

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001996-MR

ALI S. ZADEH

APPELLANT

v. APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NOS. 11-CI-00512 AND 11-CI-00552

CHRISTINE BLANKENSHIP, EXECUTRIX
OF THE ESTATE OF OTTIS BLANKENSHIP;
AND HASSELL GULLETT

APPELLEES

OPINION
REVERSING AND REMANDING
WITH DIRECTIONS

** ** *

BEFORE: STUMBO, TAYLOR, AND THOMPSON, JUDGES.

TAYLOR, JUDGE: Ali S. Zadeh brings this appeal from an October 16, 2012, judgment of the Johnson Circuit Court ordering the judicial sale of Zadeh's real property to satisfy a mechanic's lien. We reverse and remand with directions.

The underlying action centers upon a dispute between the parties as to the scope and payment for electrical repairs carried out by Ottis Blankenship upon real property owned by Zadeh in 2011. Blankenship filed a mechanic's lien for the value of the services performed upon the subject real property and instituted a civil action to recover payment for the electrical work he performed thereupon.

The circuit court conducted a bench trial and heard the matter without a jury under Kentucky Rules of Civil Procedure (CR) 54.02. In accordance therewith, the circuit court rendered findings of fact, conclusions of law, and judgment on October 16, 2012. The circuit court concluded that both parties breached the terms of oral contracts. Specifically, the court held that Zadeh was entitled to \$2,200 in damages for breach of contract and further concluded that Blankenship was also entitled to \$5,300 in damages for breach of contract. The court then offset the above amounts of damages and awarded Blankenship \$3,100 in damages against Zadeh. The court also ordered the "case be referred to the Master Commissioner for sale of aforementioned property at public sale in order to enforce the mechanic's lien." And, the court specifically noted that "[t]here being further issues for the Court to resolve once the sale of the property has taken place, this is not a final and appealable judgment."

Zadeh timely filed a notice of appeal from the October 16, 2012, judgment. Ottis Blankenship passed away during pendency of this appeal, and Christine Blankenship, in her capacity as Executrix of the Estate of Ottis Blankenship, (collectively referred to as Blankenship) was substituted by Order

entered April 12, 2013. CR 76.24. Blankenship subsequently filed a motion to dismiss arguing that the October 16, 2012, judgment was interlocutory and not subject to appeal. By order entered April 12, 2013, a motion panel of the Court of Appeals denied the motion to dismiss but limited the issue on appeal to “whether the circuit court abused its discretion in ordering a sale of the appellant’s property prior to entering a final and appealable judgment on the underlying claims.”

In accordance with our April 12, 2013, order, Zadeh solely argues that the circuit court abused its discretion by specifying that the October 16, 2012, judgment was not final and appealable. For the following reasons, we agree.

In this Commonwealth, an order directing the sale of real property by the master commissioner to enforce a lien is generally a final and appealable order. *Alexander v. Springfield Prod. Credit Ass’n*, 673 S.W.2d 741 (Ky. 1984); *Young v. U.S. Bank, Inc.*, 343 S.W.3d 618 (Ky. App. 2011). And, after the judicial sale of real property, an order confirming the sale is also considered a final and appealable order. *Maynard v. Boggs*, 735 S.W.2d 342 (Ky. 1987); *Young*, 343 S.W.3d 618; *U.S. Nat’l Bank Ass’n v. Am. Gen. Home Equity, Inc.*, 387 S.W.3d 345 (Ky. App. 2012). It is reasoned that the appeal from an order of sale solely adjudicates the validity of the underlying claim precipitating the sale while a judgment from an order of confirmation adjudicates the validity of sale procedures and distribution of proceeds therefrom. *Alexander*, 673 S.W.2d 741.

In this case, it is clear that the October 16, 2012, judgment enforced the mechanic’s lien by ordering a judicial sale of Zadeh’s real property. Under

these circumstances, we believe the October 16, 2012, judgment constituted an order of sale and thus was a final and appealable judgment. The circuit court erroneously believed the October 16, 2012, judgment was nonfinal because there were “further issues for the court to resolve” following the judicial sale of the real property. However, the issues arising after sale of real property may be properly appealed from the order confirming the sale.

Accordingly, we hold that the circuit court erred by designating the October 16, 2012, judgment ordering the sale of Zadeh’s real property not being final and appealable. Upon remand, we direct the circuit court to render an amended judgment without such nonfinal language; thereupon, the parties may appeal from the amended judgment in accordance with Kentucky Rules of Civil Procedure.¹

For the foregoing reasons, the judgment of the Johnson Circuit Court is reversed and remanded with directions to render an amended judgment without nonfinal language.

STUMBO, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

¹ Our Opinion should not be misconstrued as adjudicating the merits of the October 16, 2012, judgment that ordered the sale of Ali S. Zadeh’s real property. We merely conclude that the circuit court erred by designating the October 16, 2012, judgment as nonfinal. Upon remand, the parties’ may appeal from the amended judgment upon entry by the circuit court and may raise any issues properly appealable from said judgment.

BRIEFS FOR APPELLANT:

J. Fox DeMoisey
Matt McCubbins
Louisville, Kentucky

BRIEF FOR APPELLEE CHRISTINE
BLANKENSHIP, EXECUTRIX OF
THE ESTATE OF OTTIS
BLANKENSHIP:

Robert G. Miller, Jr.
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