

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000727-MR

TRUCK AMERICA TRAINING, LLC,  
A KENTUCKY LIABILITY COMPANY;  
JAMES W. CARTER; AND DEBBIE CARTER

APPELLANTS

v. APPEAL FROM BULLITT CIRCUIT COURT  
HONORABLE THOMAS L. WALLER, JUDGE  
ACTION NO. 05-CI-00374

CITY OF HILLVIEW, KENTUCKY MUNICIPAL  
CORPORATION, JIM EADENS, MAYOR;  
DAVID ADAMS; BOONE ADVERTISING  
AGENCY MARY HURBERTA BOONE; AND  
LOUISVILLE GAS & ELECTRIC

APPELLEES

### OPINION VACATING AND REMANDING

\*\* \*\* \* \*\* \* \*\*

BEFORE: COMBS, CHIEF JUDGE; MOORE, JUDGE; HENRY, SENIOR JUDGE.<sup>1</sup>

COMBS, CHIEF JUDGE: Truck America Training, a Kentucky limited liability company, and its managers, James W. Carter and Deborah K. Carter, appeal from a summary judgment entered by the Bullitt Circuit Court that dismissed their claim for

<sup>1</sup>Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

specific performance against the City of Hillview, Kentucky. The appellants contend that the City agreed to convey to them its interest in certain real property located in Bullitt County and that the City breached the agreement. The contract memorializing the agreement is the subject of this appeal. We vacate and remand for further proceedings.

In its memorandum supporting its motion for summary judgment, the City presented evidence of the following sequence of events. In December 1998, the City of Hillview conveyed a 40-acre tract of unimproved land located at 364 Ferguson Lane in Bullitt County to the Kentucky League of Cities Funding Trust for \$800,000.00. The Trust immediately leased the property back to the City, and the City paid the Trust between \$75,000.00 and 76,000.00 annually in rent for the property. Since the rent payments were a financial drain on the City, it was eager to find a sub-lessee.

In early 1999, the City's mayor, Leemon Powell, negotiated a lease agreement for the Ferguson Lane property with Homeplate Enterprises. Difficulties developed, and litigation between the City and Homeplate resulted. Mayor Powell testified by deposition that by that time, he "tried to get anybody I could to buy it." Deposition at 10.

Mayor Powell then negotiated an agreement with Jim and Debby Carter and George and Vivian Cambron. The parties anticipated that the site would be used as a training facility for the operation of tractor-trailers and other heavy equipment. The Trust agreed to permit the City to re-purchase the parcel for its immediate re-sale, and the Mayor proceeded to consummate the deal.

On January 29, 2002, the City executed an agreement prepared by the City Attorney entitled "lease-purchase offer," which was approved by the City Council. It provided in pertinent part as follows:

The undersigned, hereinafter called Purchasers/Lessees, having inspected the premises and relying entirely for its condition upon their own examination hereby agree to purchase from the City of Hillview, Kentucky, hereinafter "Seller" the real estate known as a 40 acre parcel more or less of unimproved land shown and more particularly described in attached Exhibit. . . .Purchasers/Lessees hereby further agree to pay for said property Eight Hundred Thousand (800,000.00) Dollars. In addition Purchasers/Lessees hereby agree to lease said property until the termination or settlement of the litigation concerning said property and upon execution of this agreement and delivery of possession to pay to the City of Hillview the sum of \$3,500.00 per month for the lease and rental of said property. All rents paid to Seller prior to execution of the contract for the sale of said property shall be applied to and result in a dollar for dollar reduction of said purchase price for the entire parcel upon the following terms and/or conditions. . . .

(5) Commencing the first day of the month following the settlement or dismissal of the litigation by and between Seller and Homeplate Enterprises, L.L.C. Purchaser/Lessee shall pay to Seller the agreed upon consideration for the purchase of said property in the amount of \$800,000.00 from which will be subtracted the total amount of rentals paid through that date and payment of the remaining sum shall be amortized in equal monthly installment of Three Thousand Five Hundred Dollars (3,500.00) per month beginning on the aforementioned date and each month thereafter until paid. . . . The agreement to purchase and sell however is contingent upon resolution of litigation with Homeplate Enterprises, L.L.C. in a manner permitting such sale. No warranty or representation is made concerning the outcome of such action by the city.

(6) Upon payment of the agreed consideration, and satisfaction of the underlying bond issue and execution of title to the city for such land, Seller, shall deliver to Purchasers an unencumbered, marketable title to said property and shall be conveyed by deed of general warranty . . . Closing shall occur within sixty (60) days after payment of the remaining balance due on the bonded indebtedness of the City of Hillview to the Kentucky League of Cities.

