

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001977-MR

HD TAD HOLDINGS, LLC; JAYME BURDEN;
AND PHILLIP MORRIS

APPELLANTS

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 11-CI-01790

FIRST FEDERAL SAVINGS BANK; CERTIFIED
CONSTRUCTION CO. OF KENTUCKY, LLC;
BLUEGRASS TL, LLC; TAX EASE LIEN
INVESTMENTS 1, LLC; ENGINEERING DESIGN
GROUP, INC.; ST. ANTHONY HOLDING COMPANY, LLC;
HARDIN COUNTY; CITY OF ELIZABETHTOWN;
AFFORDABLE HEATING AND COOLING, INC.;
JOHNSON CONCRETE; DAVID FULLERTON D/B/A
DCR CONSTRUCTION; AA PORTABLE SANITATION, LLC;
CITY OF ELIZABETHTOWN CODE ENFORCEMENT
BOARD; CANAAN REALTY GROUP, INC.; JEFFREY
FARMER; BRYAN ROBINSON; AND FIRST CECILIAN
BANCORP, INC.

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CHIEF JUDGE, JONES AND J. LAMBERT, JUDGES.

JONES, JUDGE: The Appellants, HD TAD Holdings, LLC ("HD TAD"), Jayme Burden, and Phillip Morris appeal from an order of the Hardin Circuit Court in favor of First Federal Savings Bank ("First Federal"). Therein, the circuit court determined that First Federal was entitled to foreclose on property securing four loans HD TAD assumed and to collect any deficiency from Burden and Morris because they personally guaranteed the loans. In so concluding, the circuit court rejected Appellants' defense of equitable estoppel and their counterclaim for unjust enrichment. Having carefully reviewed the record and applicable law, we are unable to identify any error on the circuit court's part. Accordingly, we AFFIRM.

I. BACKGROUND

An eight-acre tract of land located in Hardin County, Kentucky, is at the center of this dispute. Originally, St. Anthony Holding Company, LLC ("St. Anthony") had plans to develop the property into a residential community to be known as "Keeneland Gardens." St. Anthony's plans called for the construction of both multi-family units and single-family residences.

In 2005, St. Anthony borrowed funds from First Federal for the purpose of completing its planned development. The largest loan was for \$393,750. It was secured by mortgage on a vacant portion of the development where the single-family homes were to be constructed. First Federal made three additional loans to St. Anthony, each for \$188,880 and each secured by one of

three multi-family duplexes. Several individual members of St. Anthony, including Jeff Farmer and Bryan Robinson, personally guaranteed the loans.

The project did not take off as quickly as St. Anthony had hoped. By late 2007, construction had not begun on any of the planned single-family units and the multi-family duplexes were not finished. More troublesome, St. Anthony was behind on its mortgage payments and had failed to pay several of its contractors leading to mechanics liens being placed on the property. Foreclosure by First Federal seemed imminent.¹

It is at this point that friends and business partners, Jayme S. Burden and Phillip J. Morris, entered the picture.² Burden, a licensed real estate agent, had purchased other distressed properties in the past and believed the Keeneland Gardens project could be turned around under his management. Burden approached Morris about making an investment in the property. Eventually, the two agreed to form HD TAD for the purpose of entering into a joint venture with Robinson and Farmer whereby they would assume ownership of the property and complete the project.

In February of 2008, Burden and Morris entered into a memorandum of understanding with Farmer and Robinson outlining the terms of the joint

¹ A First Federal employee stated in an internal email to another employee: “We may be in trouble on the deal. Looks like it may be going down the tubes.”

² Exactly how Burden became involved is somewhat in dispute. Burden testified that personnel from First Federal alerted him to the project. First Federal claims that Burden approached the bank after having met with some of the principals at St. Anthony.

venture. Therein, the parties specified that Burden and Morris would create an entity which would have a 70% ownership of the project. Robinson's entity, either the Robinson Family Trust or Equity Realty Development, would have a 15% ownership interest and Farmer, as an individual or through another entity, would own the remaining 15%. In order to facilitate the transfer of the property from St. Anthony to the new joint venture, the parties agreed to a timeline, which contained nine items that needed to be accomplished. Bringing the First Federal loans current, making the necessary draws to complete the existing six units, and negotiating the existing liens with the contractors were among the items on the timeline.

