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Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-002116-MR

BLUE SKIES RACING STABLE, LLC — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 12-CI-03783

O'SULLIVAN FARMS, LLC; and
VINERY, LTD — APPELLEES

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: MOORE, TAYLOR, AND VANMETER, JUDGES.

MOORE, JUDGE: Blue Skies Racing Stable, LLC, appeals a judgment of the Fayette Circuit Court dismissing appellee, O'Sullivan Farms, LLC, from its declaratory action. For the reasons stated herein, we reverse the circuit court's judgment and remand for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

This matter is largely a disagreement over who is entitled to a thoroughbred stallion named Limehouse. Appellant, Blue Skies, alleges that it had a valid and binding contract to purchase the controlling interest in the horse from appellee, Vinery, as agent and syndicate manager of Limehouse Syndicate,[1] which would give Blue Skies, among other things, the right to determine where the horse would stand during breeding season; it alleges the syndicate manager, Vinery, was therefore obligated under the terms of the syndicate agreement to transfer the horse to Blue Skies; and, it alleges that Vinery exceeded the bounds of its authority as syndicate manager and breached the terms of the contract by subsequently offering and purporting to sell the controlling interest in Limehouse to another party instead, appellee O'Sullivan Farms.

Thus, when Blue Skies initiated this matter in Fayette Circuit Court on August 17, 2012, Blue Skies sought a judgment declaring that it had an enforceable

[1] Thoroughbreds, as well as other breeds of horses, are often owned by "syndicates," which are unincorporated associations, essentially comprised of several individuals or entities which own the horse in question as tenants in common. The rights and obligations of these co-owners with respect to the horse are governed by contract, and actual possession of the horse is typically vested in a syndicate manager. For a more detailed discussion of this system of ownership, *see generally James T. Scatuorchio Racing Stable, LLC v. Walmac Stud Management, LLC*, 941 F.Supp.2d 807, 819-820 (E.D. Ky. 2013); *Kefalas v. Bonnie Brae Farms, Inc.*, 630 F. Supp. 6, 7 (E.D. Ky. 1985); Timothy Nicholas Sweeney, *Keflas v. Bonnie Brae Farms: A Practical Approach To Thoroughbred Breeding Syndications and Securities Law*, 75 Ky.L.J. 419, 422 (1987); Rutherford B. Campbell, Jr., *Racing Syndicates as Securities*, 74 Ky. L.J. 691, 692-94 (1986); Rutherford B. Campbell, Jr., *Stallion Syndicates as Securities*, 70 Ky.L.J. 1131, 1131-33 (1982); John J. Kropp, John A. Flanagan & Thomas W. Kahle, *Choosing the Equine Business Form*, 70 Ky.L.J. 941, 945-48 (1982).

In this case, Blue Skies alleged that a sufficient majority of syndicate co-owners had accepted its offer to buy their factional interests in Limehouse, such that Blue Skies would be able to control the naming of a successor syndicate manager and the location of the horse. We think it important to note that Blue Skies sued Vinery in its representative capacity as agent of the Syndicate and its co-owners.

contract for the purchase of Limehouse, was entitled to specific performance of its contract, and that Vinery's purported sale of Limehouse to O'Sullivan Farms (which, at the time this action was initiated, had yet to be consummated) was invalid. Blue Skies also sought a temporary injunction to prohibit Vinery and O'Sullivan Farms from removing the horse from where it was being stabled in Kentucky and taking it to West Virginia during the pendency of the litigation. Both Vinery and O'Sullivan Farms opposed Blue Skies' motion for a temporary injunction and alternatively moved to dismiss.

The circuit court held a hearing on Blue Skies' temporary injunction motion on August 30, 2012. Shortly after the hearing, though, Vinery informed the circuit court that it had proceeded to sell Limehouse to O'Sullivan Farms and that O'Sullivan Farms had taken the horse to West Virginia.

