

RENDERED: DECEMBER 2, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001410-MR

CHILD OF THE KING MINISTRIES, INC.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANGELA MCCORMICK BISIG, JUDGE
ACTION NO. 12-CI-006658

RAMSI KAMAR and
TERRA SANTA, INC.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, MAZE, AND STUMBO, JUDGES.

JONES, JUDGE: The Appellant, Child of the King Ministries, Inc., appeals from a judgment of the Jefferson Circuit Court. For the reasons set forth below, we affirm.

I. Background

On August 9, 2004, Child of the King Ministries, Inc. (“Child of the King”) entered into a “Contract for Deed” with Terra Santa, Inc. (“Terra Santa”) for the purchase of real property located at 800 East Chestnut Street (“Chestnut Property”) in Jefferson County, Louisville, Kentucky. The stated purchase price of the property was \$171,000.00 to be paid in installments. The installments were due on the 19th day of each month, with a grace period of five days. Terra Santa was also required to maintain the property and secure fire insurance coverage. Once the purchase price was paid in full, Child of the King was obligated to convey the property to Terra Santa by way of a Deed of General Warranty. The contract for deed did not address Child of the King’s remedy in the event of a breach by Terra Santa.

Terra Santa stopped making installment payments in August of 2012. As a result, Child of the King filed suit for default in small claims court. The suit was eventually transferred to Jefferson Circuit Court due to it being over the jurisdictional amount for small claims court. Child of the King argued that it was entitled to the full outstanding sales price because Terra Santa failed to maintain the property as required under the contract making the property worth less than it was at the onset of the parties’ agreement.

Following a bench trial, at which both parties presented evidence, the circuit court entered its findings of facts and conclusions of law. As a matter of law, the circuit court determined that because the contract for deed did not contain

an acceleration clause, Child of the King did not have the right to declare the entire price due. The circuit court next concluded that Terra Santa abandoned the property. As a result, the circuit court concluded that Child of the King had the right to seek a judicial sale of the property. The circuit court indicated that in dividing the sale proceeds, the court could consider that Terra Santa had not counterclaimed for a return of any of the installment payments as well as the fact that Terra Santa's failure to maintain the property diminished its value.

Child of the King also sought to pierce Terra Santa's corporate veil and hold its owners, Mr. and Mrs. Ramsi Kamar, personally liable. In a supplemental order, the circuit court rejected this argument. The court concluded that Child of the King presented insufficient evidence to pierce Terra Santa's corporate veil.

Specifically, the circuit court found:

In this case, the Court notes that the Contract for Deed at issue was entered into between Terra Santa, Inc. and Child of the King Ministries, Inc. in 2004. There is nothing in the Contract between the parties imposing individual liability on Ramsi Kamar. The Court heard testimony at trial that Ramsi's restaurant, run by Terra Santa, Inc., has been in business approximately twenty years. Although there was testimony that this was a closely-held corporation being directed by Mr. Kamar and his wife, there was testimony that they had regular meetings to determine decisions on behalf of Terra Santa, Inc., as well as filing annual reports with the Kentucky Secretary of State's office. In addition, there was testimony that corporate tax returns were filed on behalf of Terra Santa, Inc. At the trial of this case, the burden is on the Plaintiff to prove its case. The Court did not find sufficient evidence to pierce the corporate veil of Terra Santa, Inc.

This appeal followed.

II. Standard of Review

As noted, the trial court conducted a bench trial in this action. Accordingly, our review is based upon the clearly erroneous standard set forth in CR¹ 52.01. CR 52.01 states that “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witness.” A reversible error arises when there is no substantial evidence in the record to support the findings of the trial court. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114 (Ky. App. 1998).

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

Child of the King’s first assignment of error is that the circuit court erred when it ordered a judicial sale of the property instead of awarding monetary damages to Child of the King. We disagree.

Child of the King and Terra Santa entered into a “contract for deed.” A contract for deed is simply another name for an installment land contract. The landmark case in this jurisdiction governing land contracts is *Sebastian v. Floyd*, 585 S.W.2d 381 (Ky. 1979). In that case, the Kentucky Supreme Court held:

When a typical installment land contract is used as the means of financing the purchase of property, legal title to

¹ Kentucky Rules of Civil Procedure.

the property remains in the seller until the buyer has paid the entire contract price or some agreed-upon portion thereof, at which time the seller tenders a deed to the buyer. However, equitable title passes to the buyer when the contract is entered. The seller holds nothing but the bare legal title, as security for the payment of the purchase price. *Henkenberns v. Hauck*, 314 Ky. 631, 236 S.W.2d 703 (1951).

