RENDERED: JUNE 7, 2002; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000676-MR

BEVINS BROTHERS CONSTRUCTION
COMPANY, INC.; JOHNNY PAUL BEVINS — APPELLANT

v.

APPEAL FROM MASON CIRCUIT COURT
HONORABLE ROBERT I. GALLENSTEIN, JUDGE
ACTION NO. 00-CI-00230

GENERAL ELECTRIC CAPITAL
CORPORATION — APPELLEE

OPINION
AFFIRMING IN PART, VACATING IN PART, AND REMANDING
** ** ** ** **

BEFORE: BUCKINGHAM, KNOPF, AND SCHRODER, JUDGES.

KNOPF, JUDGE: In March 1998, Bevins Brothers Construction Company, Inc. leased a crushing machine--a Powerscreen Turbo Chieftain--from Classic Equipment Leasing. Bevins paid $10,000.00 down and agreed to pay $2,018.73 per month for sixty months. Classic Equipment assigned its lease to GE Capital Corporation.

In August 2000, GE brought this action to enforce the lease. It alleged that as of January 2000 Bevins had ceased to make its monthly payments. A copy of the lease was attached to the complaint. In its answer, Bevins admitted the execution of

the lease and its own default. It alleged, however, "that certain fraudulent or false representations and statements were made to th[is] Defendant[] by the Plaintiff, or its predecessor in interest, . . . which alter or modify the terms of the subject lease." Bevins also alleged that "there was no meeting of the minds between the parties and therefore the contract is unenforceable. . . . [And] the alleged agreement between the parties constitutes a contract of adhesion, and is therefore unenforceable." Soon thereafter, GE moved for judgment on the pleadings pursuant to CR 12.03. In response Bevins merely repeated the allegations of its answer.

On February 28, 2001, the Mason Circuit Court granted GE's motion and awarded it almost $56,000.00 in damages plus costs and attorney fees. Bevins contends that its answer raised colorable defenses and thus should not have been subject to a judgment on the pleadings. It also contends that the pleadings do not provide a basis for determining the amount of damages or other relief. We disagree with the first but agree with the second of these contentions and so must affirm in part, vacate in part, and remand.

As Bevins correctly notes, to overcome a motion for judgment on the pleadings, an adverse defendant need do no more than allege a colorable defense.[1] Even under our current notice-pleading regime, however, the allegations must give notice that

[1]Archer v. Citizens Fidelity Bank & Trust Company, Ky., 365 S.W.2d 727 (1962).

there is a factual basis for the defense,[2] and, where fraud is alleged, the factual basis for the allegation must be pled in some detail.[3] Bevins' allegations do not meet these standards. Having admitted that it executed the lease (perhaps the most common way a party manifests assent to a contract), Bevins cannot call the existence of the agreement into question merely with the unelaborated assertion that "there was no meeting of the minds." Likewise, because contracts of adhesion are not *per se* unenforceable, Bevins' mere assertion that this contract was adhesive does not state a defense.[4] And, while it is true, as Bevins contends, that allegations of fraud are not subject to the parol evidence rule,[5] by failing to allege a particular misrepresentation by a particular person with particular consequences, Bevins did not meet its burden of pleading fraud in sufficient detail. We agree with the trial court, accordingly, that Bevins' admissions establish the lease and the default, that its assertions do not state a colorable defense, and therefore that GE was entitled to a judgment of liability on the pleadings.

We do not agree, however, that the pleadings alone establish the relief to which GE is entitled. Section 17 of the lease agreement provides in pertinent part that, upon the lessee's default, the lessor may dispose of the equipment in any

---

[2]Hoke v. Cullinan, Ky., 914 S.W.2d 335 (1995); Morgan v. O'Neil, Ky., 652 S.W.2d 83 (1983).

[3]CR 9.02. Scott v. Farmers State Bank, Ky., 410 S.W.2d 717 (1966).

[4]Conseco Finance Servicing Corporation v. Wilder, Ky. App., 47 S.W.3d 335 (2001).

[5]Bryant v. Troutman, Ky., 287 S.W.2d 918 (1956).

one of several ways and collect liquidated damages calculated as follows: reduce the outstanding amount of the lease to its present value, subtract the amount realized in the disposition of the equipment, and add the costs of the disposition. GE's complaint says nothing about its disposition of the equipment and so the pleadings do not enable the court to carry out this calculation. Bevins contends, moreover, that GE disposed of the equipment unreasonably. If Bevins can demonstrate some factual basis for this contention then a hearing will be necessary. In any event, the full basis of GE's claim and the basis of any award to it (including an award of attorney fees) should be made to appear in the record.

GE argues that Bevins waived his right to complain about the insufficient record by failing to move for "additional" findings under CR 52. Because there have been no findings as yet, only Bevins' admissions, CR 52 has no application. The record is not merely silent with respect to some of the necessary evidence in support of GE's claim, it is nonexistent. It will not support a presumption, in other words, that the trial court had grounds for its award. The award to GE was thus premature.

For these reasons we affirm the February 21, 2001, judgment of the Mason Circuit Court to the extent that it finds Bevins liable under its lease agreement with GE. We vacate the award to GE, however, and remand for further proceedings in which GE will have the opportunity to establish the amount of its claim.

ALL CONCUR.

BRIEF FOR APPELLANT:

John F. Estill
Fox, Wood, Wood & Estill
Maysville, Kentucky

BRIEF FOR APPELLEE:

Phillip D. Scott
Brian M. Johnson
Greenbaum Doll & McDonald PLLC
Lexington, Kentucky