

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-001006-MR

AMERICAN HOME CARE, LLC

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JAMES R. SCHRAND II, JUDGE
ACTION NO. 08-CI-01248

TANNERS LANE PROPERTIES, LLC;
CITY OF FLORENCE; COUNTY OF
BOONE; CHRISTIAN FINANCIAL, LLC;
and BANK OF KENTUCKY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, DIXON AND MAZE, JUDGES.

MAZE, JUDGE: American Home Care, LLC (“American”) appeals from the May 10, 2012, order of the Boone Circuit Court which denied American’s motion to reconsider and vacate a previously entered order dismissing American’s complaint to enforce a mechanic’s lien. We affirm.

This action stems from a mechanic's lien filed by American upon certain property ("property") owned by Tanners Lane Properties, LLC ("Tanners Lane"), on July 26, 2007, in the amount of \$12,000.00. In 2007, the property was sold to River of Faith International Harvest, Inc. ("RFIH"), who obtained a mortgage secured loan from Johnson Mortgage Services, Inc. ("Johnson"). On May 28, 2008, American filed a complaint with the Boone Circuit Court to enforce its mechanic's lien on the property, and named only Tanners Lane as the defendant. At some point, Johnson had assigned the mortgage to Christian Financial, LLC ("Christian") and that mortgage was recorded on May 29, 2009. Although American initiated legal action in 2008, it did not file a notice of *lis pendens* until February 28, 2011.

Upon discovering the lawsuit, Christian filed a motion to intervene on August 10, 2011. The motion to intervene was granted and Christian filed a motion to dismiss, alleging, among other things, that American had failed to name all the necessary parties to the action. American then filed a motion to amend its complaint. On or about August 23, 2011, Christian conveyed the mortgage to the Bank of Kentucky. On January 10, 2012, the trial court denied the motion to dismiss and granted American thirty days to file an amended complaint. The amended complaint, which named Christian, but not Bank of Kentucky, was filed on February 6, 2012. Thereafter, Christian filed a new motion to dismiss, alleging that American had still not named all necessary parties. American then filed a second amended complaint on February 28, 2012, without first receiving leave

from the trial court to do so. Christian's motion to dismiss was granted in an order entered on March 13, 2013, for failure to name all necessary parties and failure to comply with the January 10, 2012, order. Thereafter, on March 21, 2012, American filed a motion to reconsider and vacate the order dismissing. That motion was denied on May 10, 2012, and this appeal followed.

American's sole argument on appeal is that the trial court abused its discretion when it dismissed American's complaint. A complaint may only be amended within twenty days of service, or "by leave of court or by written consent of the adverse party." Kentucky Rules of Civil Procedure (CR) 15.01. Leave to amend is discretionary with the trial court, whose ruling will not be disturbed absent clear abuse. *Graves v. Winer*, 351 S.W.2d 193, 197 (Ky. 1961). Here, American had been given leave to file an amended complaint, which it did. That amended complaint, however, still remained deficient in that it did not name Bank of Kentucky. Thereafter, American filed a second amended complaint, after the court's imposed thirty-day deadline and without leave from the trial court. Its second amended complaint was therefore not filed within the confines of the trial court's January 10, 2012, order, or CR 15.01. In its brief, American provides no "supportive references" to the record. CR 76.12(4)(c)(v). Furthermore, American does not make any cognizable legal argument nor cite to any precise legal authority. Instead, American only makes general statements that the trial court's dismissal was unreasonable and unfair. "It is not our function as an appellate court to research and construct a party's legal arguments." *Hadley v. Citizen Deposit*

Bank, 186 S.W.3d 754, 759 (Ky. App. 2005). Because American has failed to provide any identifiable manner in which the trial court abused its discretion, its argument is without merit. Moreover, given the procedural history of the case, we cannot say that dismissal was an abuse of discretion.

For the foregoing reasons, the May 10, 2012, order of the Boone Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Theodore Knoebber
Newport, Kentucky

BRIEF FOR APPELLEE,
CHRISTIAN FINANCIAL, LLC:

Brian W. Wais
Cincinnati, Ohio