Also shortly after the hearing, O'Sullivan Farms renewed its motion to dismiss. Boiled down, O'Sullivan Farms' argument in favor of dismissal was that it was no longer necessary to litigate who owned a controlling interest in Limehouse, or to require O'Sullivan Farms to participate in this litigation any further, because O'Sullivan Farms now owned Limehouse. In support, O'Sullivan Farms contended that it had relied upon certain verbal remarks made by the circuit court and by opposing counsel during the temporary injunction hearing, which it had interpreted to mean that it could have Limehouse if it closed on its contract with Vinery; that it had done so; and, accordingly, it asserted that its ownership of Limehouse was a settled matter.

The specifics of this appeal relate to a December 6, 2012 order of the circuit court[2] in which the circuit court determined that O'Sullivan Farms was indeed entitled to keep Limehouse. As to why, its order provides only the following explanation:

> 1. The Court makes findings of fact and conclusions of law consistent with the reasons recited by the Court on the record during the Hearing,[3] which reasons are incorporated herein by reference, and for those reasons, GRANTS Defendant O'Sullivan Farms, LLC's Motion to Dismiss the allegations of the Complaint directed against O'Sullivan Farms, LLC;
>
> 2. The Court furthermore OVERRULES the Plaintiff Blue Skies Racing Stable, LLC's Motion to Amend its Complaint against Defendant O'Sullivan Farms, LLC, because of the reasons stated on the record during the Hearing and because granting such Motion would be futile in that Plaintiff may not obtain specific performance against O'Sullivan Farms, LLC;
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> 3. Consistent with the above, and because the Court's Orders herein terminate all allegations and claims against the party, O'Sullivan Farms, LLC, the Court will enter a separate Final Judgment in favor of O'Sullivan Farms, LLC, pursuant to CR 54.02.

This appeal followed. Additional details relating to this matter will be discussed as they become relevant within the context of our analysis, below.

STANDARD OF REVIEW

[2] This December 6, 2012 order made exactly the same rulings as another final order that the circuit court entered on December 3, 2012. It is unclear why the circuit court deemed it necessary to enter the same order twice.

[3] The hearing described by this order took place on November 16, 2012.

When findings of fact and conclusions of law are warranted (as in the case of a judgment resulting from a bench trial or an order granting or denying injunctive relief, for example), a mere reference to a recorded hearing, such as the reference that the circuit court incorporated into its December 6, 2012 order, does not satisfy the mandates of Kentucky Rules of Civil Procedure (CR) 52.01.[4] However, the circuit court's use of "findings of fact and conclusions of law" in its order was unnecessary because its order was designed to address a motion to dismiss that O'Sullivan Farms filed pursuant to CR 12.02(f); in resolving such a motion, findings of fact and conclusions of law are not warranted. *See* CR 52.01. The standard of review of a dismissal of a complaint pursuant to CR 12.02(f) for failure to state a claim is as follows:

> The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim. In making this decision, the circuit court is not required to make any factual determination; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?

James v. Wilson, 95 S.W.3d 875, 883–84 (Ky. App. 2002) (internal quotation and footnote omitted).

ANALYSIS

[4] We are aware of only one occasion in which a court's reference to a video record as a substitute for written findings of fact has amounted to something other than manifest injustice. *See, e.g., Marshall v. Commonwealth*, 60 S.W.3d 513, 524 (Ky. 2001) (holding no manifest injustice resulted because circuit court's order "referenced the videotaped record at the exact point at which [the presiding judge] orally found the aggravating circumstance to exist beyond a reasonable doubt." *See also Perry v. McLemore*, 414 S.W.2d 141, 142 (Ky.1967) (noting that an appellate court has authority to waive the requirement where the record is so clear that it does not need such aid).

The first step toward resolving this appeal is deciphering the underpinnings of the circuit court's order. Therefore, we have reviewed the November 16, 2012 hearing referred to in the circuit court's order and have transcribed the portion of it that appears to explain the circuit court's reasoning:

. . .