At the end of the agreement were five signature lines: one entitled “James W. Carter,” signed “James W. Carter, President”; one entitled “Deborah K. Carter,” signed “Deborah K. Carter, Treasurer”; one entitled “George Cambron,” signed “George Cambron V. President”; one entitled “Vivian Cambron,” signed “Vivian Cambron, Secretary”; and, finally, one entitled City of Hillview, Kentucky, signed “By: Leemon Powell, Mayor.”

While Truck America was never identified by name in the agreement, the company took possession of the property. Truck America and another limited liability company, American Heavy Equipment Training, remitted monthly lease payments to the City beginning December 30, 2002. According to Mayor Powell, “Truck America and the Carters were the same people.” Deposition at 13.

The outstanding litigation with Homeplate Enterprises referenced in the parties’ agreement was concluded in the fall of 2004. By letter to the City dated October 7, 2004, Truck America, the Carters, and the Cambrons expressed their eagerness to complete the purchase of the property and requested a closing date. By this time, the City was under a new administration. No longer eager to complete the transaction, it did not respond to the inquiry about a closing date.

On April 5, 2005, Truck America filed a complaint against the City of Hillview; the Kentucky League of Cities Funding Trust; Boone Advertising Agency; the Commonwealth of Kentucky, Transportation Cabinet; Louisville Gas & Electric; and David W. Adams, who was negotiating with the City to purchase the property. Truck America alleged that the defendants had interfered with its interest in the Ferguson Lane property by failing to convey title pursuant to the terms of the “lease-purchase offer.” Truck America sought to enforce the terms of the agreement against the City and to secure a court order directing David Adams to cease his interference with the transaction.

Prior to answering the complaint, the City filed a motion to dismiss pursuant to the provisions of Kentucky Rules of Civil Procedure (CR) 12.02 for failure to state a claim upon which relief can be granted. The City contended that Truck America had not been a party to the disputed lease-purchase offer and that the City had never been authorized by the City Council to enter into an agreement of any kind with Truck America. Therefore, it argued that Truck America could not bring an action to enforce the contract. The City claimed that the signatures of the Carters and the Cambrons in their capacity as officers of an unnamed corporation were insufficient to bind either Truck America, a limited liability company, or the signatories in their individual capacities.

Truck America immediately filed a motion for leave to amend its complaint. Although Truck America contested the City’s argument that it was not a proper party to bring the action, it nonetheless sought to amend its complaint to include

as additional plaintiffs James W. Carter and Deborah K. Carter “in their individual capacities and/or as officers of Truck America.” Truck America noted that George Cambron was now deceased and that Vivian Cambron had disposed of her interest in the property by quitclaim deed.

In an order entered on May 3, 2005, the trial court permitted Truck America to amend its complaint and denied the City’s motion to dismiss for failure to state a claim. The first amended complaint was promptly filed. In its answer, the City denied the material allegations contained in Truck America’s complaint and in the first amended complaint.

The parties entered into an agreed order on August 3, 2005. They agreed that if the plaintiffs were to prevail in the litigation, title to the disputed property would not pass until the City’s obligations under a separate lease agreement with Kentucky League of Cities Funding Trust had been satisfied. The plaintiffs' claims against the League of Cities were soon dismissed. In September 2005, the claims against the Commonwealth of Kentucky, Transportation Cabinet, were also dismissed with prejudice.

Highlighting the failure of the Carters to respond in timely fashion to requests for admission, on January 4, 2006, the City filed a motion for summary judgment asserting that there were no genuine issues of material fact precluding judgment in its favor. One of the City’s requests for admission had asked the Carters to admit that they had executed the disputed agreement in their capacity as individuals. Another

requested the Carters to admit that an agreement with them as individuals -- and not with Truck America -- had been finally approved by means of a formal City Council resolution. The City argued that since these and several other crucial items contained in those requests were now deemed admitted, the plaintiffs could not hope to prevail at trial.

Truck America and the Carters filed an extensive response, and on January 27, 2006, the trial court denied the City's motion for summary judgment. On February 1, 2006, the City filed a motion to alter, amend, or vacate the court's order denying summary judgment.