There is no practical distinction between the land sale contract and a purchase money mortgage, in which the seller conveys legal title to the buyer but retains a lien on the property to secure payment. The significant feature of each device is the seller's financing the buyer's purchase of the property, using the property as collateral for the loan.

Where the purchaser of property has given a mortgage and subsequently defaults on his payments, his entire interest in the property is not forfeited. The mortgagor has the right to redeem the property by paying the full debt plus interest and expenses incurred by the creditor due to default. In order to cut off the mortgagor's right to redeem, the mortgagee must request a court to sell the property at public auction. See Lewis, Reeves, *How the Doctrine of Equitable Conversion Affects Land Sale Contract Forfeitures*, 3 Real Estate Law Journal 249, 253 (1974). See also KRS [1] 426.005, 426.525. From the proceeds of the sale, the mortgagee recovers the amount owed him on the mortgage, as well as the expenses of bringing suit; the mortgagor is entitled to the balance, if any.

Id. at 382–83.

This case involves an installment land contract. Despite Child of the King arguments to the contrary, we can see no reason to treat this installment contract as different from any other. As such, Child of the King's "remedy for breach of the contract is to obtain a judicial sale of the property." *Id.*; *see also*

Slone v. Calhoun, 386 S.W.3d 745 (Ky. App. 2012) (finding palpable error where the trial court enforced a forfeiture provision in a land contract because “[a]s required by the Kentucky Supreme Court in *Sebastian*, the only judicial remedy to resolve the alleged breach of the land contract between the parties is a judicial sale of the property.”).

Here, it is undisputed that the Contract for Deed did not contain any forfeiture clause or provision in the event of Terra Santa’s default. However, this does not change Child of the King’s remedy. An installment land contract was created between Child of the King and Terra Santa. Terra Santa defaulted on that contract and abandoned the property. Under *Sebastian*, as a matter of law, this left Child of the King with one remedy – a judicial sale of the property. Thus, we agree with the circuit court’s conclusion that a judicial sale of the Chestnut Property was proper and find no error.

Our conclusion that monetary damages should not have been awarded largely renders Child of the King’s second assignment of error regarding the trial court’s failure to pierce the corporate veil moot. Nevertheless, we will briefly address this argument.

In *Inter-Tel Techs., Inc. v. Linn Station Props., LLC*, 360 S.W.3d 152 (Ky. 2012), the Kentucky Supreme Court discussed the issue of piercing the corporate veil. The Court noted that it is “an equitable doctrine to be applied by the courts.” *Id.* at 165. Specifically, the Court explained:

Piercing the corporate veil is an equitable doctrine invoked by courts to allow a creditor recourse against the shareholders of a corporation. In short, the limited liability which is the hallmark of a corporation is disregarded and the debt of the pierced entity becomes enforceable against those who have exercised dominion over the corporation to the point that it has no real separate existence. A successful veil-piercing claim requires both this element of domination and circumstances in which continued recognition of the corporation as a separate entity would sanction a fraud or promote injustice.

Id. at 155.

Thus, in order to pierce the corporate veil a court must find: “(1) domination of the corporation resulting in a loss of corporate separateness and (2) circumstances under which continued recognition of the corporation would sanction fraud or promote injustice.” *Id.* at 165. “Courts should not pierce corporate veils lightly but neither should they hesitate in those cases where the circumstances are extreme enough to justify disregard of an allegedly separate corporate entity.” *Id.* at 168.

Here, we agree with the circuit court’s findings that Child of the King presented insufficient evidence to pierce Terra Santa’s corporate veil. In declining to pierce Terra Santa’s corporate veil, the circuit court referenced the fact that regular corporate meetings were held, all annual reports were filed with the Kentucky Secretary of State as required, Terra Santa’s two decade long existence, and Terra Santa’s filing of its federal and state corporate tax returns. While Child of the King might disagree with the circuit court’s decision, substantial evidence

supports its decision that Terra Santa had a real and very separate existence from the Kamars. Therefore, we find no error in the circuit court's conclusion on this issue.

IV. Conclusion

For the foregoing reasons, we affirm the April 22, 2014, and August 7, 2014, orders of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

David S. Weinstein
Louisville, Kentucky

BRIEF FOR APPELLEES:

Davis E. Edwards
Louisville, Kentucky