> THE COURT: [A]t the time we were here at the motion for temporary injunction, a lot came out about the merits of the case and the facts of the case, and the two competing offers, if you will, for contracts, if you will, and the whole point of the plaintiff's motion was that they had a binding contract with Vinery for the purchase of this horse and therefore they wanted the horse or wanted it to remain in Kentucky, that, that O'Sullivan shouldn't get it, it shouldn't go to West Virginia, it shouldn't be moved, that it's our horse, we bought and paid for it, basically, was the argument. And, Vinery made their argument and I made my, I found at that point there was no, um, I found that again these were competing offers, that I hadn't made a determination on the actual merits, but I did find that there was no, um, binding contract because I said there was no meeting of the minds. I said how could there be a meeting of the minds when there's two offers out there to purchase this particular horse? And I think it was Mr. Meuser [co-counsel for Blue Skies] who represented that whatever you decide here is going to determine basically the outcome of the case. The, at the conclusion of that, Vinery then proceeds to close on the sale of the horse to O'Sullivan, so they no longer have ownership of this horse. The ownership of this horse has been sold pursuant to what O'Sullivan and Vinery believe is a valid contract, they purchased it, and now the horse is in West Virginia. And just like I said in August, if in fact Blue Skies has been damaged, and this was the basis of my overruling the motion for injunctive relief, was that there was a monetary remedy at law, that being damages that Vinery would owe you if in fact, um, Blue Skies proceeded on the merits. And so the argument that you

can seek specific performance from O'Sullivan to bring us back the horse would mean I would then have to void a valid sale that has taken place, when, which would I think require something more than just a suit by Blue Skies versus Vinery, and so I think the basis of the comment that was made about we'll do whatever you order us to do meant that if that horse was moved to West Virginia, there had been no sale at that point or a change in ownership and it was determined subsequently that if in fact Blue Skies won on the merits, and so I can't, I don't know how I would, at the conclusion of this lawsuit, void a sale between Vinery and O'Sullivan when, like I said before, your remedy or Blue Skies' remedy is monetary damages if there is a breach.

BLUE SKIES' COUNSEL: Okay, I can address that. There was never any intention on [O'Sullivan's] part to take the horse to West Virginia without closing on it first. That was never going to happen. I mean, they were going to close on the horse before they ever took it. So, the fact that they have closed on it after the temporary injunction hearing is something that they did at their peril because they were aware that we were seeking specific performance. And, on the specific performance, whether we can get that, we can get specific performance. There's two issues here. First is your decision that we weren't entitled to injunctive relief doesn't preclude us from prevailing on the merits of the claims that we asserted in our complaint. One of those claims was specific performance. And, I understand Mr. Meuser's statement at the hearing, but everyone will recall I also said I kind of disagree with Mr. Meuser, and that was kind of a joke after the hearing that I said I disagree with Mr. Meuser because we have to remember the standard for every stage of the litigation. And what they're wanting is a summary judgment right now, as we sit here today, on the fact of whether we can get specific performance. And you deciding on a temporary injunction that one party doesn't get the temporary injunction doesn't mean the party automatically loses on the merits or else there would never be any continuing lawsuit. We should have the opportunity to get discovery, and if necessary expert proof, to show that this

is the type of asset that specific performance is appropriate for. And, I understand what your honor is saying, that can't you just get monetary damages, but the situation I would compare it to is a contract for the sale of real property. If there is a buyer who seeks specific performance of a contract for purchase of real property, there's always a purchase price of that property. And so let's say you signed a contract for $300,000. You could always find another piece of property. Let's say you had to pay $350,000 for a similar piece of property. Then the court could say your damages were $50,000 monetary damages. But, courts don't do that because they recognize that every piece of property is unique. Every real---