On March 7, 2006, the trial court granted the City's motion to vacate. The trial court concluded that the ambiguous nature of the signatures of the Carters and the Cambrons was insufficient to bind an unnamed, limited liability company; that the contract could not have been and was not assigned to Truck America; and that the individual plaintiffs could not have executed the agreement both in their individual capacities and as representatives of Truck America. Citing the fact that the "time to choose their capacity has passed by their failure to respond to the request for admissions, interrogatories, and requests for production of documents propounded by the City," the trial court determined that the City was entitled to judgment as a matter of law. This appeal followed.

The primary impediment to enforcement of the agreement has been the questionable nature of the Carters' signatures. The signatures did not indicate whether they were executed in either an individual or a representative capacity. While the

signature block contained typewritten text suggesting that the Carters were to be bound individually, their signatures were followed by identifiers normally associated with a corporate entity. The hybrid nature of the signatures created the resulting ambiguity as to capacity in which the Carters signed the agreement.

This Court has held that the substance of an agreement rather than the form of the signature block governs the interpretation of a contract. *Simpson v. Heath & Co.*, 580 S.W.2d 505 (Ky.App. 1979), involved a situation in which the president of a corporation signed as guarantor of a contract executed by him as president of the corporation. At issue was whether he was individually liable on the guaranty as a matter of law because he followed his signature on the guaranty with the identifier: “Pres.” We concluded that the signature created an ambiguity on its face as to whether the parties intended for Simpson to be bound individually. After reviewing the the record, we concluded that the issue was not yet appropriate for summary judgment since there remained a question of fact concerning Simpson’s intentions. That case was remanded for further proceedings.

In this case, the trial court correctly observed that the Carters could not have executed the agreement both in their capacity as individuals and in their capacity as representatives of Truck America. However, despite the ambiguous nature of the execution, the City’s requests for admission, having been deemed admitted by default in answering, must be viewed as binding the Carters in their capacity as individuals. The



City accepted the agreement despite the equivocal nature of the execution, and we agree that this acceptance was sufficient to create a binding contract between the parties.

Truck America makes several arguments in support of its contention that the trial court erred by granting summary judgment in favor of the City. After our review of the record and relevant authority, we conclude that only one of its arguments needs to be addressed as it governs the resolution of this appeal.

Truck America contends that it had its own separate legal right to attempt to enforce the Carters' agreement against the City. In order to prevail against the City on the motion for summary judgment, Truck America must be able to demonstrate the existence of an enforceable contract and its status as a third-party beneficiary of that agreement.

Having determined that a valid contract exists, we must examine whether Truck America can establish itself as a third-party beneficiary of the contract. One who is not an actual party to an agreement may nevertheless enforce it if it creates obligations intended for his benefit. *Sexton v. Taylor County, Kentucky*, 692 S.W.2d 808 (Ky.App. 1985). The third person seeking to enforce the terms of a contract in his own name must show that the parties to the contract intended by their agreement to benefit the third-party directly. *Id.* Such intent need not be expressed in the agreement itself; it may be evidenced by the terms of the agreement, the surrounding circumstances, or both. *Id.*

At least two provisions of the disputed agreement indicate that the parties intended that the contract was to benefit Truck America directly. Paragraph 10 provided

as a condition of the agreement that the Carters were to obtain the necessary authorization from the Bullitt County Planning Commission to use the premises “for a truck diver(sic) and/or heavy equipment training facility. . . .” A portion of paragraph 11 provides for an abatement of property taxes if the Carters’ on-site business operations produced at least twenty-five jobs for the community. Truck America took possession of the property as anticipated by the parties, and it remitted the monthly rental. Consequently, we can infer both from the terms of the contract and the surrounding circumstances that the parties’ agreement was designed to confer a direct benefit on Truck America. In reality, the very *purpose* of the contract was aimed at benefiting Truck America. The City contracted with the Carters in order to lease and sell the property to a going concern with dual expectations: to provide jobs to the community and to pay the rent that had drained the city’s coffers.

The standard of review on appeal of a summary judgment is whether the trial court correctly determined that there were no genuine issues of material fact and that the moving party was entitled to judgment as a matter of law. CR 56.03. Since the City was not entitled to judgment as a matter of law, a summary dismissal was not properly granted in this case.

Accordingly, the summary judgment of the Bullitt Circuit Court is vacated, and this matter is remanded for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANTS:

J. Scott Wantland  
Shepherdsville, Kentucky

BRIEF FOR APPELLEE CITY OF  
HILLVIEW:

Mark E. Edison  
Shepherdsville, Kentucky

BRIEF FOR APPELLEE BULLITT  
COUNTY SIGN CO., INC.:

Thomas E. Cooper  
Elizabethtown, Kentucky