Consistent with the memorandum, Burden and Morris delivered a check to First Federal for approximately \$20,000 to bring the construction loans current. Burden also began managing the project. While First Federal initially balked at dispersing funds to HD TAD because its name was not on the loans, it eventually agreed to do so. A closing was planned for late April of 2008. However, due to the existence of numerous mechanics liens on the property, the closing was delayed. Nevertheless, Burden and Morris continued working on the project.

By August of 2008, Burden had almost completed the units under construction and already had five of the six rented out. As reflected in an email dated August 21, 2008, he also believed that he had worked out a solution so that the deal could be closed by the end of August. However, once again, the presence

of the liens thwarted the parties' plans to transfer title from St. Anthony to the new joint venture. By far, the largest lien was a mechanics lien in favor of Certified Construction Co. of Kentucky, LLC ("Certified") in the original sum of \$54,663.00, dated September 10, 2007. Certified's lien arose out of work and materials it supplied in developing and paving the roads in the development. Burden states that he was told by First Federal that this lien would eventually be going away because Certified had not perfected it in a timely fashion.³

Nevertheless, it became apparent that St. Anthony could not pass clear title to HD TAD by the end of August of 2008 as Burden wanted. Because First Federal would not fund a loan to HD TAD unless its priority was assured, the entire deal looked as though it was falling through. Obviously, this was not a desirable outcome for any of the parties. HD TAD (Morris and Burden) had already invested time and money in the project; walking away from the deal would leave it with nothing to show for its investment and efforts. First Federal would once again have to deal with four nonperforming assets. And, if First Federal foreclosed on the property, the principals of St. Anthony would be on the hook for any deficiency based on their personal guarantees.

³ Pursuant to Kentucky Revised Statutes (KRS) 376.090, a mechanics lien filed under KRS 376.010 "shall be deemed dissolved unless an action is brought to enforce the lien within twelve (12) months from the day of filing the statement in the clerk's office, as required by KRS 376.080." Appellants have consistently taken the position that the lien had lapsed when they assumed the loans. However, the lien shows that it was filed on September 7, 2007. The assumption is dated August 28, 2008. Thus, it appears that the lien was technically still valid at the time of the assumption.

To save the deal, a solution was devised whereby HD TAD would assume the existing loans in exchange for an ownership interest in the property and an agreement that title would be transferred to HD TAD once the liens were cleared. To this end, HD TAD, Burden and Morris, entered into an assumption without release with First Federal. At this time, HD TAD brought all the loans current.⁴

The same day, August 28, 2008, Morris and Burden executed a second memorandum of understanding with Robinson and Farmer. In relevant part, the memorandum of understanding provides as follows:

Principals and Guarantors: Dr. Phillip J. Morris and Mr. Jayme S. Burden by and through a Kentucky-based entity (LLC, sub-Chapter S Corporation, etc.) totaling seventy (70%) ownership, Mr. Bryan Robinson by and through the Robinson Family Trust and/or EQUITY Realty Development, Inc. totaling fifteen percent (15%) ownership and Mr. Jeffrey M. Farmer as an individual or through a Kentucky-based entity (LLC, sub-Chapter S Corporation, etc.) totaling fifteen percent (15%) ownership.

Financing: Financing shall be provided by First Federal Savings Bank of Kentucky through the completion of the distribution of current construction funds to complete the initial six units, with additional financing to construct the approximate forty additional single-family units. All parties to this MOU understand that the current construction and development loans must be made current in order to affect the final draws available and

⁴ There was some confusion regarding the timing of the next mortgage payment following the assumption. HD TAD assumed it had the standard thirty days before the next payment was due as would generally be the case with a new loan. However, because HD TAD had agreed to assume the preexisting loans, the payment was actually due just a few days after the closing. HD TAD missed the payment and First Federal notified it accordingly. The confusion was eventually cleared up and First Federal decided not to charge the default interest rate.

obtain future financing. Dr. Morris and Mr. Burden are providing funds to achieve this in order to move this project further.

Current Ownership: The members of the St. Anthony Holding Company, LLC shall transfer ownership of the real estate to the new joint venture partners and shall dissolve the LLC thereafter through legal and proper means. It is assumed that the lender shall require members Mr. William Eversole, CPA and Mr. James Keith to remain as guarantors for the existing land development loan and three initial dwellings until their full repayment to the lender. It is also understood that the principal amount of an existing loan shall be reduced by the lender each time new dwellings are built in the future thus benefiting the current guarantors in that regard.

