

RENDERED: FEBRUARY 12, 2016; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-001600-MR

TAX EASE LIEN SERVICING, LLC

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE FREDERICK J. COWAN, JUDGE  
ACTION NO. 13-CI-400354

HABITAT FOR HUMANITY OF  
METRO LOUISVILLE, INC.;  
UNKNOWN OCCUPANTS OF 509 MARRET  
AVENUE, LOUISVILLE, KENTUCKY 40208,  
PARCEL/MAP ID#09023D00770000, IF ANY;  
COMMONWEALTH OF KENTUCKY,  
DIVISION OF COLLECTIONS;  
LOUISVILLE-JEFFERSON COUNTY  
METRO DEPARTMENT OF INSPECTIONS,  
PERMITS AND LICENSES; LOUISVILLE-JEFFERSON  
COUNTY METRO, DEPARTMENT OF CODES AND  
REGULATIONS; AND COMMONWEALTH OF  
KENTUCKY, COUNTY OF JEFFERSON

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DIXON, D. LAMBERT, AND THOMPSON, JUDGES.

D. LAMBERT, JUDGE: Tax Ease Lien Servicing, LLC (Tax Ease) appeals from two orders of the Jefferson Circuit Court dismissing a foreclosure suit against Habitat for Humanity of Metro Louisville, Inc. (Habitat). After careful review, we affirm.

## **I. BACKGROUND**

On August 6, 2010, Tax Ease purchased a 2009 property tax certificate of delinquency on 509 Marret Avenue in Louisville, Kentucky. On January 28, 2013, Tax Ease brought a foreclosure action against Habitat, which had acquired the property subject to Tax Ease's tax certificate. Upon receiving the complaint, Habitat contacted Tax Ease and learned that \$4,440.09 would satisfy the debt.<sup>1</sup>

Habitat wrote Tax Ease a letter on February 18, 2013, outlining its position with respect to the foreclosure suit. In the letter, Habitat alleged that Tax Ease failed to follow several statutory procedures prior to filing its complaint.<sup>2</sup> The letter also contained an offer of "\$1,000 in exchange for a recorded release of the certificate of delinquency." The offer expired three days later without acceptance from Tax Ease.

On February 25, 2013, Habitat filed a counterclaim and a motion to dismiss Tax Ease's complaint "for lack of particular case subject matter jurisdiction." Two days later, Tax Ease notified Habitat of its willingness to accept

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<sup>1</sup> Tax Ease originally bought the certificate of delinquency for \$842.67.

<sup>2</sup> Specifically, Habitat alleged Tax Ease failed to comply with Kentucky Revised Statutes (KRS) 134.546, 134.126, 134.490, 134.010, and 134.452 (as amended in 2009).

the initial \$1,000.00 offer. Tax Ease received a \$1,000.00 check by mid-March and released its recorded *lis pendens* notice one month later.

On April 26, 2013, Habitat voluntarily dismissed its counterclaim pursuant to CR<sup>3</sup> 41.01. A month after that, Tax Ease presented Habitat with an agreed order to dismiss its own complaint as well as Habitat's counterclaim.

Without signing the agreed order, Habitat notified Tax Ease that the counterclaim had already been voluntarily dismissed.

The trial court referred Habitat's motion to dismiss to the Jefferson County Master Commissioner, who recommended dismissal after finding that Tax Ease failed to comply with KRS<sup>4</sup> Chapter 134 prior to foreclosing.<sup>5</sup> Tax Ease received a copy of the report containing this recommendation but did not object to it. The trial court ultimately approved the master commissioner's report and dismissed Tax Ease's claims for lack of particular case jurisdiction. Neither Tax Ease nor Habitat received a service copy of the order.

Unaware of the order from September 20, 2013, Habitat filed a second motion to dismiss Tax Ease's complaint in accordance with the master commissioner's recommendation. Tax Ease took this opportunity to assert that the parties had entered into an oral settlement agreement requiring both parties to

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<sup>3</sup> Kentucky Rules of Civil Procedure.

<sup>4</sup> Kentucky Revised Statutes.

<sup>5</sup> Tax Ease, *inter alia*, did not send a proper 45-day notice as required by KRS 134.490; it did not itemize its charges or provide the correct contact information for the third-party purchaser.

dismiss their respective claims *with prejudice*. According to Tax Ease, this purported settlement rendered the jurisdictional issues moot.

On February 28, 2014, the trial court incorporated the master commissioner's report from the previous September into an order dismissing Tax Ease's claims with prejudice. The trial court designated the order "final and appealable." The trial court also denied Tax Ease's subsequent motion to vacate the final order without conducting an evidentiary hearing as to the terms of the purported settlement. This appeal followed.

## II. DISCUSSION

On appeal, Tax Ease does not challenge the trial court's adoption of the master commissioner's findings that Tax Ease did not comply with KRS Chapter 134. Instead, Tax Ease asserts (1) that it entered into an oral settlement agreement with Habitat under which both parties agreed to dismiss their claims with prejudice and (2) that the settlement agreement mooted any determination by the trial court that particular case jurisdiction was lacking. For the following reasons, we agree with the trial court that the settlement did not require Habitat to dismiss its claims with prejudice.

In Kentucky, oral agreements are just as binding as written ones, *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 105 (Ky. 2003), and disputes as to whether the parties reached an oral agreement are issues of fact for the jury. *Motorists Mut. Ins. Co. v. Glass*, 996 S.W.2d 437, 445 (Ky. 1997). An appellate court reviews factual issues for clear error. *Yates v. Wilson*, 339 S.W.2d 458, 464

(Ky. 1960). However, legal questions are reviewed *de novo* without any deference to the lower court. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky. App. 1998).

The construction and interpretation of a contract is a legal question. *Spot-A-Pot, Inc. v. State Resources Corp.*, 278 S.W.3d 158, 161 (Ky. App. 2009).

Here, there is no dispute that the parties agreed to settle their claims: Habitat gave Tax Ease \$1,000.00, and Tax Ease released its certificate of delinquency. However, nothing in the record indicates that Habitat also agreed to dismiss its counterclaim with prejudice. The master commissioner reviewed the February 18, 2013 letter and concluded that it did not contain any language conditioning the settlement on Habitat's dismissal of the counterclaim. The master commissioner also did not find that the parties ever attempted to add such a condition until May 2, 2013, when Tax Ease presented Habitat with an agreed order to dismiss its counterclaim with prejudice. Habitat refused to sign that agreed order, as by that time it had already voluntarily dismissed its counterclaim.

With this information, or lack thereof, in the record, the trial court properly adopted the master commissioner's findings. The trial court also did not abuse its discretion in denying Tax Ease's motion for an evidentiary hearing because there was no indication that Tax Ease would be able to present any additional proof that Habitat agreed to dismiss its counterclaim with prejudice *and* pay \$1,000.00 in exchange for the release. Accordingly, we affirm the Jefferson Circuit Court.

THOMPSON, JUDGE, CONCURS.

DIXON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Michael R. Gosnell  
Louisville, Kentucky

BRIEF FOR APPELLEE, HABITAT  
FOR HUMANITY:

Karen Jaracz  
Louisville, Kentucky