

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001732-MR

ELTON O. RUNNER, SR. AND
BETTY G. RUNNER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANGELA MCCORMICK BISIG, JUDGE
ACTION NO. 12-CI-005353

KENTUCKY HOUSING CORPORATION

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, NICKELL AND VANMETER, JUDGES.

COMBS, JUDGE: Elton O. Runner and Betty G. Runner, his wife, appeal from a summary judgment granted to Kentucky Housing Corporation (KHC) by the Jefferson Circuit Court in an opinion and order entered on September 24, 2014. The trial court concluded that the Runners had failed to present any evidence to show that there is a genuine issue of material fact as to any of the allegations contained in their complaint and granted summary judgment. Additionally, the

trial court denied the Runners leave to file an amended complaint against KHC.

After our review, we affirm.

The record reveals the pertinent facts that follow. KHC filed a foreclosure action against the Runners in Jefferson Circuit Court in 2004. In conjunction with the civil action, KHC filed a notice of *lis pendens* in the Jefferson County Clerk's Office on April 29, 2004. The notice was properly recorded. The foreclosure action was eventually settled, and a release of the *lis pendens* was filed in the Jefferson County Clerk's Office on May 3, 2011. The release was also properly recorded.

On October 8, 2012, the Runners (acting *pro se*) filed a complaint against KHC in Jefferson Circuit Court, essentially alleging that KHC played a role in the "issuance of improper mortgages, premature and unauthorized foreclosures, [and] violation of service members' and other homeowners' rights." The Runners also implied that KHC may have used "false and deceptive affidavits and other documents" and wasted taxpayer funds. The Runners referred specifically to a number of federal statutes and extensively to the allegedly wrongful conduct of numerous banks. The banks were not included as defendants in the action. They sought to recover \$1,000,000.00 in damages.

In its answer, KHC explained that many of the allegations included in the complaint appeared to relate to matters that bore no relationship to the foreclosure action that it had filed against the Runners in 2004. KHC denied any unlawful conduct.

In April 2014, the Runners sought leave to amend their complaint to add a claim of slander of title. KHC argued that leave of court should not be granted. On July 21, 2014, KHC filed a motion for summary judgment with respect to the remaining claims. The Runners did not respond.

In its opinion and order entered September 24, 2014, the Jefferson Circuit Court denied the Runners' motion for leave to amend their complaint. The court concluded that the allegations included in the tendered complaint did not constitute a claim for slander of title. It also determined that KHC was entitled to summary judgment since the Runners had failed to show how any conduct on the part of KHC constituted a violation of federal or state law. Acting *pro se*, the Runners then filed this appeal.

The Runners contend on appeal that the circuit court erred by refusing to allow them to file an amended complaint pursuant to the provisions of Kentucky Rule[s] of Civil Procedure (CR) 15.01 and by granting summary judgment in favor of KHC.

First, we address the Runners' contention that the circuit court erred by refusing to allow them to file an amended complaint pursuant to CR 15.01. The relevant language of that rule provides that after a responsive pleading is served, "a party may amend his pleading only by leave of court[.] The rules indicates that "leave shall be freely given when justice so requires." We review a denial of a motion for leave to file an amended complaint for abuse of discretion. *Graves v. Winer*, 351 S.W.2d 193, 197 (Ky. 1961). "The test for abuse of discretion is

whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000).

The circuit court did not abuse its discretion by denying the Runners’ motion for leave to file an amended complaint. The tendered complaint sought to assert a claim for slander of title based upon the contention that KHC filed a notice of *lis pendens* and then failed to file a release once the foreclosure action was dismissed. As the trial court correctly observed, a claim of slander of title under these circumstances would require a creditor to have acted in bad faith in making a disparaging and false statement that affected the debtors’ title to property. There is no evidence whatsoever to indicate that KHC acted with malicious intent by commencing its foreclosure action or by filing the notice of *lis pendens*. A release of the *lis pendens* was filed by KHC and was subsequently duly recorded by the county clerk. Thus, the court properly concluded that the additional claim for slander of title was baseless. The court did not err by refusing to permit the complaint to be amended.

Next, the Runners contend that entry of summary judgment was not warranted. They claim that property records indicate that KHC failed to release its recorded notice of *lis pendens* in accordance with its express agreement to do so. However, absolutely no evidence exists to support that bare allegation. The undisputed evidence of the release directly refutes the allegation. Thus, no issue of fact is present.

Summary judgment shall be granted only where “the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56.03. The trial court must view the record “in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). However, “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. Upon review, the appellate court must determine “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky.App. 1996).

To reiterate, the Runners have failed to show the existence of any genuine issues of material fact in this matter. While they alleged that KHC engaged in deceptive consumer practices with respect to loan origination, loan servicing, and foreclosure proceedings, the Runners failed to present any evidence demonstrating that KHC had engaged in any of these actions. Consequently, KHC was entitled to judgment as a matter of law. Summary judgment was proper.

We affirm the judgment of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Elton O. Runner, Sr
Betty G. Runner
Louisville, Kentucky

BRIEF FOR APPELLEE:

Luke Morgan
Lexington, Kentucky