

RENDERED: JULY 12, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000530-MR

STELLAR FUELS, LLC.

APPELLANT

v. APPEAL FROM MAGOFFIN CIRCUIT COURT
HONORABLE KIM C. CHILDERS, JUDGE
ACTION NO. 10-CI-00121

CANDACE CONLEY;
MINION ENERGY, LLC.;
J.D. CARTY RESOURCES, LLC;
CAMELBACK GAS, LLC.;
SUN TECH ENERGY, LLC.;
PEYOTE GAS, LLC.;
MLC PRODUCTIONS, LLC.;
MLC PRODUCTIONS 1A, LLC.;
KY-AZ HOLDINGS, LLC.;
KY-AZ TRANSMISSION, LLC.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, MAZE, AND THOMPSON, JUDGES.

CAPERTON, JUDGE: Stellar Fuels, LLC, appeals from the Magoffin Circuit Court's grant of summary judgment to Candace Conley on January 21, 2011. Upon submission of the briefs to this Court, the parties are in agreement that the judgment should be affirmed and that Conley shall be foreclosed from pursuing any damages from Stellar Fuels. As such, we affirm on this ground.

Briefly we shall discuss the matter that was brought before this Court. Conley entered into an oil and gas lease with J.D. Carty Resources, LLC with a provision that no assignment by the lessee was allowed except upon written approval of the lessors. J.D.Carty Resources assigned the lease to the other named Appellees and Stellar Fuels by way of short form assignment of leases. Conley therefore claimed that the lease was terminated by virtue of the failure of the initial lessee to procure written consent to the assignments. This resulted in three separate claims before the trial court: (1) Conley made a claim against Minion Energy, LLC; Stellar Fuels; J.D. Carty Resources; Camelback Gas, LLC; Sun Tech Energy, LLC; Peyote Gas, LLC; MLC Productions, LLC; MLC Productions 1A, LLC; KY-AZ holdings, LLC; and KY-AZ Transmission, LLC for a termination of her lease by its own terms, breach of contract and accounting, and a declaration of rights; (2) a counter-claim by Stellar Fuels against Conley for unjust enrichment and bad faith; (3) a cross-claim by Stellar Fuels for a declaratory judgment against J.D. Carty Resources.

Conley presented the trial court a motion for summary judgment on the issues of damages and to declare the original lease between Conley and J.D.

Carty Resources null and void. Minion Energy and Stellar Fuels filed responses to Conley's motion. The trial court entered an order on January 21, 2011, granting Conley's motion and declared the lease between Conley and J.D. Carty Resources null and void. The court did not address Conley's request for damages or Stellar Fuels' cross-claims. The order recited that it was a final and appealable order with there being no just reason for delay of its entry. It is from this order that Stellar Fuels now appeals. Conley has not appealed from this order.

On appeal, Stellar Fuels initially argued: (1) the order should not have been designated as final and appealable with no just cause for delay; (2) even if the order was properly designated as final and appealable, it was erroneous as there were material issues of fact; and (3) in the alternative, Stellar Fuels has no objection to being bound by this judgment provided Conley is also foreclosed from pursuing any other claims - specifically of costs, fees, or damages - against Stellar Fuels.

In response, Conley argued to this Court: (1) the order was correctly designated as final and appealable with no just cause for delay; (2) summary judgment was appropriate as there were no genuine material issues of fact in question; and (3) as the order was proper, all parties should be bound by the judgment. In support of this third argument, Conley states that the summary judgment "order should be affirmed as a final and appealable judgment and that includes all the rights and obligations of the parties and that this will end the litigation by and between Conley and Stellar Fuels."

In reply, Stellar Fuels states:

Nevertheless, since Appellee Conley now has acknowledged of record that her claim for damages has been foreclosed; that the counter-claim of Stellar Fuels for unjust enrichment and bad faith has not been adjudicated, nor the cross-claim of Stellar Fuels against J.D. Carty Resources, LLC, the Appellant withdraws any objection to the affirmation of the summary judgment to the extent it merely adjudicates only the claims of Appellee Conley against this Appellant, i.e., that Appellee Conley is foreclosed against any damages against this Appellant.

In light of the fact that the parties now agree that the summary judgment should be affirmed, that any of Stellar Fuels' remaining claims were adjudicated by the summary judgment order, and that Conley is foreclosed from pursuing a damage claim against Stellar Fuels, we affirm the summary judgment order.

THOMPSON, JUDGE, CONCURS.

MAZE, JUDGE, CONCURS IN RESULT ONLY AND FILES SEPARATE OPINION.

MAZE, JUDGE, CONCURRING IN RESULT ONLY: I concur in result only and, in doing so, state that I would also have examined Appellant's arguments regarding the finality of the trial court's order and grant of summary judgment. This case presents us with several issues. While I believe we ultimately achieve the correct result, the point upon which we find that the parties agree, the foreclosure of Ms. Conley's claims, is one of only three arguments and is asserted

as an alternative to, not dispositive of, the other two. Thus, it is our responsibility on appeal to consider and rule, however briefly, upon those arguments.

Nonetheless, because I believe the trial court did not err and because, under Kentucky Rules of Civil Procedure 56 and *Steelvest v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991), it appears no genuine issues of fact remained, I concur with the result in this case.

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