RENDERED: DECEMBER 11, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001127-MR

J.E. WATSON D/B/A QUICK
COVER INSTANT BUILDINGS
FROM WATSON FARMS — APPELLANT

v.

APPEAL FROM MARSHALL CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 05-CI-00176

LARRY GARDNER — APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: CAPERTON, DIXON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: J.E. Watson, d/b/a Quick Cover Instant Buildings From Watson Farms (Watson) brings this appeal from a May 21, 2008, judgment of the Marshall Circuit Court awarding Larry Gardner $2,118.61. We reverse and remand.

In 1999, Larry Gardner purchased a Quick Cover Instant Building from Watson. Gardner paid Watson $5,200 for the building. Gardner used the building from May 1999 until April 2004. On April 15, 2004, Gardner informed Watson that there was a problem with the building's roof cover. An employee of Watson inspected the cover and determined it was a total loss. The sales contract provided for a sixteen-year prorated warranty on the cover. Watson informed Gardner that he would replace the cover but that Gardner would be required to pay $2,064.84. Gardner refused and believed Watson should pay Gardner his prorated portion of the cost to replace the cover. Watson declined, and the parties reached an impasse.

Consequently, Gardner filed a complaint against Watson for damages associated with replacing the cover. Watson filed an answer and thereafter, almost three years after the complaint was filed, filed a motion for judgment on the pleadings and/or summary judgment. By judgment entered May 21, 2008, the Marshall Circuit Court entered judgment in favor of Gardner and awarded him $2,118.61 in damages. This appeal follows.

To begin, Watson appealed from a May 21, 2008, judgment of the circuit court. Therein, the court clearly stated that it was granting Gardner a judgment on the pleadings. A judgment on the pleadings is provided for under Kentucky Rules of Civil Procedure (CR) 12.03. Pursuant to CR 12.03, the circuit court "shall" consider the motion as a motion for summary judgment if "matters outside the pleadings are presented." In this case, the record plainly reveals that

the parties presented matters outside the pleadings.[1] Consequently, we shall analyze the May 2, 2008, judgment as a summary judgment under CR 56. *See Ferguson v. Oates*, 314 S.W.2d 518 (Ky. 1958).

Watson contends the circuit court erred by rendering judgment in favor of Gardner. For the reasons hereinafter set forth, we agree.

Summary judgment is proper where the material facts are undisputed and movant is entitled to judgment as a matter of law. CR 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). When considering a motion for summary judgment, the facts and inferences therefrom are to be viewed in a light most favorable to the nonmoving party. *Id.* However, we note that Gardner did not file a motion for summary judgment in this case and only Watson's motion was pending at the time the judgment was entered.[2]

The circuit court's judgment entered May 2, 2008, in Gardner's favor provides no basis for the decision, nor is the court required to do so under CR 56. The judgment reads:

> This matter having come before the Court on Motion for Judgment on the Pleadings and the Court being otherwise sufficiently advised;
>
> IT IS HEREBY ORDERED that Judgment on the pleadings is granted for [Gardner], and [Watson] is

[1] Based on our review of the pleadings, judgment would not be warranted under Kentucky Rules of Civil Procedure 12.03 as there appear to have been sufficient defenses pled to preclude entry of judgment under this Rule.

[2] The record reflects a jury trial was scheduled on April 3, 2008, but was apparently continued when J.E. Watson, d/b/a Quick Cover Instant Buildings From Watson Farms filed his motion in March 2008.

> ordered to pay [Gardner] the sum of $2,118.61 based upon the contractual agreement of a 16-year prorated warranty provided to [Gardner].

From the record and the parties' appellate briefs, it is clear that the primary dispute between the parties concerned the existence and terms of the warranty on the roof cover. The record contains a written invoice supplied by Watson, signed by Gardner, and dated May 31, 1999. The invoice specifies the items sold by Watson to Gardner (which references the cover) and includes the prices for each item. Relevant to this case is the following provision concerning a warranty:

> The sole warranty for any product(s) supplied is limited to the warranty that is published and offered by the manufacturer(s). No other warranties are express or implied.

Watson attached a copy of a written limited warranty to his answer. Watson claims that such warranty was the limited warranty referenced in the invoice. Watson further asserts that he complied with the terms of the limited warranty by offering to replace the cover with Gardner paying "59/192 of the cost of the cover and all the freight, labor, and installation costs." Watson Brief at 3.[3] Based upon the written limited warranty provided by Watson, Watson claims that he was entitled to summary judgment.

In response, Gardner maintains that the written limited warranty supplied by Watson was not the warranty referenced in the invoice. Additionally,

[3] It appears the cost to replace the roof was $3,058.48. Additionally, the costs of installation was $775 and of freight was $350.

Gardner claims he never received a copy of any written warranty but was orally informed that the building was covered by a sixteen-year prorated warranty. Gardner argues that Watson was responsible for 153/192 of the cost of the cover and should pay such sum to Gardner.

It is generally well-accepted that the interpretation of a contract is a question of law for the courts. *See Frear v. P.T.A. Indus., Inc.*, 103 S.W.3d 99 (Ky. 2003). As such, our review proceeds *de novo*.

The "invoice" constitutes the only written agreement between the parties. Under its express terms, the "sole warranty" upon the building was "limited to the warranty that is published and offered by the manufacturer(s)." A thorough review of the record does not reveal the uncontroverted identity of the actual manufacturer of the building. In Watson's motion for summary judgment or for judgment on the pleadings, he asserts that "[b]oth parties acknowledge that there has been a "cover failure" suffered by [Gardner] based upon the product manufactured by [Watson]." In Watson's answer to interrogatories, he asserts that he manufactured the building, including the roof cover at issue. However, in Gardner's trial brief filed of record, he contends that Watson is a distributor, not the actual manufacturer of the building. The limited warranty attached to Watson's answer was clearly offered by Watson; consequently, this warranty could only qualify as the warranty referenced in the invoice if Watson was the manufacturer of the building. If Watson is not the manufacturer of the building, the manufacturer should be identified and the terms of the actual warranty in question

determined. Regardless of whether Watson manufactured the building, it is clear that genuine issues of material fact exist regarding the terms of the warranty and any damage claims arising thereunder. As such, Gardner has not demonstrated that he is entitled to a summary judgment as a matter of law. Accordingly, we conclude that summary judgment was improperly rendered in favor of Gardner at this stage of the proceeding.

For the foregoing reasons, the order of the Marshall Circuit Court is reversed and this cause is remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

William Clint Prow
Providence, Kentucky

BRIEF FOR APPELLEE:

Donald E. Thomas
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