RENDERED: MARCH 13, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000138-MR

JEFFERY SYKES AND
DIANE SYKES — APPELLANTS

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 12-CI-00431

ROGER SCOTTY POOL AND
CONNIE L. POOL — APPELLEES

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: COMBS, J. LAMBERT, AND MAZE, JUDGES.

J. LAMBERT, JUDGE: Jeffery and Diane Sykes appeal from the Pike Circuit Court's order granting summary judgment in favor of Roger and Connie Pool. After careful review, we reverse and remand for proceedings consistent with this opinion.

In October 2006, Jeffery and Diane Sykes (hereinafter the Appellants) entered into a land contract with Connie and Roger Pool (hereinafter the Appellees) for the purchase of real estate and a home thereon located in Elkhorn City, Pike County, Kentucky. The home was a typical, single family residence. Although the contract states that it was drafted by Diane Sykes, in their brief, the Appellants contend that the contract was drafted by the Appellees. It is not clear from the record if the court ever made a determination as to who drafted the contract in question.

On April 5, 2012, the Appellees filed a civil complaint against the Appellants, alleging that they had not made monthly payments on the contract, failed to insure the property as required under the contract, and failed to pay property taxes on the property from the time it was purchased in 2006 through 2011. The Appellants counterclaimed that the Appellees were interfering with their quiet use and enjoyment of the property by unlawfully demanding money from them that they did not owe under the contract and/or in manners for which they did not agree to and which were contrary to the terms of the contract.

The Appellees filed a motion for summary judgment on October 16, 2012, and the Appellants responded and argued that based on the ambiguous terms of the contract, they were entitled to a hearing and should be allowed to introduce extrinsic or "parol" evidence due to the ambiguity of the contract. The trial court held a hearing on the motion for summary judgment; however, without allowing the Appellants the opportunity to present extrinsic evidence, the trial court entered

an order on April 29, 2013, granting summary judgment in favor of the Appellees. That order also awarded a deficiency judgment and interest from the date of the complaint for amounts of money due and owing to the Appellees, including insurance monies, property taxes, and monthly installments. The order also designated that the Master Commissioner should sell the property at the Pike County Courthouse and that all proceeds should be used to satisfy any liens on the property, to pay for the costs of the instant action, and that any proceeds should go to Roger and Connie Pool.

The Appellants filed a motion to alter, amend, or vacate, arguing that the terms of the contract were ambiguous and, therefore, parol evidence should have been admissible. That motion was denied by the trial court, and this appeal now follows.

On appeal, the Appellants present only one issue to this Court: namely, that the trial court erred when it granted summary judgment without permitting them to introduce parol evidence concerning vague and missing terms in the land contract.

The Supreme Court of Kentucky has concluded that "the proper function for a summary judgment in a case "is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant." *Paintsville Hospital Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985) (internal citation omitted). Furthermore, "a party opposing a properly supported summary judgment motion

cannot defeat that motion without presenting at least some affirmative evidence demonstrating that there is a genuine issue of material fact requiring trial." *Hubble v. Johnson*, 841 S.W.2d 169, 171 (Ky. 1992) (citing *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991).

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." *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001). 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. *Id*. At the trial level, the moving party bears the initial burden of showing that no genuine issue of material fact exists and he is entitled to judgment as a matter of law; thereafter, 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." *Steelvest*, *supra*, at 482.

Where a contract is ambiguous or silent on a vital matter, a court may consider parol and extrinsic evidence involving the circumstances surrounding the execution of the contract, the subject matter of the contract, the objects to be accomplished, and the conduct of the parties. *See, e.g.*, *Reynolds Metals Co. v. Barker*, 256 S.W.2d 17, 18 (Ky. 1953); *Dennis v. Watson*, 264 S.W.2d 858, 860

(Ky. 1954); *L.K. Comstock & Co., Inc. v. Becon Const. Co.*, 932 F.Supp. 948, 965 (E.D.Ky. 1994). Absent an ambiguity in the contract, the parties' intentions must be discerned from the four corners of the instrument without resort to extrinsic evidence. *Hoheimer v. Hoheimer*, 30 S.W.3d 176, 178 (Ky. 2000). Generally, the interpretation of a contract, including determining whether a contract is ambiguous, is a question of law for the courts and is subject to *de novo* review. *First Commonwealth Bank of Prestonsburg v. West*, 55 S.W.3d 829, 835 (Ky. App. 2000). However, once a court determines that a contract is ambiguous, areas of dispute concerning the extrinsic evidence are factual issues and construction of the contract becomes subject to resolution by the fact-finder. *See Cook United, Inc. v. Waits*, 512 S.W.2d 493, 495 (Ky. 1974).