THE COURT: But if that house or piece of property is sold to somebody else, the court isn't gonna come in and make that person move out of that house and say oh it really belongs to party "A".
BLUE SKIES' COUNSEL: But I think this situation is different than the situation you are talking about because they were already parties to this lawsuit. Your honor's denied our motion for temporary injunction and they decided to go ahead with the closing. They didn't have to go ahead with the closing. So, I mean, to me they were already a party and they were already on notice that we were seeking specific performance. I mean, what you're saying they said at the hearing was, "We'll take it to West Virginia and then if your honor decided on the merits that, um, the plaintiff is the rightful owner, we'll bring it back." They would have never, you know, they weren't going to take it without doing the closing. So what they were saying at the closing was "We'll go and do whatever we want with Vinery and then we'll bring, we'll give you the horse back." I mean, that's, I just think that if what your honor is saying is true, then no party could ever get specific performance because there's always a value of the real property, for example, and they could always get some sort of damages but the idea is that the plaintiff is allowed to prove whether that is a unique asset that—

THE COURT: But I think that was part of the underlying argument with the injunctive relief. In that, "your honor, injunctive relief is appropriate because this isn't just monetary damages and we are seeking the horse, not just the money."

BLUE SKIES' COUNSEL: Right.

THE COURT: And the court[5] found that, well, no, if you're actually damaged for a breach of contract, it's monetary damages that can in fact make you whole. And, and I think that's why Mr. Meuser was saying I think this will resolve the issue because he, in his mind, was saying it does away with that specific performance argument because I'm ruling that you can get monetary damages. And so if you proceeded to go forward, and, and, and again, you're not, the damages here isn't, okay well we could've got $50,000 for Limes, Limehouse, or we could've gotten $100,000 or whatever the purchase price was, this is an argument over money, and how much money you could've made by owning this horse, breeding this horse in the future, what it's future value would be, what the sale, I mean all of that constitutes monetary damages.

BLUE SKIES' COUNSEL: Well, what we also argued at the hearing, and what is also true, is that, and what [opposing counsel] argued at the hearing was that there's a limited number of these stallions that have certain breeding qualifications, have a certain bloodline, and that are appropriate for the market. Our, our client, you'll recall, is from Louisiana, and they want to take this horse to Louisiana. So there's only a certain number of horses that could be suitable for that purpose. And I think that what, um, is missing is that at the hearing on motion for temporary injunction, we didn't put on any witnesses or experts that could produce evidence of the fact that you can't just go out and replace a stallion with another stallion. It's not—

THE COURT: But doesn't that go, again, into the calculation of damages? That's what an expert would

[5] To clarify, the circuit court is referring to itself in the third person.

testify to, that, "your honor, this isn't just a $50,000 horse. This is a $1.5 million horse because it has special characteristics, it's only a limited breeding amount, it can only be bred at certain times so only a limited number of whatevers, and had we had the horse, had we gotten that, we could've found a special other person thing to breed it to, could've got our Derby winner, and therefore we're entitled to $50 million in damages from Vinery. Based on our expert calculations of the future value and monetary production of this horse." So that all goes into the calculation of what Blue Skies' damages would be if in fact they were damaged or there was this breach of contract. So, again, I think all of that, the special characteristics, the special circumstances, goes to the value of the horse, not that we get the horse at that particular point in time. Because, as I understand it, every time a horse is bred, every time, you know, the breeding season goes, the older a horse gets, doesn't mean it's worth more money. Just like people, horses get old. Um, and so, again, I think, you know, you, you're still making an argument about the calculation of monetary damages. And I think all of this, again, was considered. I'm not saying that Vinery gets out of this. I'm not saying this case goes away like I thought it would and hoped it would, but if it doesn't it doesn't. But, again, Vinery is still in this, you've got a breach of contract claim for damages if in fact on the merits of the case we find that they breached a contract. Um, and so they, they've sold the horse to O'Sullivan and the horse has been removed. There's been no allegation that O'Sullivan was in collusion or cahoots or did anything, you know, like that. They just have possession of the horse. And so, I'm not, I'm not sure what, what specific performance they could be made to do at this point because again it wouldn't just be a matter of me saying return the horse to Kentucky a year from now when this case is ultimately resolved. I would have to go through or there would have to be some kind of proceeding to void their contract, to, the, the, the legalities of the transfer of ownership of that particular horse or you wouldn't have clear title to the horse. So, again, I'm not hearing anything other than "we're out of a lot of money at the fault of Vinery, and therefore we're entitled to

