

RENDERED: JANUARY 10, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001814-MR

ANN PATMON, INDIVIDUALLY AND IN HER
REPRESENTATIVE CAPACITY FOR
AMERICAN LEASING AND MANAGEMENT, LLC APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 04-CI-004901

LANIER HOBBS APPELLEE

OPINION AND ORDER DISMISSING

** ** * * * * *

BEFORE: LAMBERT, MOORE, AND VANMETER, JUDGES.

VANMETER, JUDGE: Ann Patmon appeals, individually and on behalf of American Leasing and Management, LLC (“American Leasing”), from an opinion and order of the Jefferson Circuit Court. Patmon contends that the amount of damages awarded by the trial court is inadequate. However, the order Patmon

appeals from is not a final order and thus we lack jurisdiction to address her claim. Accordingly, we dismiss this appeal.

American Leasing is a Kentucky limited liability company that is involved in construction and build-to-suit lease projects. Patmon, Lanier Hobbs, and Bruce Gray are members of the company holding, respectively, 51 percent, 44 percent, and 5 percent ownership.¹ Following a bench trial, the trial court held that Hobbs had breached his common law fiduciary duty of loyalty to the company, and had failed to follow the guidelines of KRS² 275.170(2).

In a prior appeal of this case, we determined that Hobbs, as managing member of American Leasing, diverted an opportunity from the company without the consent of the other members. *Patmon v. Hobbs*, 280 S.W.3d 589 (Ky. App. 2009). We noted the existence of a common law duty of loyalty owed to members of a limited liability company, as well as the existence of a statutory duty, set forth in KRS 275.170, that requires a member to “account to and hold as a trustee for the limited liability company any profit or benefit derived from transactions involving the use of a limited liability company’s property by that member or manager without [adequate] consent[.]” *Id.* at 598. Ultimately, we reversed and remanded with instructions for the trial court to determine whether American Leasing was able to take advantage of the opportunity diverted by Hobbs, which is a prerequisite to recovery. *Id.* If the prerequisite was met, we instructed the trial

¹ Gray is no longer participating in this action and his claims have been dismissed.

² Kentucky Revised Statutes.

court “to determine a remedy for Hobbs’s common-law breach of fiduciary duty and failure to follow the statutory guidelines of KRS 275.170.” *Id.* We further instructed:

Pursuant to KRS 275.170, at a minimum, Hobbs is required to hold in trust all benefits and profits derived by him as the result of his misuse of the build-to-suit leases. In so doing, the court shall determine the value of the build-to-suit leases that Hobbs diverted to American Development. . . .

Further, pursuant to KRS 275.290 and KRS 275.300(1)(b), based on Hobbs’s misconduct, the court is authorized to order the dissolution of American Leasing. The dissolution of the company will allow American Leasing to conclude its affairs, collect its assets and distribute the assets to its members. In light of Hobbs’s misconduct, the court will need to decide, in the interest of justice, the percentage to be used in dividing the assets among the members.

Patmon, 280 S.W.3d at 598-99.

On remand, however, the trial court did not order Hobbs to hold the benefit he received in trust for American Leasing, did not determine the breach’s impact on the members’ respective ownership interests, and did not dissolve the company. The trial court simply awarded Patmon \$37,400³ for Hobbs’s breach of his statutory duty and his failure to follow the guidelines of KRS 275.170(2). Patmon

³ The trial court determined that the benefit of the leases went to American Development, a company owned in part by Hobbs, who subsequently sold his interests to a third party for \$115,000. The court reduced that value by \$25,000, to account for attorney’s fees incurred to complete the transaction, and then awarded Patmon 44% of the remaining \$85,000. The 44% reflects Patmon’s ownership interest in American Leasing prior to the breach. For purposes of future proceedings, we note that mathematically, \$115,000 minus \$25,000 equals \$90,000, of which 44% equals \$39,600 (not \$37,400).

filed a CR⁴ 59.05 motion to alter, amend, or vacate the trial court's order, which the court granted. The trial court then awarded \$18,980.46⁵ to American Leasing, and added the finality language of CR 54.02(1) to its order. This appeal followed.

Despite the issue of jurisdiction not being raised by the parties, our review of the record and the parties' briefs reveals that the trial court's order is not final and appealable because it fails to resolve the issue of dissolution and fails to determine the impact of Hobbs's breach on the members' respective ownership interests.⁶ As a result, we issued an order to show cause why the appeal should not be dismissed. Both parties argued that this court has jurisdiction to hear Patmon's appeal because her interests were fully determined and the dissolution represents a separate claim. We disagree.

CR 54.02(1) allows a trial court to "grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay." Yet, "attempted compliance with CR 54.02(1) will not necessarily make an otherwise interlocutory judgment final and appealable."

Francis v. Crouse Corp., 98 S.W.3d 62, 65 (Ky. App. 2002).

Here, Patmon's rights were not finally determined by the trial court's order, nor were they sufficiently severable to warrant appellate review at this juncture.

⁴ Kentucky Rules of Civil Procedure.

⁵ This amount includes: \$9,100 in down payments to secure land for the build-to-suit leases later completed by American Development; \$1,527.46 for signage for these projects; \$7,500 for Hobbs's personal legal expenses; and \$853 for his personal telephone bill.

⁶ If not raised by the parties, we are required to address jurisdictional issues *sua sponte*. *Kentucky High School Athletic Ass'n v. Edwards*, 256 S.W.3d 1, 4 (Ky. 2008).

The value of American Leasing after it has been made whole, the percentage owed to each member upon dissolution, and the amount of damages awarded to Patmon and American Leasing are intertwined.⁷ American Leasing's dissolution does not represent a separate claim because the breach impacts the percentage of the members' ownership interests upon dissolution. *See Patmon*, 280 S.W.3d at 599 (“In light of Hobbs’s misconduct, the court will need to decide, in the interest of justice, the percentage to be used in dividing the assets among the members.”). Before American Leasing is dissolved, and the members’ respective ownership interests determined, American Leasing must be made whole. Until American Leasing is made whole and its assets are distributed, Patmon’s interests have not been conclusively determined. *See Hale v. Deaton*, 528 S.W.2d 719, 722 (Ky. 1975) (“The judgment must conclusively determine the rights of the parties in regard to that particular phase of the proceeding.”).⁸

For the reasons set forth above, we lack jurisdiction to consider Patmon’s claims and hereby dismiss this appeal.

ALL CONCUR.

ENTERED: January 10, 2014

/s/ Laurance B. VanMeter
JUDGE, COURT OF APPEALS

⁷ The common law fiduciary duty owed by directors and officers of a corporation generally runs directly to the corporation, not its members, as do the statutory duties. 18B Am. Jur. 2d *Corporations* §1462 (2011). Likewise, the statute governing the duty of loyalty to members of a limited liability company instructs that the duty is to “account to the company.” *See* KRS 275.170(2).

⁸ We note that Patmon is not the only individual with an ownership interest in American Leasing who is entitled to receive assets upon its dissolution.

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