

RENDERED: JULY 5, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001517-MR

REBECCA MERCER

APPELLANT

v. APPEAL FROM BRECKINRIDGE CIRCUIT COURT
HONORABLE BRUCE T. BUTLER, JUDGE
ACTION NO. 11-CI-00289

KENTUCKY LAND HOLDINGS
OF RADCLIFF, LLC G@1 SERIES

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, DIXON AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Rebecca Mercer, proceeding *pro se*, has appealed from the entry of a summary judgment and order of sale by the Breckinridge Circuit Court in favor of Kentucky Land Holdings of Radcliff, LLC G@1 Series (“Kentucky Land”) related to her default on a promissory note and contract for deed. Mercer has also appealed from the orders denying her motions to reconsider and to set

aside the summary judgment and order of sale. Finding no merit in Mercer's arguments, we affirm.

In October 2011, Kentucky Land filed a complaint seeking a judgment against Mercer related to her default on a promissory note in the principal amount of \$60,000.00 entered into the prior May.¹ To secure the promissory note, Mercer executed and delivered to Kentucky Land a contract for deed dated May 5, 2011, which was recorded in the Breckinridge County Clerk's Office.² The land was described in the deed as Tract Two of the John L. Mercer Estate Division, located in Breckinridge County. When Mercer failed to make the required payments, Kentucky Land sought a judgment against her in the amount of \$36,239.23, inclusive of principal and interest, along with post-judgment interest until the amount was paid in full, as well as foreclosure of its mortgage lien by a judicial sale.

Breckinridge County filed an answer to the complaint, stating that there were no delinquent, unpaid ad valorem taxes on the subject property, and requested that it be dismissed as a party. The circuit court later dismissed Meade County Bank after it issued a deed of release of its mortgage.

¹ Also named as defendants in the complaint were Meade County Bank, due to a mortgage dated May 16, 2011, on the subject property, and Breckinridge County, due to possible delinquent taxes.

² The contract for deed was in the amount of \$60,000.00, for which Mercer made a \$1,000.00 down payment. The remaining \$59,000.00 was to be paid in monthly installments of \$670.00.

Mercer filed an answer in which she presented many accusations against the practices of Kentucky Land, but did not otherwise deny executing the promissory note and contract for deed or that she was in default.

Kentucky Land filed a motion for summary judgment and order of sale, arguing that it had established that Mercer had defaulted on the terms of the promissory note, owed a valid debt, and that the amount she owed totaled \$36,239.23. Kentucky Land noted that in her answer, Mercer had not raised any specific defenses and included only general denials, which were insufficient to raise a genuine issue of material fact. In support of the motion, Kentucky Land attached an affidavit from its office manager, Gene McGehee, who was the custodian of records for delinquent accounts. Mr. McGehee detailed the terms of the promissory note and the amount still owed. He also indicated that the promissory note required Mercer to pay attorney fees and court costs in the event of a default; those fees totaled \$2,093.16. Mercer objected to the motion, stating that she no longer had the property because she had signed a quit claim deed. In reply, Kentucky Land again pointed out that Mercer only provided general denials, which were not sufficient to raise a genuine issue of material fact. Her accusations against Kentucky Land, including violations of the Racketeer Influenced and Corrupt Organizations Act and usury law, were irrelevant as she never denied that she signed the note or failed to pay the amounts due under the note.

On July 3, 2012, the circuit court entered its findings of fact, conclusions of law, summary judgment, and order of sale. The court held that

Kentucky Land made a *prima facie* case and was therefore entitled to judgment as a matter of law. The court awarded Kentucky Land a judgment against Mercer in the amount of \$36,239.23, plus interest at a rate of 6% per annum until paid in full. The court then ordered the property to be sold in order to enforce Kentucky Land's liens. In addition, the court awarded Kentucky Land a judgment against Mercer in the amount of \$2,093.16, representing the attorney fees and costs it incurred in prosecuting the action. The subject property was sold at a Master Commissioner's sale in September 2012 for the amount of \$33,000.00.

Mercer moved the court to reconsider its judgment, arguing that she was not mentally capable of entering into the contract for deed as well as other issues related to a quit claim deed. The court denied the motion in an order entered July 25, 2012. Mercer filed a subsequent motion pursuant to Kentucky Rules of Civil Procedure 60.02 to set aside and vacate the judgment, stating that she would present new evidence and that she was seeking remedies against Kentucky Land. This motion was denied on August 8, 2012. This appeal follows.

Our standard of review is well-settled in the Commonwealth:

The standard of review on appeal when a trial court grants a motion for summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." The trial court must view the evidence in the light most favorable to the nonmoving party, and summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. The moving party bears the initial burden of showing that no genuine issue

of material fact exists, and then the burden shifts to the party opposing summary judgment to present “at least some affirmative evidence showing that there is a genuine issue of material fact for trial.” The trial court “must examine the evidence, not to decide any issue of fact, but to discover if a real issue exists.” While the Court in *Steelvest[, Inc. v. Scansteel Service Center, Inc.]*, 807 S.W.2d 476, 480 (Ky. 1991),] used the word “impossible” in describing the strict standard for summary judgment, the Supreme Court later stated that that word was “used in a practical sense, not in an absolute sense.” Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court’s decision and will review the issue de novo. [Citations in footnotes omitted.]

Lewis v. B&R Corp., 56 S.W.3d 432, 436 (Ky. App. 2001).

In her brief, Mercer continues to object to the business practices of Kentucky Land and Mr. McGehee, discussing the quit claim deed and the effect it had on her contract for deed, whether the contract for deed was ever recorded, and the circumstances of Meade County Bank’s deed of release. Kentucky Land argues that Mercer failed to meet her burden to come forward with affirmative evidence in the record to establish that a genuine issue of material fact existed.

We agree with Kentucky Land that Mercer has failed to present any evidence to overcome its motion for summary judgment on her default, but has merely presented unsubstantiated and irrelevant accusations. This is not enough to meet her burden: “[A] party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence

showing that there is a genuine issue of material fact for trial.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991).

Accordingly, the Breckinridge Circuit Court’s summary judgment and order of sale as well as the orders denying Mercer’s post-judgment motions are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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