what we would have gotten from the purchase of the horse and our calculations show this horse to be worth." Um, everybody's quiet.

VINERY'S COUNSEL: Well, oh, I, I just want, so, the only thing I wanted to say your honor was, uh, I, and I just want to say that if this thing does get to the merits, our characterization of what they're held to on damages and how that's been described, we would, since everybody's using—

THE COURT: You would dispute it.

VINERY'S COUNSEL: I don't want my silence to be any kind of—

THE COURT: Sure.

VINERY'S COUNSEL: Acquiescence—

THE COURT: Mm-hm. Sure.

VINERY'S COUNSEL: I think they're limited to a lot less than that. But, you know, I, I saw, I, you know, for what it's worth, I saw [O'Sullivan's counsel's] characterizations the way the court did, which was, depending on what you do, we'll agree to this, but, you know, I don't, I, seems to me they've got a case against us for damages, I thought, I gotta figure out whether to file a motion to dismiss or summary judgment, I thought the case was going away, too, and we'll figure out what to do next as well.

O'SULLIVAN'S COUNSEL: As far as O'Sullivan is concerned, your honor, what you articulated we agree with. That's exactly our position. So—

THE COURT: . . . Alright . . . well just as I ruled at the, at the motion for temporary injunction, I think this is an issue of damages, I think it's monetary damages, and I think the issue is with Blue Skies and Vinery, I'm going to sustain O'Sullivan Farms' motion to dismiss.

As indicated above, O'Sullivan Farms represented that what the circuit court articulated at the hearing as the basis of its ruling was exactly its position with regard to its motion to dismiss. To summarize, the circuit court articulated that it had already made a determination, at the August 30, 2012 hearing regarding Blue Skies' motion for a temporary injunction, to the effect that no binding contract for the purchase of Limehouse existed between Blue Skies and Vinery. The circuit court added, however, that its determination in that respect had been nonbinding and that Blue Skies remained, to date, entitled to prosecute a breach of contract action against Vinery. But, the circuit court appears to have held that its decision to deny Blue Skies' motion for a temporary injunction at that hearing, combined with a number of other factors, nevertheless precluded Blue Skies from receiving possession of Limehouse even if Blue Skies eventually prevailed against Vinery on the merits of a breach of contract action. Those other factors, as related by the circuit court, appear to be: 1) what the circuit court perceived to be a concession from Blue Skies' counsel at the prior hearing, to the effect that Blue Skies would not want ownership of Limehouse if the circuit court did not grant it a temporary injunction; 2) the circuit court's conclusion that Blue Skies was not entitled to specific performance because Blue Skies otherwise had an adequate remedy at law; and 3) the circuit court's conclusion that it would be either impossible or unfair to void what it perceived was Vinery's "valid sale" of Limehouse to O'Sullivan Farms. Relying upon this logic, the circuit court determined that O'Sullivan Farms could therefore keep Limehouse; O'Sullivan

Farms' presence in this litigation was no longer required; and, Blue Skies was therefore limited to monetary damages.

With that said, neither the record nor the law of Kentucky supports the circuit court's judgment.

We begin with the first basis the circuit court apparently considered as a basis for dismissing O'Sullivan Farms from this litigation, namely: (1) that its decision to deny Blue Skies' motion for a temporary injunction at the August 30, 2012 hearing, combined with (2) some form of nonbinding ruling that it had rendered over the course of that temporary injunction hearing regarding the existence of an enforceable contract between Blue Skies and Vinery, resulted in (3) foreclosing Blue Skies from asking for specific performance later on in the litigation if it eventually prevailed against Vinery.