.....

Time-line/Chronology

.....

7) Negotiate existing liens with prior contractors

.....

8) Obtain construction financing plan with FFSB to construct three units at a time.

The project never really took off. Very little additional work was completed. Appellants maintain that the delay was caused by First Federal's refusal to provide them with additional financing to complete the project. First Federal denies any promise to provide future financing and maintains that such financing was not available because Appellants were in default on the existing loans and the project was overall too risky. In early 2011, Appellants signed a series of amended mortgages. Pursuant to the amendments, First Federal agreed to extend the maturity dates on the loans thereby giving HD TAD more time to

complete the project before being required to pay off the balance of the loans, which by that time was close to a million dollars. While ultimate completion was far from guaranteed at this point, it appeared that with this additional time Appellants might actually be able to avoid foreclosure by First Federal and eventually make the project work.

This was not to be the case. The wheels fell off just a few months later, in August of 2011, when Certified filed a foreclosure action in Hardin Circuit Court requesting an order of sale on the property. Certified's action was based on a default judgment it obtained against St. Anthony on October 31, 2008, in the amount of \$54,663.⁵ Among several others, Certified named HD TAD and First Federal as defendants in the foreclosure action. At this point, HD TAD stopped making payments on the loans.

The litigation soon grew quite large and complicated. First Federal filed a number of cross-claims, including a cross-claim against HD TAD, St. Anthony, Burden, Morris, Farmer, and Robinson.⁶ In July of 2012, First Federal filed a motion for default judgment against St. Anthony, and a motion for summary judgment against HD TAD and Certified, seeking an order of judicial sale.⁷ First

⁵ This default judgment did not arise out of the mechanics lien; Certified commenced a breach of contract action against St. Anthony and Jeff Farmer. When they failed to answer, it obtained default judgment and filed a judgment lien on the property, which was still in St. Anthony's name.

⁶ First Federal's cross-claims against Robinson and Farmer were later dismissed without prejudice on First Federal's motion.

⁷ First Federal named other entities, but we list only those most important to understanding the issues pertinent to this appeal.

Federal alleged that HD TAD and St. Anthony were in default on all four loans entitling it to foreclose on the property. First Federal also alleged that its liens were superior and should be satisfied before any other liens.

HD TAD objected to summary judgment claiming it was premature as no discovery had been conducted. HD TAD asserted that there were material issues concerning the amount of indebtedness due First Federal as well as First Federal's actions in inducing it to assume responsibility for the loans. In support, HD TAD filed an affidavit by Burden. Burden averred that he was aware that Certified had filed a mechanics lien, but was told by staff at First Federal that the lien would not be an issue because it was time-barred. Burden asserted that he relied on First Federal's representation in this regard when HD TAD agreed to assume the loans. Burden also averred that First Federal promised to facilitate a transfer of title from St. Anthony to HD TAD after the assumptions, but it never did so causing the property to remain in St. Anthony's name alone. Burden also maintained that First Federal failed to fund additional loans on the project as it promised it would do when HD TAD first became involved in the project.

On September 25, 2012, the trial court entered an order granting First Federal summary judgment, in part. The trial court concluded that it was undisputed that St. Anthony and First Federal defaulted on the loans allowing HD TAD to demand full payment and to foreclose on the subject property, but found that there was some dispute regarding the exact amount due on the loans

preventing summary judgment on that issue. A bench trial was set to determine only the amounts due on the loans.

However, on April 2, 2013, the trial court granted Appellants' motion to file an amended answer. Appellants' amended answer raised the affirmative defenses of equitable estoppel and unjust enrichment. These defenses were then included in the issues to be determined by bench trial. Ultimately, the trial court conducted a bench trial on May 17, 2013, the purpose of which was to decide whether First Federal was entitled to call the loans for default, establish the amount of the loans, determine the viability of HD TAD's defense of equitable estoppel, and resolve HD TAD's unjust enrichment counterclaim against First Federal.

