

RENDERED: OCTOBER 31, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001661-MR

PRAMCO IV, L.L.C.

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 05-CI-01303

BLUE STREAK MOTORS, INC.;
AND LON WESLEY CONLEY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER AND TAYLOR, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: Pramco IV, L.L.C., appeals from an order of the Boyd Circuit Court denying its motion to substitute as a party and to intervene in a foreclosure action. We affirm.

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On December 12, 2005, Fifth Third Bank, Ohio Valley (Fifth Third), initiated a foreclosure action against Blue Streak Motors, Inc. and Lon Wesley Conley (collectively “Blue Streak Motors.”) Meanwhile, Fifth Third and Blue Streak Motors entered into settlement negotiations. On January 27, 2006, Fifth Third and Blue Streak Motors reached a settlement agreement in which Blue Streak Motors executed and delivered to Fifth Third Bank the deeds of the subject properties in lieu of foreclosure. Subsequently, Pramco purchased from Fifth Third the settled loans which were included in a larger pool of loans.

On November 14, 2006, Blue Streak Motors filed a motion to dismiss Fifth Third’s foreclosure action as settled. On December 12, 2006, Pramco filed a motion to substitute itself as plaintiff based on its purchase of the loans. This motion was denied. The trial court conducted hearings on December 13, 2006, and February 21, 2007. On January 22, 2007, Pramco filed a motion to intervene. Pramco was permitted to participate in the hearings through its counsel. During the second hearings, counsel for Pramco and Fifth Third agreed to submit the prior settlement issue to the trial court for adjudication. Pramco’s intervention was contingent on the outcome. The trial court entered judgment dismissing the foreclosure action as settled and denied Pramco’s motion to intervene as moot. This appeal followed.

The sole issue in this appeal is whether the trial court abused its discretion by denying Pramco’s motions to substitute and intervene. Kentucky Rules of Civil Procedure (CR) 24.01(1) states:

Upon timely application anyone shall be permitted to intervene in an action... (b) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless that interest is adequately represented by existing parties.

We find that CR 24.01 is inapplicable to the present appeal because of Pramco's consent to the judgment. The record is clear that counsel for Fifth Third and Pramco agreed that the trial court should decide the threshold question of whether the loans between Fifth Third and Blue Streak Motors were, in fact, settled. It was also agreed that Pramco's intervention would be contingent on the outcome of the trial court's determination. The trial court found that the loans were settled. This finding has not been questioned. Therefore, any further dispute lies between Pramco and Fifth Third.

Accordingly, the judgment of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

M. Kevin Lett
Ashland, Kentucky

BRIEF FOR APPELLEES:

Charles D. Greenwell
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