There are at least two problems.

The first problem is that the circuit court did *not* deny Blue Skies' motion for a temporary injunction at the August 30, 2012 hearing. To date, it has never done so. To explain, circuit courts speak "only through written orders entered upon the official record." *Kindred Nursing Centers Ltd. P'ship v. Sloan*, 329 S.W.3d 347, 349 (Ky. App. 2010). Specifically, court orders are only effective if they are in writing, entered into the official record by the circuit clerk, and signed by the judge. *Murrell v. City of Hurstbourne Acres*, 401 S.W.2d 60, 61 (Ky. 1966). These requirements are especially applicable and relevant in the context of any decision to either grant or deny a temporary injunction because such

decisions require written findings of fact and conclusions of law. *See* CR 65.04(5); *see also Common Cause of Kentucky v. Commonwealth*, 143 S.W.3d 634, 636 (Ky. App. 2004) (noting "the court did not hear proof, and its order does not include findings of fact and conclusions of law, as are required in an order granting or denying a temporary injunction[]"). In addition, such decisions are immediately appealable, per CR 65.07, whereas verbal orders are entirely unappealable. *Oakley v. Oakley*, 391 S.W.3d 377, 378 (Ky. App. 2012).

Here, the only document entered of record that approaches a decision of the circuit court to either grant or deny Blue Skies' motion for temporary injunction is a copy of the "video log" of the August 30, 2012 hearing, entered of record by the circuit clerk. The video log is not signed by the court. It does not contain any findings of fact and conclusions of law. In fact, the video log does not even indicate what the circuit court's ruling was; it merely recites that a "ruling of the judge" was made. In short, the circuit court has never disposed of Blue Skies' motion for temporary injunction, much less in any appealable fashion. Blue Skies' motion remains unresolved.

This leads to the second problem. The circuit court, like the Court of Appeals, had no authority to render a nonbinding, advisory opinion. *See Sullivan v. Tucker*, 29 S.W.3d 805, 808 (Ky. App. 2000); *see also* BLACK'S LAW DICTIONARY OPINION (9th ed.2009) (defining an "advisory opinion" as "[a] nonbinding statement by a court of its interpretation of the law on a matter submitted for that purpose"). The circuit court could not properly have disposed of the underlying

merits of this dispute when simply considering Blue Skies' motion for temporary injunction. *See Webb v. Welcome Wagon, Inc.*, 255 S.W.2d 459, 460 (Ky. 1953). During the November 16, 2012 hearing, the circuit court also made it explicitly clear that it had not resolved whether Blue Skies had an enforceable contract with Vinery, and that it would not do so until that matter was litigated on the merits. Therefore, we are left to guess at why the circuit court found it to be of any consequence that it had made a nonbinding ruling at a prior temporary injunction hearing regarding the merits of this case (*i.e.*, whether Blue Skies had an enforceable contract with Vinery). In any event, to the extent that the circuit court used this as any justification for dismissing O'Sullivan Farms from this litigation, it clearly erred.

The second factor indicated by the circuit court is what it characterized as a concession from Blue Skies' counsel at August 30, 2012 hearing to the effect that Blue Skies would not want a controlling interest in and possession of Limehouse if the circuit court did not grant it a temporary injunction. However, Blue Skies did not enter into any kind of consent judgment or written agreement that would support the circuit court's interpretation of what, upon our review of the videotaped hearing of August 30, 2012, appears to be nothing more than hyperbole from Blue Skies' counsel.[6] That aside, even if Blue Skies had made such a

[6] The circuit court's understanding of Blue Skies' "concession" appears to derive entirely from two statements of one of Blue Skies' counsel during the August 30, 2012 hearing. On one occasion, he stated: "The merits of this case is essentially what your ruling should be today." Later, he stated: "Even though this isn't a trial, and I don't think these gentlemen, the lawyers at least, will disagree with me, your ruling today on this motion will probably cause one party to give up and go home, because if this horse goes to West Virginia, it's unlikely that my client's

concession (and it did not), the circuit court at least understood that it was a concession contingent upon whether the circuit court granted or denied Blue Skies' motion for a temporary injunction. And, as noted above, the circuit court never denied Blue Skies' motion.

