

RENDERED: NOVEMBER 3, 2017; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-001533-MR

BASIL POLLITT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE BRIAN C. EDWARDS, JUDGE  
ACTION NO. 09-CI-400616

SECURITY NATIONAL BANK OF OMAHA AND  
NEBRASKA ALLIANCE REALTY COMPANY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DIXON, NICKELL, AND TAYLOR, JUDGES.

NICKELL, JUDGE: In this tax lien foreclosure action, Basil Pollitt appeals from the Jefferson Circuit Court’s entry of summary judgment in favor of Nebraska Alliance Realty Company (“NAR”) and dismissal of his counterclaim against Security National Bank of Omaha (“SNBO”). Following a careful review, we affirm.

KRS<sup>1</sup> Chapter 134 governs the payment, collection and refund of taxes. If an *ad valorem* tax claim is not timely paid, it is thereafter referred to as a Certificate of Delinquency, and is transferred by the sheriff to the county clerk. *See* KRS 134.122 and KRS 134.126. After transfer to the county clerk, private persons or businesses may purchase an unpaid Certificate of Delinquency pursuant to a process described in various provisions of Chapter 134. Such purchasers are referred to as “third-party purchasers.” KRS 134.010(16), KRS 134.128.

Pollitt failed to pay the *ad valorem* taxes on real property he owned in Jefferson County, Kentucky, for the tax years 2000, 2001 and 2002. The delinquent tax bills for 2000 and 2001 were sold on February 23, 2003, and the 2002 delinquency was sold on July 26, 2003. NAR purchased these tax bills using funds borrowed from SNBO. The Jefferson County Clerk issued Assignments of the Certificates of Delinquency listing “Security National Bank Trustee” (“SNBT”) as the assignee. Receipts issued related to the transactions indicated SNBO wired the purchase money to the County Clerk, while showing NAR as the purchaser.

Multiple notices were sent to Pollitt pursuant to KRS 134.490 between August 29, 2003, and April 10, 2008. The instant foreclosure action was instituted on December 4, 2009, listing the plaintiff as SNBT, conforming to the name listed on the various Certificates of Delinquency. Some eighteen months later, the matter was referred to the Jefferson County Master Commissioner for a recommendation on whether judgment should be entered. Upon receipt of the

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<sup>1</sup> Kentucky Revised Statutes.

Master Commissioner's affirmative recommendation and objections thereto from Pollitt, the trial court withheld ruling for thirty days to permit settlement negotiations. Pollitt was allowed to conduct discovery in the interim. By December 2011 the matter was again referred to the Master Commissioner which again recommended entry of a Judgment and Order of Sale. Pollitt again filed objections to the recommendation.

SNBT responded to Pollitt's objections, contradicted each, and moved for entry of summary judgment. In his May 18, 2012, response to SNBT's motion for judgment, Pollitt—for the first time—raised the issue of SNBT's standing to bring the action in the first instance, challenging whether it was, in fact, the real party in interest. Pollitt also challenged whether the statutory notice requirements had been complied with and sought entry of summary judgment in his favor based on the alleged deficiencies as set forth in his pleadings. Countering Pollitt's assertions, SNBT reiterated its previous position that the action was styled to conform to the name listed on the Certificates of Delinquency, which had been truncated due to space limitations inherent in the County Clerk's form. SNBT indicated it had previously attempted to explain the matter to Pollitt to no avail and stated its belief "Pollitt is grasping at straws in a continued attempt to dodge his obligation to pay his property taxes." Finally, it set forth the manner in which the statutory notice requirements had been met.

Approximately three months later, in October of 2012, SNBT moved the trial court to "take judicial notice of the identity of the Plaintiff" or,

alternatively, for leave to amend the complaint to clarify the identity of the Plaintiff as NAR. Several weeks later, Pollitt moved for leave to file a counterclaim against “Security National Bank.” The trial court subsequently denied SNBT’s motion to take judicial notice, granted its motion for leave to amend, and granted Pollitt’s motion to file a counterclaim. After the amended complaint and counterclaim were filed, SNBO moved to dismiss the counterclaim, insisting it was not a proper party and the trial court had no personal jurisdiction over it. After filing his responsive pleading to the dismissal motion, Pollitt moved for leave to amend his counterclaim in an attempt to assert a class action against “Security National Bank and/or Security National Bank, Trustee.” Ultimately, the trial court granted summary judgment in favor of NAR and dismissed Pollitt’s counterclaim. This appeal followed.

Pollitt raises four challenges to the trial court’s rulings in seeking reversal. First, he contends the complaint was void *ab initio*. He next argues no procedural means was available to change the name of the parties. Third, Pollitt alleges the trial court erred in dismissing his counterclaim. Finally, he claims the trial court’s entry of summary judgment was improper. We have carefully reviewed each of these allegations and conclude all are without merit.

First, we note throughout this case, Pollitt has tried numerous legal maneuvers to avoid paying the amounts he rightfully owed. Notably, he has never attempted to deny his obligation to pay the *ad valorem* taxes nor his refusal to do so. However, his avoidance techniques knew little bounds and permitted his

obligation to balloon from \$6,258.44 to \$30,964.61 with the inclusion of statutory interest and litigation and legal expenses. His actions can be seen as little more than an attempt to shroud the straightforward weaknesses of his claim and to manufacture disputes where none exist.