The contract between the Appellants and the Appellees stated in pertinent parts the following:

> CONTRACT PRICE. METHOD OF PAYMENT, INTEREST RATE:
> In consideration whereof, the Vendee agrees to purchase the above described property for the sum of **Forty Three Thousand** Dollars ($43,000.00) payable as follows: The sum of **$750.00 in October 2006 and $750.00 in November 2006** as down payment at the time of execution of the within Land Contract the receipt of which is hereby acknowledged, leaving principal balance owed by Vendee of **$41,500.00** together with interest on the unpaid balance payable in consecutive monthly installments of **$485.00** beginning on the **1st day** of **November 2006**, and on the **1st** day of each and every month thereafter until said balance and interest is **paid in full**.
> ….

> REAL ESTATE TAXES:
> Real estate taxes shall be the responsibility of the Vendee as of the date of the execution of this agreement. Said taxes shall be escrowed and added to the principal and interest payment required hereunder.
>
> INSURANCE AND MAINTENANCE:
> The Vendor agrees to keep the premises insured against fire and other hazard for at least **Forty Five Thousand** dollars **($45,000.00**), and shall escrow and add the cost for said insurance premiums to the Vendee's principal and interest obligation herein.
>
> ….

The contract simply does not state an interest rate. In fact, it is completely silent as to any numerical interest rate. It is also ambiguous as to how property taxes and insurance premiums will be escrowed, especially in light of the parties' conduct and the indefinite time in which $485.00 monthly payments will be paid by the Appellants. There is no end date listed on the contract as to when the balance will be paid in full. The contract says the tax and insurance will be added to the principal and interest obligation, but does not specify the manner or method it will be applied, and it further states it will be escrowed, but does not give any information as to the manner in which it will be escrowed or information on an escrow account.

The Appellants contend that as the Appellees drafted the contract, it should be construed in a light most favorable to them (the Appellants). They further contend that the Appellees accepted their payments without complaint for a period of six years, and that sometime shortly before the filing of the complaint, the

Appellees began to demand more money from them after they failed to make some payments in a timely fashion. When the Appellees began to threaten to oust the Appellants from their home, the Appellants advised the Appellees that the contract stated that the Appellees "agreed to keep the premises insured against fire and other hazard for at least $45,000.00, and shall escrow and add the cost for said insurance premiums to the Vendee's (Appellants) principal and interest obligation [t]herein." The Appellants argue that the same was true in responding to the issue of property taxes: Appellants acknowledged that they were ultimately responsible for the cost of insurance as well as the property taxes, but that the Appellees had failed to escrow those monies paid under the monthly installment payment in the amount of $485.00, nor had they provided the method in which these amounts would be paid.

We agree that the contract was silent on the interest rate and was ambiguous as to the manner in which insurance and taxes would be added to the principal and escrowed by the Appellees. We also agree that it is odd that the Appellees accepted payments without question for many years, and then suddenly demanded that such payments be made in addition to the monthly payment amount that had been made for some time. Accordingly, we hold that the contract was ambiguous and that the Appellants were entitled to present extrinsic evidence to the Court for resolution of this dispute. Because the trial court did not permit the introduction of such extrinsic evidence and instead granted summary judgment to the Appellees, we reverse and remand for consideration of such evidence by the trial court. It is

clear that the Appellants are responsible for insurance premiums and taxes on the property in question, but the trial court only considered evidence on behalf of the Appellees. Because there are remaining issues of fact, summary judgment was improper.

We reverse the Pike Circuit Court's September 10, 2013, order entering summary judgment and remand for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Tommy R. May
Pikeville, Kentucky

BRIEF FOR APPELLEES:

Stephen L. Hogg
Pikeville, Kentucky