Moving on, the third factor indicated by the circuit court was its conclusion that Blue Skies was not entitled to specific performance because Blue Skies otherwise had an adequate remedy at law.

An adequate remedy at law typically precludes specific performance. But, determining whether specific performance may or may not be warranted in the future is not an appropriate subject of a CR 12.02(f) motion for at least two reasons. First, CR 12.02(f) motions are designed to dismiss *claims*. Specific performance is not a claim. It is a *remedy*.[7] Second, as noted earlier, circuit courts

gonna want to pursue this litigation. If you grant an injunction that says the horse has to stay in Kentucky, the likely scenario is that we're somehow gonna get that horse to Louisiana. So that's kind of where we are." As indicated by Blue Skies' counsel in what we have transcribed of the dialogue at the November 16, 2012 hearing, however, both of these statements were qualified at the August 30, 2012 hearing. Specifically, the other attorney representing Blue Skies clarified that Blue Skies was not obligated to prove its case on the merits at that time, was not seeking or consenting to any ruling on the merits regarding who was entitled to possession of Limehouse at that time, and was merely seeking to demonstrate a likelihood that it would prevail in the future.

[7] As more fully explained in *Kuntz v. Peters*, 286 Ky. 227, 150 S.W.2d 665, 667 (1941),

> [i]t is scarcely necessary to say that the remedy of specific performance is one of the many extraordinary ones created by equity to meet the deficiencies in remedies provided by strictly legal procedure and it is not available where the complaining party had an adequate remedy at law. Furthermore, the relief sought is one resting largely in the discretion of the court (but not an arbitrary one), and is cautiously administered. But in any event the burden of proof is on the plaintiff seeking specific performance to prove his right thereto, which is thus stated in the text in 25 R.C.L. p. 335, § 157: "In suits for specific performance the general burden of proof, as in other cases, rests on the plaintiff. Not only must he prove the existence of the contract and its terms, but he must show a full and complete performance on his part or an offer of such performance."

are not authorized to make findings of fact or to weigh the evidence in resolving a CR 12.02(f) motion to dismiss. *See James*, 95 S.W.3d at 884. And, a circuit court's decision to grant or deny specific performance of a contract necessarily involves weighing the equities, which, in turn, *requires fact-finding and weighing the evidence*. *See also Hickey v. Glass*, 149 S.W.2d 535, 536 (Ky. 1941) (holding whether a contract was formed is a question of fact); s*ee also West Ky. Coal Co. v. Nourse*, 320 S.W.2d 311, 314 (Ky. 1959) ("[S]pecific performance of a contract is not granted as a matter of right, but is always addressed to the reasonable discretion of the court, to be exercised according to the facts of each case. The discretion, however, is not an arbitrary or capricious one.").

We also question the circuit court's conclusion that Blue Skies otherwise had an adequate remedy at law. The circuit court appears to have arrived at this conclusion because 1) it believed that specific performance cannot, as a matter of law, apply in the context of a contract for the purchase of a horse; or 2) it believed that O'Sullivan Farms now owned Limehouse, and it either lacked the authority to "void" O'Sullivan Farms' "valid" ownership; or 3) the circuit court nevertheless believed that doing so would be unfair to O'Sullivan Farms because There was "no allegation that O'Sullivan was in collusion" or otherwise at fault.