After considering the testimony and evidence, the trial court concluded that First Federal had a right to declare the loans in default and acted appropriately when it did so after Certified commenced its own foreclosure action. It found the amounts due on the loans as follows: Acct. No. 5060: \$192,449.17; Acct. No. 5700: \$183,036.52; Acct. No. 5660: \$194,711.77; and Acct. No. 7730: \$375,298.36. It rejected HD TAD's defense of equitable estoppel finding that HD TAD knew or should have known of the risks associated with the project and was capable of ascertaining the property's status by communicating with St. Anthony or performing its own title search at the county clerk's office. Likewise, the court found that First Federal was not unjustly enriched by HD TAD's loan payments because HD TAD, Morris and Burden, benefited by having their indebtedness reduced. The court entered a judgment of sale on October 24, 2013.

This appeal by HD TAD, Burden, and Morris followed.

II. STANDARD OF REVIEW

Our review of a circuit court's findings of fact following a bench trial is limited to determining whether those findings are clearly erroneous. Kentucky Rules of Civil Procedure (CR) 52.01. Factual findings are clearly erroneous if unsupported by substantial evidence. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). Our role as a reviewing court prohibits us from disturbing the circuit court's factual findings so long as they are supported by substantial evidence, even if we would have reached a contrary conclusion. *Id.* at 354. We defer to a significant degree to the circuit court, for it had the opportunity to observe, scrutinize and assess the credibility of witnesses. CR 52.01; *Owens–Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). Substantial evidence is “some evidence of substance and relevant consequence, having fitness to induce conviction in the minds of reasonable people.” *Abel Verdon Const. v. Riveria*, 348 S.W.3d 749, 753 (Ky. 2011).

Notwithstanding the deference due the circuit court's factual findings, its conclusions of law reached after making its findings are reviewed *de novo*. *Hoskins v. Beatty*, 343 S.W.3d 639, 641 (Ky. App. 2011).

III. ANALYSIS

A. Unjust Enrichment

Appellants' first assignment of error is that the trial court erred by failing to find that they had a claim or defense for unjust enrichment. Appellants

argue that First Federal derived an “enormous” benefit from HD TAD’s involvement and eventual assumption. Appellants explain that they brought the loans current in 2008, continued making payments on them up until the time Certified filed its lawsuit, and improved the property by finishing and renting out the duplexes. Appellants maintain that it is unjust for First Federal to enjoy these benefits and also reap the benefit of Appellants' personal guarantees because First Federal induced them to stay in the project and failed to disclose essential and material facts about the project, including the existence of Certified's lawsuit. Additionally, Appellants assert that First Federal failed to provide them with the additional financing necessary to make the project profitable, which prevented them from being able to complete the project and pay off the loans.

The equitable doctrine of unjust enrichment “is applicable as a basis of restitution to prevent one person from keeping money or benefits belonging to another.” *Rose v. Ackerson*, 374 S.W.3d 339, 343 (Ky. App. 2012) (quoting *Haeberle v. St. Paul Fire and Marine Ins. Co.*, 769 S.W.2d 64, 67 (Ky. App. 1989)). There are three elements that a party must prove to prevail on an unjust enrichment claim: "(1) benefit conferred upon defendant at plaintiff's expense; (2) a resulting appreciation of benefit by defendant; and (3) inequitable retention of benefit without payment for its value." *Collins v. Kentucky Lottery Corp.*, 399 S.W.3d 449, 455 (Ky. App. 2012).

The trial court rejected Appellants' claim of unjust enrichment on the following basis:

Payments made by HD benefited HD and its guarantors. It reduced the ultimate amount owed on the debt. While compliant with payments, HD had possession of the property and the right to earn from the possession, at least until assignment of rents occurred. The judgment in favor of FFSB will be for what is owed under the loan agreements, which FFSB may or may not realize from the sale of the properties. This set of circumstances does not authorize an award for unjust enrichment. With all of the circumstances presented by this controversy, the Court should not take the extraordinary step of interfering with the contractual relationship among these parties with application of the equity claims.

Applying the elements of unjust enrichment, we must agree with the trial court. While it is clear that HD TAD conferred a benefit of sorts on First Federal by assuming the loans and making some payments on them, we fail to appreciate anything unjust. No matter how one looks at the facts, it cannot be disputed that this was a risky real estate venture. St. Anthony had been involved in the project for over three years without finishing even a single unit and the entire project was on the brink of collapse when HD TAD entered the picture. Appellants believed they stood to make a sizable profit from the deal and went ahead with it even after learning about the existence of the liens and all the while knowing that HD TAD did not have title to the property. *See, e.g., Dellagrotta v. Dellagrotta*, 873 A.2d 101, 114 (R.I. 2005) (“[W]hen a party makes improvements or confers a benefit upon the land of another with full knowledge that title is vested in another, or subject to dispute, the improver will not be entitled to restitution under the equitable doctrine of unjust enrichment.”).

