RENDERED: January 29, 1999; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-002792-MR

CLYDE BROWN, JR. and
VIRGINIA BROWN — APPELLANTS

v. — APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
ACTION NO. 94-CI-000231

BUDDIE R. MORRIS, II, EXECUTOR
OF THE ESTATE OF BUDDIE R. MORRIS, and
MIDWEST ENERGY DEVELOPMENT CORP. — APPELLEES

<u>OPINION</u>
<u>REVERSING AND REMANDING</u>
** ** ** ** **

BEFORE: COMBS, HUDDLESTON, AND KNOX, JUDGES.

KNOX, JUDGE: Appellants, Clyde Brown, Jr. and Virginia Brown (the Browns), appeal the judgment of the Hopkins Circuit Court denying their motion that the court make a determination that its previous order denying the Brown's motion to dismiss was final and appealable, there being no just reason for delay, and, alternatively, that the trial court erred in denying the Browns' motion to dismiss. Having reviewed the record, we reverse and remand.

Appellees, Buddie R. Morris, II, in his capacity as executor of the estate of Buddie R. Morris, and Midwest Energy Development Corp. (the Morrises) filed a lawsuit in Hopkins Circuit Court alleging the Browns were indebted to the Morrises for a sum in excess of eight (8) million dollars on certain written guaranties. Subsequently, the Browns filed a petition for bankruptcy. The bankruptcy court granted relief from the automatic stay to permit the action to proceed in state court. During the course of the circuit court case, both parties filed motions for summary judgment.

On May 19, 1997, while the summary judgment motions remained pending, the parties negotiated and entered into a settlement agreement, which provided, in relevant part:

> (c) Upon payments of the amounts aforesaid, and payment of the anticipated $2,000,000 payment to First Parties [the Morrises] by Big Rivers Electric Corp., <u>the parties shall execute and file an agreed order of dismissal of Hopkins Circuit Court case</u> and any and all claims First Parties [the Morrises] have or may have brought in said action or any other claims shall be released.

On May 22, 1997, the circuit court entered an order granting the Morrises summary judgment and further ordering "[t]he parties shall schedule a hearing to determine the correct amounts due to the Plaintiffs as a result of this Order." Following entry of the aforementioned summary judgment, the Morrises and the Browns, on June 3, 1997, entered into a separate global settlement agreement between themselves and other parties involved in the bankruptcy action, which, too, contained a

release provision.[1] Upon fulfilling all the conditions and obligations provided for in the settlement agreements, the Browns moved the court for an order dismissing the action.

On September 5, 1997, the Morrises filed a notice of satisfaction with the circuit court which provided as follows:

> The Plaintiffs, by counsel, pursuant to Civil Rule 79 and other applicable law, hereby notify the Court that the Judgment entered against the Defendants in favor of the Plaintiffs in the action herein, has been satisfied in full, and that all claims as a result hereof have been discharged in their entirety, and this action shall be dismissed, with prejudice.

The circuit court denied the Browns' motion for dismissal on September 10, 1997, yet did not stipulate the order as final and appealable. Upon reconsideration, the circuit court, on October 8, 1997, again denied the Browns' motion to dismiss, as well as its motion to render the September 10 order final and appealable. It is from the final order of October 8, 1997 that this appeal ensued.

Given that the circuit court's order of October 8, 1997, adjudicating the exact issues addressed in the September order, contained the language necessary for the Morrises to seek appellate relief, the matter is moot. As such, we pretermit discussion of this issue on appeal.

With respect to the issue of dismissal, it is our opinion the language contained in the notice of satisfaction is dispositive in that it operates as a judicial admission.

---

[1] The copious terms and provisions of the June 3, 1997, global settlement agreement are not necessary to this opinion, hence, shall not be discussed.

> A judicial admission is defined in Sutherland v. Davis, 286 Ky. 743, 151 S.W.2d 1021, 1024 (1941), as "a formal act done in the course of judicial proceedings which waives or dispenses with the necessity of producing evidence by the opponent and bars the party himself from disputing it." The sole reason for having such a doctrine, binding and conclusive, is because the law should not permit a party that has made solemn representations to a court of law to suit its interests to change positions with respect to the same subject matter when it suits other interests.

Goldsmith v. Allied Bldg. Components, Inc., Ky., 833 S.W.2d 378, 382 (1992)(Leibson, J., concurring)(emphasis added).

Since the Morrises tendered notice to the circuit court that the judgment was wholly satisfied and "that all claims as a result hereof have been discharged in their entirety, and this action shall be dismissed, with prejudice[,]" a binding judicial admission occurred. As such, in light of the underlying policy attending judicial admissions, the Morrises are precluded from seeking any further action, and the court being apprised of the formal statement of operative facts, should have granted the motion for dismissal.

The order of the Hopkins Circuit Court is reversed and the matter remanded for entry of an order dismissing this cause of action with prejudice.

ALL CONCUR.

BRIEF FOR APPELLANT:

B.R. Paxton
Jonathan S. King
Patricia Creager
Central City, Kentucky

BRIEF FOR APPELLEE:

Jeff S. Taylor
Owensboro, Kentucky

Roger V. Barth
Washington, DC