The first of these reasons finds no support in Kentucky law. Specific performance developed as a remedy to redress instances where the property contemplated in a contract is unique and simple monetary damages will not suffice as a substitute. *See Smith v. Williams*, 396 S.W.3d 296, 300 (Ky. 2012). Kentucky

case law has recognized specific performance as a viable remedy in the context of actions for enforcing contracts for the purchase of specially bred horses. *See, e.g., Curry v. Bennett*, 301 S.W.3d 502 (Ky. App. 2009); *Beasley v. Trontz*, 677 S.W.2d 891 (Ky. App. 1984). The Kentucky Supreme Court has also explained that it is "self-evident" that thoroughbred horses, such as Limehouse, are unique; their future value "depends upon an infinite variety of future factors"; and, they cannot simply be replaced like fungible property. *Murty Bros. Sales, Inc. v. Preston*, 716 S.W.2d 239, 242 (Ky. 1986); *see also* Kentucky Revised Statutes (KRS) 355.2-716(1) (providing that "[s]pecific performance may be decreed where the goods are unique or in other proper circumstances").

Also, the second of these reasons indicates that the circuit court misapprehended the nature of Blue Skies' lawsuit. Blue Skies filed an action for declaratory relief. Specifically, it requested a judicial determination of its rights under what it regarded as an enforceable contract to purchase a controlling interest in Limehouse from the Limehouse Syndicate. *See* KRS 418.045. Whether O'Sullivan Farms "was in collusion" has no bearing upon why Blue Skies joined it as a party to this action; O'Sullivan Farms was joined because it also claims a paramount interest in Limehouse, and KRS 418.075 requires that "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings." *See also* CR 19.01.[8]

[8] CR 19.01 similarly provides:

It is also unclear how or when the circuit court came to regard O'Sullivan Farms as having a "valid" ownership interest in Limehouse. As the dialogue during the November 16, 2012 hearing indicates, no discovery has ever taken place in this case. The circuit court has not, as far as we are able to tell from the record, reviewed any of the documentation forming the bases of either Blue Skies' alleged contract or O'Sullivan Farms' alleged contract. The circuit court has made no determination of whether Vinery had the authority to convey Limehouse to O'Sullivan Farms. And, in the event that Blue Skies did have an enforceable contract for the purchase of Limehouse, the circuit court has also offered no explanation of why O'Sullivan Farms should nevertheless be allowed to keep Limehouse, and be essentially treated as a good faith purchaser of the horse, when it was undisputedly on notice of Blue Skies' claim to the horse beforehand.

Finally, the circuit court also erred if its conclusion was based on what it perceived as its lack of authority to unwind O'Sullivan Farms' purported purchase of Limehouse or otherwise exercise jurisdiction over Limehouse because the horse is now in another state. On this point, the circuit court undisputedly has

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> A person who is subject to service of process, either personal or constructive, shall be joined as a party in the action if (a) in his absence complete relief cannot be accorded among those already parties, or (b) *he claims an interest relating to the subject of the action* and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(Emphasis added.)

personal jurisdiction over O'Sullivan Farms; we also note that this is an equitable proceeding. As such, the circuit court is fully authorized to compel O'Sullivan Farms to act in relation to any property not within its jurisdiction. As explained in *Becker v. Becker*, 576 S.W.2d 255, 257 (Ky. 1979),

> [s]uch a decree would not operate directly on the property nor affect the title, but is made effectual through the coercion of the defendant; as, for instance, by directing a deed to be executed or cancelled by or on behalf of the party. . . . Whatever it may do through the party, it may do to give effect to its decree respecting property, whether it goes to the entire disposition of it or only to affect it with liens or burdens. . . . [W]hile a decree pursuant to such power [is] not legal title, nor [does] it transfer legal title, obedience to it could be compelled by contempt, attachment, or sequestration.

(Internal citations and quotations omitted.)

CONCLUSION

We reverse the judgment of the Fayette Circuit Court and remand for further proceedings consistent with this opinion.

ALL CONCUR.

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