Additionally, under Kentucky law, a claim for unjust enrichment “has no application in a situation where there is an explicit contract which has been performed.” *Codell Constr. Co. v. Commonwealth*, 566 S.W.2d 161, 165 (Ky.1977). While Appellants claim that First Federal failed to provide them additional financing as promised, they cannot dispute that the only written agreement between them and First Federal is the assumption. It contains no such promise. If Appellants wished to make a promise of future financing, a condition to entering into the assumption, they should have insisted that it be made part of their contract with First Federal. They did not do so, which is fatal to their unjust enrichment claim. *Id.*

We also agree with the trial court that Appellants could have easily protected themselves by performing a title search, requiring greater assurances from St. Anthony, or otherwise limiting their exposure until title was transferred to them. They cannot rely on unjust enrichment to save them from their own bad bargain. This was an arms-length transaction between sophisticated businessmen and both parties received the benefits and burdens of their bargain. The evidence does not support any finding of unjust enrichment. That remedy is available only in the absence of a contract and is not designed to rescue a party from the consequences of a bad bargain.

Finally, we would be remiss if we did not note the old maxim that “he who seeks equity must do equity.” *Louisville Asphalt Co. v. Cobb*, 220 S.W.2d 110, 112 (Ky. 1949). By all accounts, HD TAD knew Certified was owed for

work it performed on the subject property. However, there is no indication that HD TAD planned to pay for that work, even though it increased the overall value of the project. HD TAD's only concern appeared to be whether Certified had perfected its mechanics lien, not whether it was paid for its time, materials, and labor. It appears that Appellants were perfectly satisfied to sit back and enjoy the benefits of Certified's materials and labor knowing full well that Certified had not been compensated by St. Anthony. In this respect, one could argue that HD TAD's failure to do equity resulted in its ultimate demise. *Crowell v. Woodruff*, 245 S.W.2d 447, 450 (Ky. 1951) ("The fairness of the transaction and its freedom of any taint of oppression is always a matter of consideration in weighing the right of a party to the aid of the court.").

B. Equitable Estoppel

Appellants' second assignment of error is that the trial court erred in finding that First Federal was not equitably estopped from seeking to enforce the personal guaranties against Burden and Morris. Appellants argue that First Federal made material representations on which Burden and Morris relied. Specifically, Appellants assert that First Federal failed to inform them of St. Anthony's precarious financial situation, disclose the April 2008 title search, disclose that the first mortgage payment was due three days after the assumption, failed to facilitate transfer of the title to HD TAD as it promised and failed to make additional loans to HD TAD. Appellants claim that they "lacked knowledge of or the means to

obtain the truth of the situation" as "all the pertinent financial information was held by First Federal who was only interested in rescuing its non-performing loans."

"Equitable estoppel is a defensive doctrine founded on the principles of fraud, under which one party is prevented from taking advantage of another party whom it has falsely induced to act in some injurious or detrimental way."

Ping v. Beverly Enterprises, Inc., 376 S.W.3d 581, 594-95 (Ky. 2012). Under Kentucky law, equitable estoppel requires both a material misrepresentation by one party and reasonable reliance by the other party:

The essential elements of equitable estoppel are[:] (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention, or at least the expectation, that such conduct shall be acted upon by, or influence, the other party or other persons; and (3) knowledge, actual or constructive, of the real facts. And, broadly speaking, as related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and (3) action or inaction based thereon of such a character as to change the position or status of the party claiming the estoppel, to his injury, detriment, or prejudice.

Sebastian–Voor Properties, LLC v. Lexington–Fayette Urban County

Government, 265 S.W.3d 190, 194–95 (Ky. 2008) (internal citation omitted).

Having reviewed the record, we agree with the trial court that equitable estoppel was not available in this situation. Even if First Federal did

act inappropriately in some manner, we agree with the trial court that Appellants have failed to demonstrate that they lacked the means to obtain knowledge of the true facts.

