

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000858-MR

MARVIN MAESER PLUMBING, INC.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 98-CI-001388

DONALD S. KINCAID AND
HUNTINGTON MORTGAGE COMPANY

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: COMBS, GUIDUGLI, AND MILLER, JUDGES.

MILLER, JUDGE: Marvin Maeser Plumbing, Inc. (Maeser) brings this appeal from a March 6, 2000, Opinion and Order of the Jefferson Circuit Court. We affirm.

Maeser is in the plumbing business in Jefferson County, Kentucky. Maeser performed "rough-in" plumbing work for Countryside Builders, Inc. (Countryside), a builder located in that county. The dispute in this matter is between Maeser, the plumber, and Donald S. Kincaid, a homeowner, who purchased a home from Countryside. A sequence of events is important to the disposition of the case:

- (1) On July 3, 1997, Kincaid entered into a contract with Countryside to purchase a house on Lot 23;
- (2) On August 1, 1997, a closing was held and Countryside delivered a deed to Kincaid;
- (3) On August 4, 1997, Maeser recorded a judgment against Countryside for work performed on various houses from September 1995 to July 1996;¹
- (4) On August 5, 1997, Maeser filed notice of a judgment lien pursuant to Kentucky Revised Statutes (KRS) 426.720;
- (5) On August 6, 1997, Kincaid recorded his deed.

Based on the foregoing information, Maeser claimed that his judgment lien took precedence over the Kincaid deed by virtue of our recording statute set forth in KRS 382.270.

The circuit court disagreed with Maeser upon two grounds: (1) Maeser's judgment lien was obtained with notice that Kincaid had purchased the property; and (2) at the time Maeser recorded its judgment lien against Countryside, Countryside had no interest in the Lot 23 to be subjected to the lien inasmuch as title had already passed to Kincaid.

KRS 382.270 provides as follows:

Instruments not valid against purchasers or creditors unless recorded. -- No deed or deed of trust or mortgage conveying a legal or equitable title to real property shall be valid against a purchaser for a valuable consideration, without notice thereof, or against creditors, until such deed or mortgage is acknowledged or proved according to law and lodged for record. As used in

¹A judgment lien is not to be confused with a mechanics' and materialmen's lien, which may be asserted under Kentucky Revised Statute Chapter 376.

this section "creditors" includes all creditors irrespective of whether or not they have acquired a lien by legal or equitable proceedings or by voluntary conveyance.

KRS 426.720 provides, in relevant part, as follows:

Final judgment to act as lien on realty – Judgment creditor's notice requirements. – A final judgment for the recovery of money or costs in the courts of record in this Commonwealth, whether state or federal, shall act as a lien upon all real estate in which the judgment debtor has any ownership interest, in any county in which the following first shall be done:

(1) The judgment creditor or his counsel shall file with the county clerk of any county a notice of judgment lien containing the court of record entering the judgment, the civil action number of the suit in which the judgment was entered, and the amount of the judgment, including principal, interest rate, court costs, and any attorney fees; (Emphasis added.)

This appeal is from an entry of a summary judgment and our review is under Ky. R. Civ. P. (CR) 56; Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991).

Perceiving there to be no question of fact, we think disposition turned upon a question of law. We are inclined to agree with the circuit court on both its stated premises.

During the arrangements to purchase Lot 23, it is undisputed that Kincaid had direct communication with Maeser concerning the completion of the rough-in work it had performed for Countryside. Moreover, Kincaid conversed with Maeser concerning additional plumbing work on the house. In view of this, it cannot be doubted that Maeser had knowledge that Kincaid was in the process of acquiring Lot 23. Maeser was in the general business of roughing-in the plumbing on various houses to

be built by Countryside and well knew the nature of Countryside's business inasmuch as the houses were of new construction offered for immediate sale. We think the circuit court was correct in concluding that Maeser was on notice of Kincaid's interest in the property and perforce fell outside of the recording statute. Simply stated, any interest that Maeser may have acquired by the recordation of its notice of judgment lien was with actual notice of Kincaid's interest in the property.

We now turn to the question of whether Countryside had an interest in the property which could be subjected to the judgment lien. KRS 426.720 clearly provides that the recordation of notice of judgment "shall act as a lien upon all real estate in which the judgment debtor has any ownership interest." It is obvious that at the time of recordation, the judgment debtor, Countryside, had no interest in Lot 23, as same having been conveyed to Kincaid some five days before. Had Maeser attempted to foreclose on the judgment lien and sell the real property belonging to Countryside, it certainly could not have subjected Lot 23 to the foreclosure.

For the foregoing reasons, the Opinion and Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Michael M. Hirn
Louisville, Kentucky

BRIEF FOR APPELLEES:

T. Morgan Ward, Jr.
Padma G. Hinrichs
Louisville, Kentucky