Before this Court, he continues his attempt to avoid the inevitable paying of amounts legally due by advancing arguments requiring a great deal of mental and logical gymnastics to comprehend their applicability to the case at bar. Pollitt is clearly aware of the consequences of his own actions and is merely seeking to delay and thwart the process. As below, red herrings are repetitively thrown about to confuse the real issue which is his delinquency in paying real estate taxes for which he is legally obligated. Further, it is clear Pollitt's position belies his efforts to extract a favorable settlement by ostensibly setting up a potential class action suit. His shifting positions are untenable.

After carefully reviewing the lengthy procedural history of this matter and the applicable law, we are convinced the issues were properly laid out in the trial court's order and correctly adjudicated based on the facts of this matter. We set forth the pertinent parts of that order and adopt the logic as our own.

The facts involved in this case are relatively simple. SNB alleges that they purchased certificates of delinquency regarding unpaid tax bills relating to property owned by the Defendant Basil Pollitt. SNB initiated this action to enforce what they allege are their validly purchased certificates.

Previously, SNB filed a Motion for Judgment. The Defendant in both his response and his own Motion for

Summary Judgment argued that SNB cannot prevail because they are not the real party in interest. The Court found the Defendant's argument that SNB was not the proper party in interest to be compelling and denied both Motions. The Court's order then directed SNB to file an amended complaint identifying the proper party in interest. SNB complied with this directive and filed an amended complaint asserting that [NAR] is the real party in interest.

In the amended complaint, [NAR] stated that SNB's only involvement in the purchases at issue is that they loaned [NAR] the funds used to purchase the certificates of delinquency for unpaid ad valorem taxes on the defendant's property. [NAR] further asserts that SNB's involvement was entirely contained to activities that occurred in the state of Nebraska which is where both companies are based.

The Defendant filed an answer to this amended Complaint and also requested leave to file a counterclaim against SNB. The Court granted the request for leave.

Subsequently, SNB filed their *Motion to Dismiss Defendant Basil Pollitt's ("Defendant") Counterclaim* arguing that SNB is not a proper party to this action and that accordingly, this Court lacks personal jurisdiction over SNB. The Court agrees. As articulated in its above-referenced order, the proper party in interest in this action is [NAR] not SNB. Accordingly, in that SNB is no longer a party to this action, the Court lacks jurisdiction to preside over a counterclaim against SNB. Accordingly, the Court must [dismiss Pollitt's counterclaim]. (It should be noted that this Court's ruling on this matter renders moot the Defendant's pending *Motion to Amend its Counterclaim Certifying a Plaintiff's Class.*)

[NAR] has also filed a *Motion for In Personam Summary Judgment*. [NAR] argues that the record is clear that they purchased certificates of delinquency for unpaid ad valorem taxes on Defendant Basil Pollitt's property. They further argue that they complied with all of the

statutory notice requirements regarding their claim. Finally, [NAR] argues that Pollitt in answering the Complaint, has not disputed these core allegations and has presented no evidence to controvert these allegations.

In Kentucky, a movant should not succeed on a motion for summary judgment unless it appears impossible for the non-moving party to produce evidence warranting a judgment in its favor. *See Steelvest v. Scansteel Serv. Ctr.*, 807 S.W.2d 476 (Ky. 1991). The term “impossible” is used in a practical sense and not in an absolute sense. *See Perkins v. Hausladen*, 828 S.W.2d 652 (Ky. 1992). *Steelvest* merely states that trial judges are to refrain from weighing evidence at the summary judgment stage; the inquiry should be whether, from the evidence of record, facts exist which would make it impossible for the non-moving party to prevail. *See Welch v. American Publishing Co. of Kentucky*, 3 S.W.3d 724, 730 (Ky. 1999). “The movant bears the initial burden of convincing the court by evidence of record that no genuine issue of fact is in dispute, and then 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.’” *Hallahan v. The Courier-Journal*, 138 S.W.3d 699, 705 (Ky. App. 2004 (quoting *Steelvest*, 807 S.W.2d at 482)). The Kentucky Supreme Court has indicated that “[t]he circuit judge must examine the evidentiary matter, not to decide any issue of fact, but to discover if a real or genuine issue exists. All doubts are to be resolved in favor of the party opposing the motion.” *City of Florence, Kentucky v. Chipman*, 38 S.W.3d 387, 390 (Ky. 2001).

Pollitt has responded to this the Plaintiff’s Motion for Summary Judgment and argues that the Motion should be denied because [NAR] is not a party to this action and thus lacks standing. The Court is baffled by this argument in lieu (sic) of the fact that it ignores the fact that the Court has previously acknowledged [NAR’s] involvement in this action, has granted leave for [NAR] to be named as a party to this action, and has accepted the amended complaint naming [NAR] as the proper party in interest.

The Defendant also alleges that the motion must be dismissed because their complaint fails to state a cause of action against Pollitt personally. However, the Court is unpersuaded by this argument as well. KRS 134.452 clearly contemplates and permits such a cause of action.

Finally, the Defendant argues that the Motion must be denied because [NAR] failed to comply with the mandatory notice provisions applicable to purchases of certificates of delinquency. The Court is unpersuaded by this argument as well. A review of the statutory notice requirements outlined in KRS 134 reveals that [NAR] complied with all of the relevant provisions.

Without extending this Opinion further, we find no merit in Pollitt's contentions. The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

Jerry Higgins  
Morgan L. Wills  
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