Appellants knew St. Anthony was in deep financial difficulty when they came to the deal. The loans were in default, construction was not finished, and the principals wanted out. Appellants were attracted to the deal because of its distressed nature. It should have been no surprise to them that St. Anthony and its principals were not in stellar financial shape or they would have finished the project themselves. Additionally, Appellants could have taken steps to protect themselves by engaging an attorney to perform due diligence on St. Anthony and its principals prior to entering into the deal as is normally done in complex business transactions.

Likewise, the Appellants knew the property was encumbered by liens. Even though First Federal did not provide Appellants with a copy of the title search, Burden admitted that he saw it and that there were around twenty liens on it that had to be dealt with. Specifically, he admitted that he knew about Certified's lien and also knew that the existence of the liens was the holdup in transferring title.

While Appellants maintain that First Federal should have disclosed the existence of the Certified lawsuit, we disagree. The lawsuit did not involve the property at that point. It was a breach of contract action against St. Anthony and Jeff Farmer. Jeff Farmer and Bryan Robinson were part of the joint venture

with Burden and Morris. If anyone should have disclosed the existence of the lawsuit it was Farmer and Robinson.⁸ It would be illogical to find that First Federal had an obligation to disclose the existence of a lawsuit it was not a party to, and that at that juncture, did not involve First Federal's loan or mortgage on the property.

Appellants point to the August 2008 memorandum of understanding as evidence that First Federal promised to loan additional money to HD TAD. As already noted, First Federal was not a party to this agreement. The mortgage assumption is the only document that binds First Federal and it contains no such promise. As noted by the trial court “it is not reasonable to suggest that [First Federal] had to make more loans, even if such loans could not be approved under objective, applicable banking standards.”

Finally, Appellants claim that First Federal failed to facilitate the transfer of the title to HD TAD. First Federal did not own the property and therefore could not transfer it. First Federal may have agreed to facilitate this process, but there were multiple liens on the property that prevented a transfer. First Federal was under no obligation to facilitate transfer of the title while it was

⁸ The existence of a

joint enterprise create[s] a fiduciary relationship between the parties. Such relationship exists when the parties are ‘under a duty to act for or give advice for the benefit of another upon matters within the scope of the relation.’ It exists where a special confidence is reposed in another who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence. As a general rule joint purchasers of property own fiduciary obligations to one another. *Lappas v. Barker*, 375 S.W.2d 248, 251 (Ky. 1963) (internal citations omitted).

still encumbered by liens. HD TAD was or should have been aware of this fact. Moreover, it appears that HD TAD did not take any action itself to ensure transfer of title between 2008 and 2011.

Equitable estoppel cannot be used to save a party from a bad business deal or to rescue one who failed to exercise reasonable diligence to ascertain the true nature of the facts. *See Smith v. Bethlehem Sand & Gravel Co., LLC*, 342 S.W.3d 288 (Ky. App. 2011). In the end, Appellants failed to produce enough evidence to convince the trial court that First Federal actively hid or concealed any material facts from them that they could not have ascertained with even minimal due diligence. Put simply, Appellants thought that they would be able to make money by rescuing a failed project. In an effort to keep the project moving, they invested their time and money into a property they knew was heavily encumbered and titled in another entity's name. They assumed the risk that the project might fall apart for any number of reasons. And, they failed to take steps to protect themselves along the way. Equity cannot save Appellants from their own imprudent business dealings.

C. Equitable Lien

Appellants' final assignment of error is that the trial court erred by failing to allow them an equitable lien against the proceeds of the foreclosure sale. After the trial court issued its order granting the foreclosure, it allowed all interested parties to submit statements of claims for any amounts owed to them. Appellants submitted a claim for \$381,637.81 as an equitable lien for

improvements made to the property, maintenance and management of the property, and payments made on loans for the property. Such a claim is simply a reiteration of Appellants' unsuccessful unjust enrichment/equitable estoppel claims.

Appellants enjoyed the right to occupy and attempt to develop the property during the years at issue. And, there was the potential that they would make a profit from their efforts. They did not. However, one cannot characterize their mortgage payments and development efforts as an equitable lien on the property. Furthermore, the improvements to the property will be reflected in the sales price reducing the ultimate amount for which Appellants remain liable under the loans and their personal guarantees.

IV. CONCLUSION

For the reasons discussed above, we AFFIRM the orders of the Hardin Circuit Court.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT
FOR APPELLANTS:

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BRIEF AND ORAL ARGUMENT
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