

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2012-CA-000034-MR

JAMOS FUND I, LP

APPELLANT

v.

APPEAL FROM MADISON CIRCUIT COURT  
HONORABLE JEAN CHENAULT LOGUE, JUDGE  
ACTION NO. 11-CI-01634

SONYA MIDDLETON

APPELLEE

OPINION  
VACATING AND REMANDING

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

BEFORE: CLAYTON, COMBS, AND NICKELL, JUDGES.

NICKELL, JUDGE: Jamos Fund I, LP, has appealed from the Madison Circuit Court's award of costs and attorney's fees to Sonya Middleton on her claim for damages pursuant to KRS<sup>1</sup> 382.365(3) which governs the timely release of liens on

---

<sup>1</sup> Kentucky Revised Statutes.

real property following the payment of the underlying obligation. Following a review of the sparse record,<sup>2</sup> we vacate and remand for further proceedings.

Jamos, a third-party purchaser of delinquent tax liens, acquired a 2001 Madison County property tax certificate on property owned by Middleton, and caused a lien to be filed against the property. During the ensuing foreclosure action,<sup>3</sup> Middleton tendered payment on or about July 15, 2011, to Jamos for the amounts due and owing on the lien. Clearly believing Jamos had failed to fulfill its duties under KRS 382.365(1)<sup>4</sup> to release its lien within thirty days of satisfaction, Middleton filed the instant action on November 8, 2011, seeking a judgment authorizing the Master Commissioner to enter a release of the lien, plus her costs and fees arising from the necessity of filing the action, all as provided by KRS 382.365(3).

Jamos answered the complaint and averred it had complied with the statutory mandate by timely executing a release of its lien and delivering same to the Madison County Court Clerk. Jamos contended its lien remained unsatisfied

---

<sup>2</sup> The entire record on appeal consists of one volume containing twenty pages of documents, including the notice of appeal, certification of the record on appeal, receipt for payment of filing fee, and clerk's certificate. No audio or video recordings of the proceedings are included in the record. Thus, our review is necessarily limited by the lack of a fully-developed record and the recitation of historical facts is gleaned from the few pleadings contained in the record.

<sup>3</sup> The record from the foreclosure action is not before us. However, in contravention of Kentucky Rules of Civil Procedure (CR) 76.12(4)(c)(vii), both parties include multiple documents from that action in the appendices to their briefs filed in this Court and rely on them in support of their respective arguments. Additionally, Jamos's brief does not specify the method and location of preservation of the alleged errors, nor does it contain any citations to the record—both requirements of CR 76.12(4)(c)(v). CR 76.12(8)(a) permits, but does not require, a brief to be stricken for failure to substantially comply with this rule. Rather than strike the parties' briefs in their entirety, we choose instead to disregard the portions of the briefs relying on the extraneous materials contained in the appendices. *Commonwealth v. Crum*, 250 S.W.3d 347, 349 (Ky. App. 2008).

<sup>4</sup> In pertinent part, the statute states the "holder of a lien on real property . . . shall release the lien in the county clerk's office where the lien is recorded within thirty (30) days from the date of satisfaction."

until October 15, 2011, when Middleton's tendered check was negotiated following the trial court's ruling on October 6, 2011, concerning a dispute as to the amounts actually due and owing. A copy of the release, signed by the General Partner of Jamos, was attached to their response. The release states, "the undersigned has caused this Release of Lien for Certificate of Delinquency to be executed this 26<sup>th</sup> day of October, 2011." The record is devoid of evidence indicating when the release was forwarded to the county clerk for recording. Although it appears the release was recorded by the Madison County Court Clerk, no certification or date of recording appears on the face of the document.<sup>5</sup>

After receiving Jamos's answer to her complaint and discovering the lien had been released, Middleton moved for an award of attorney's fees and costs incurred as a result of bringing her action. Following a hearing,<sup>6</sup> the trial court granted the motion in a written order stating:

This matter having come before the Court upon Plaintiff's Motion for Attorney's Fees and Costs on December 8, 2011, the Court having heard argument of counsel for both parties, having reviewed the file and otherwise being sufficiently advised:

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. Pursuant to KRS 382.365, Plaintiff is awarded a Judgment against Defendant, Jamos Fund I,

---

<sup>5</sup> Both parties allege the release was recorded on November 10, 2011, but we are unable to verify this fact based on the record before us. Another document recorded by the Madison County Court Clerk bearing a time/date stamp is included in the record. No such mark appears on the recorded release at the center of this appeal.

<sup>6</sup> No recording of the hearing is included in the appellate record.

LP, for her reasonable attorney's fees in this action in the amount of \$1,200.00. Said sum shall be delivered unto counsel for Plaintiff by Defendant.

2. Pursuant to KRS 382.365, Plaintiff is awarded a judgment against Defendant, Jamos Fund I, LP, for her costs herein in the amount of \$186.07. Said sum shall be delivered unto counsel for Plaintiff by Defendant.

We note the absence of finality language from the above order, the only order contained in the record. This appeal followed.

Jamos contends the trial court's award of attorney's fees and costs was erroneous. We agree.

It is undisputed that KRS 382.365(4) permits a trial court to award "costs including a reasonable attorney's fee" in any judgment entered as a result of a lienholder's violation of release requirements. However, our review of the record indicates the trial court made no finding on the critical issue of whether Jamos violated the statutory provisions contained in KRS 382.365(1). Absent this threshold finding, we believe the trial court abused its discretion in granting Middleton relief. A plain reading of the statute clearly indicates its purpose is to obtain a judicially-sanctioned release where the secured party is unable or unwilling to voluntarily release its lien. Here, Jamos appears to have taken the necessary steps to release the lien on Middleton's property before the instant suit was commenced and the release had apparently been recorded prior to the trial court taking any action. No contrary findings appear in the record.

As Middleton did not prevail in obtaining a judgment under the statutory guidelines, it cannot be said she was entitled to an award of fees and costs. Thus, we are compelled to conclude the trial court's award of attorney's fees and costs was improvidently made and we must vacate the December 14, 2011, judgment. Remand is therefore necessary for the trial court to determine whether Jamos did, in fact, violate the statutory mandates of KRS 382.365. If it so finds, it may then determine the appropriateness of an award of costs and reasonable attorney's fees.<sup>7</sup>

The judgment of the Madison Circuit Court is vacated and the matter remanded for further proceedings consistent with this Opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT:

David R. Steele  
Ft. Mitchell, Kentucky

BRIEF FOR APPELLEE:

Jubal L. Miller  
Richmond, Kentucky

---

<sup>7</sup> While determining what constitutes a reasonable fee is left to the discretion of the trial court, we note the initial award of \$1,200.00 gives us pause considering the simple nature and apparently minimal amount of legal effort expended on this matter. We encourage the trial court to consider these factors should it determine Middleton is entitled to an award on remand.