

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-002140-MR

MICHAEL L. BERNARD AND
STATE DOCK VENTURES, LLC

APPELLANTS

v. APPEAL FROM RUSSELL CIRCUIT COURT
HONORABLE VERNON MINIARD, JR., JUDGE
ACTION NO. 08-CI-00475

BLEDSON, LLC; CHAMEG, LLC;
AND W. JASPER, LLC

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: NICKELL AND WINE, JUDGES; HARRIS,¹ SENIOR JUDGE.

HARRIS, SENIOR JUDGE: Michael L. Bernard and State Dock Ventures, LLC,
appeal from an order entered in the Russell Circuit Court on October 14, 2008,
granting a stay of arbitration. Bernard and State Dock Ventures argue that: (1) the

¹ Senior Judge William R. Harris sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

trial court did not have jurisdiction to enter the order; (2) the notice of the motion to stay arbitration did not conform to local rules; and (3) the requirements to stay arbitration were not satisfied. Because the issues presented are now moot, we affirm.

In order to contextualize the issues before this Court in the present appeal, we must briefly recite the facts from a prior case styled *W. Jasper, LLC v. Chameg, LLC, et al.*, 07-CI-00473.

07-CI-00473

On November 30, 2007, W. Jasper, LLC, filed a petition for declaratory judgment in the Russell Circuit Court against Chameg, LLC; Bledsoe, LLC; Michael L. Bernard; and State Dock Ventures, LLC. The parties with the exception of Bernard were members of State Dock Marina Ventures, LLC. Jasper alleged that Bernard and State Dock Ventures improperly attempted to transfer their interests in State Dock Marina Ventures and reneged on promises to increase his salary, give him a bonus, and replace his vehicle. On May 14, 2008, the trial court held a hearing. Bernard and State Dock Ventures failed to appear. The trial court specifically found that Bernard was not a party to the LLC agreement. The court also found that State Dock Ventures was not a party to the LLC agreement because it had been administratively dissolved. The court entered a default judgment against State Dock Ventures and accepted Jasper's allegations as true.

Because Bernard was not a party to the agreement, the trial court found that his denial of the allegations did not prevent the entry of judgment. Judgment was entered on May 16, 2008. The court ordered: (1) Jasper was entitled to a \$20,000.00 increase in his annual salary; (2) Jasper was entitled to a \$25,000.00 bonus compensation; (3) Jasper was entitled to have his company vehicle replaced at the expense of State Dock Marina Ventures; and (4) Jasper, LLC, was entitled to purchase its pro-rata share of Bernard's and State Dock Venture's interests in State Dock Marina Ventures in accordance with the agreement.

Bernard and State Dock Ventures filed a motion to alter, amend, or vacate the judgment. The trial court denied the motion in a written order on August 4, 2008. The court also denied a motion by Bernard and State Dock Ventures to refer the matter to arbitration. Bernard filed a notice of appeal from the judgment entered on May 16, 2008, as well as the order denying his motion to alter, amend, or vacate and the order denying the motion to refer the matter to arbitration. This Court dismissed the appeal of Bernard by order entered on January 8, 2009, for Bernard's failure to timely file his appeal. The Supreme Court of Kentucky denied the motion of Bernard and State Dock Ventures for discretionary review on August 19, 2009. On August 25, 2009, the Supreme Court's denial of discretionary review became final, thus concluding the appeal in Russell Circuit Court case No. 07-CI-00473.

Present Appeal from Case No. 08-CI-00475

In the meanwhile, Bernard and State Dock Ventures initiated an arbitration action before the American Arbitration Association against the other members of State Dock Marina Ventures. The members filed a notice of objection and limited entry of appearance in the arbitration action. These objections were not ruled upon.

On October 10, 2008, Bledsoe, Chameg, and W. Jasper filed a joint complaint in Russell Circuit Court, Case No. 08-CI-00475, seeking a stay of arbitration pursuant to KRS 417.060(2) and filed a joint motion to stay arbitration simultaneously with the complaint. The motion was noticed for hearing on October 14, 2008. Bernard and State Dock Ventures filed an objection and appeared at the hearing to argue against the motion. The trial court entered an order on October 14, 2008, staying arbitration pursuant to KRS 417.060 until the appeal of *W. Jasper, LLC v. Chameg, LLC, et al.*, 07-CI-00473, becomes final. This appeal is from that order.

Bernard and State Dock Ventures seek reversal of the stay of arbitration on several grounds. However, we must first consider whether these issues are properly before this Court.

In Case No. 07-CI-00473, the trial court concluded that neither Bernard nor State Dock Ventures were parties to the LLC agreement of State Dock Marina Ventures. This Court dismissed the appeal from that judgment because the appeal was not timely filed and the Supreme Court denied discretionary review. In the present appeal, the order of the trial court only stayed arbitration until the time

when the appeal in Case No. 07-CI-00473 becomes final. That appeal became final on August 25, 2009. By the language of the order, the stay expired at that time and therefore Case No. 08-CI-00475 remains on the trial court's docket. It follows that any issue surrounding this order is moot because the stay is no longer in effect.

Accordingly, the order of the Russell Circuit Court entered on October 14, 2008, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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Erin R. Ratliff
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ORAL ARGUMENT FOR
APPELLANTS:

C. Gilmore Dutton, III

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Donald H. Byrom
Jamestown, Kentucky

ORAL ARGUMENT FOR
APPELLEES, BLEDSOE, LLC, AND
CHAMEG, LLC:

Gary W. Napier

ORAL ARGUMENT FOR
APPELLEE, W. JASPER, LLC:

Donald H. Byrom