by Ms. Mazurka, including one piece of property already being leased by Kingdom Purpose Ministries. The buyers agreed to pay rent on the properties until they could be purchased. The contract was signed by the Coopers and Ms. Mazurka. Kingdom Purpose Ministries was not mentioned in the contract. Neither were the Coopers designated as agents for Kingdom Purpose Ministries.

Subsequently, the Appellees failed to pay some of the rent. In an effort to salvage the deal, Ms. Mazurka agreed to amend the contract. Two amendments were agreed to. They stated that Kingdom Purpose Ministries would pay half of the past rents due and that future rent payments would be lowered. These amendments were signed by Ms. Mazurka and Byron Cooper, in his corporate capacity. The Appellees later breached the new amendments and the underlying suit followed.

On October 15, 2008, Ms. Mazurka filed a complaint against the Appellees claiming she was owed back rent. She brought suit against Kingdom Purpose Ministries and the Coopers in their individual capacities. On December 9, 2008, the Coopers filed a CR 12.02 motion to dismiss based upon Appellants' failure to state a claim against them. The Coopers argued that any documents they signed were done so in their corporate capacity and that only Kingdom Purpose Ministries was liable for any breach of contract. Ms. Mazurka argued that Kingdom Purpose Ministries was never mentioned in the Offer to Purchase Contract and she believed the Coopers signed the contract on their own behalf, and that Kingdom Purpose Ministries only got involved later in order to guarantee the rents due and to ensure the agreement would continue to move forward.

A hearing was held on the motion to dismiss and the trial court found that the Coopers signed as agents of Kingdom Purpose Ministries and were not personally liable. The trial court then dismissed them from the suit. Ms. Mazurka filed a motion to reconsider, but it was denied. This appeal followed.

It is well established that a court should not dismiss an action for failure to state a claim unless the pleading party appears not to be entitled to relief under any set of facts which could be proven in support of his claim. *Weller v. McCauley*, 383 S.W.2d 356 (Ky. 1964). In ruling on a motion to dismiss, the pleadings should be liberally construed in the light most favorable to the plaintiff, all allegations being taken as true. *Mims v. Western-Southern Agency, Inc.*, 226 S.W.3d 833, 835 (Ky. App. 2007). Therefore, "the question is purely a matter of law." *James v. Wilson*, 95 S.W.3d 875, 884 (Ky. App. 2002). Accordingly, the trial court's decision

will be reviewed *de novo*. *Revenue Cabinet v. Hubbard*, 37 S.W.3d 717, 719 (Ky. 2000).

Morgan v. Bird, 289 S.W.3d 222, 226 (Ky. App. 2009). “Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?” *James v. Wilson*, 95 S.W.3d 875, 884 (Ky. App. 2002).

If an individual signs a contract on behalf of a corporation, there must be some indication of his representative capacity in the contract. *See White v. Winchester Land Development Corp.*, 584 S.W.2d 56 (Ky. App. 1979). For example, this can be done by signing one’s name after the name of the corporation or indicating that you are a representative of the corporation (John Doe, President or John Doe, Agent). “[A]fter the identity of the principal . . . is disclosed, the agent is not liable for his own authorized acts.” *Id.* at 60.

The Coopers argue that Ms. Mazurka was on notice they were acting on behalf of Kingdom Purpose Ministries. They bring our attention to a lease entered into prior to the December 22, 2006, contract.² That lease clearly sets forth that the land is being leased by Kingdom Purpose Ministries. The lease was entered into on August 7, 2006, and specifically states that Kingdom Purpose Ministries is the lessee. It was signed by Carol Cooper. The Coopers also point out that the two amendments were signed by Byron Cooper, and his signature was

² This previous lease covered a parcel of land being leased by Kingdom Purpose Ministries. This parcel is also included in the Offer to Purchase Contract.

under the name Kingdom Purpose Ministries. The amendments also state that Kingdom Purpose Ministries would be making rent payments.

Ms. Mazurka argues that she believed at all times the Coopers were buying the five properties in their individual capacity. She argues that she was not a party to the August, 2006 lease because she did not sign it. The lease was in fact signed by her then husband, and now ex-husband. She also claims that she believed Kingdom Purpose Ministries took part in the two amendments to help guarantee the Offer to Purchase Contract and keep the deal from falling through.

We find that there are too many unanswered questions for the Coopers to be dismissed from the case at this time. The four corners of the Offer to Purchase Contract do not mention Kingdom Purpose Ministries anywhere. If the allegations in the Complaint are taken as true, it is possible Ms. Mazurka could prevail. In order to grant a CR 12.02 motion to dismiss, there must be no set of facts that would entitle Ms. Mazurka to relief. We cannot say that is the case here.

Based on the foregoing, we reverse and remand this case to the trial court for further proceedings consistent with this opinion.

ALL CONCUR.