

RENDERED: JULY 7, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001819-MR

MARCHON HORSE FARM, LP;
KBA FARMS, LLC; BEAVERBROOK
FARM, LLC; DAN MCCORMICK,
INDIVIDUALLY; ANGELES
CREST FARM, LLC; AND
WHISPERING CREEK FARM, LP

APPELLANTS

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 11-CI-00088

FIFTH THIRD BANK

APPELLEE

AND

NO. 2014-CA-001835-MR

FIFTH THIRD BANK

CROSS-APPELLANT

v. CROSS-APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 11-CI-00088

MARCHON HORSE FARM, LP;
KBA FARMS, LLC; BEAVERBROOK
FARM, LLC; DAN MCCORMICK,
INDIVIDUALLY; ANGELES
CREST FARM, LLC; AND
WHISPERING CREEK FARM, LP

CROSS-APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: J. LAMBERT, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Marchon Horse Farm, LP, KBA Farms, LLC, Beaverbrook Farm, LLC, Dan McCormick, individually, Angeles Crest Farm, LLC; and Whispering Creek Farm, LP (collectively referred to as appellants) bring Appeal No. 2014-CA-001819-MR and Fifth Third Bank brings Cross-Appeal No. 2014-CA-001835-MR from a September 8, 2014, Final Order of the Fayette Circuit Court. We dismiss the appeal and cross-appeal for failure to name an indispensable party in the notices of appeal.

It is well-established that failure to name an indispensable party in the notice of appeal is considered a jurisdictional defect that results in dismissal of the appeal. *City of Devondale v. Stallings*, 795 S.W.2d 954 (Ky. 1990). A party is viewed as indispensable if such party's interest or claims would be affected by a decision of the Court or if the Court is prevented from granting complete relief to the parties. *Jarvis v. National City*, 410 S.W.3d 148 (Ky. 2013); *Tolliver v. Pittsburg-Consolidation Coal Co., Inc.*, 290 S.W.2d 471 (Ky. 1956). In December

2014, prior to briefs being filed in this case, Fifth Third Bank (Fifth Third) filed a motion to dismiss the direct appeal for appellants' failure to name indispensable parties (Gulf Coast Farms, LLC, and Celtic Bank) in the notice of appeal.¹ We shall also review, *sua sponte*, whether Fifth Third failed to name an indispensable party (Gulf Coast) in its cross-appeal.

These appeals revolve around a business venture undertaken by Gulf Coast and known as the "mare lease program." Under the mare lease program, Gulf Coast would lease a mare for the purpose of breeding it with a stallion and any foal produced thereby would be owned by the lessee. Gulf Coast apparently entered into mare lease agreements with each appellant. Thereafter, Gulf Coast defaulted under terms of loan agreements with Fifth Third. Due to the default, all of Gulf Coast's horses were eventually sold at public auctions. Fifth Third asserted security interests in the horses, and the right to the proceeds therefrom to offset the deficiency due by Gulf Coast under the loan agreements.

We digress here to note that as a part of the underlying action from which this appeal emanates, Fifth Third obtained a summary judgment against Gulf Coast and various related entities as concerns the loan indebtedness owed to Fifth Third and the "equine collateral" securing the debt. Gulf Coast appealed that judgment which was affirmed by another panel of this Court by a consolidated

¹ Fifth Third Bank's motion to dismiss was filed on December 17, 2014. A motion panel of this Court considered the motion and by Order entered May 15, 2015, passed this motion for consideration by the merits panel. An oral argument was conducted by this Court on May 31, 2017, that considered both the motion to dismiss and the merits of the underlying appeal and cross-appeal.

opinion rendered April 19, 2013, in Appeal Nos. 2011-CA-000965-MR, 2011-CA-001575-MR, and 2012-CA-000491-MR. The Kentucky Supreme Court denied discretionary review of that opinion on February 12, 2014.

Appellant, Marchon Horse Farm, LP (Marchon) was an original defendant in this action and filed a counterclaim against Fifth Third. The remaining appellants intervened in this action to assert a third-party complaint against Fifth Third. As noted by appellants, Marchon did not file a cross-claim against co-defendant Gulf Coast and neither did the remaining appellants assert a claim against Gulf Coast in their third-party complaint. Interestingly, appellants, Gulf Coast, and its affiliates are all represented by the same law firm in this action.

In the current appeal, each appellant claims that it owned certain foals or horses that were sold at public auction by Fifth Third. Appellants assert that under their respective mare lease agreements with Gulf Coast, they were entitled to the proceeds from the sale of such horses. Pivotal to the determination of ownership of the disputed horses was interpretation of the mare lease agreements. It appears from the record that some of the disputed horses were born of mares substituted for originally leased mares under the mare lease agreements.

In the direct appeal, appellants argue, *inter alia*, that the substituted mares were proper under the mare lease agreements, while Fifth Third argues that the substituted mares were in contravention of the mare lease agreements and otherwise subject to their lien claim, which was upheld in the earlier appeal. If the substitution of the mares were proper, arguably appellants, rather than Gulf Coast,

ultimately own the disputed horses, and Fifth Third would possess no security interest in the disputed foals. We thus view Gulf Coast as an indispensable party to the direct appeal as our decision would directly affect its ownership interests in the disputed horses. Accordingly, complete relief cannot be granted by this Court in Gulf Coast's absence. *See Browning v. Preece*, 392 S.W.3d 388 (Ky. 2013); *West v. Goldstein*, 830 S.W.2d 379 (Ky. 1992).

In the cross-appeal, Fifth Third contends, *inter alia*, that the circuit court erred by deciding that appellees paid all obligations due and owing to Gulf Coast under the mare lease agreements. Fifth Third claims that Gulf Coast improperly forgave certain payments due under the mare leases in exchange for the lessees' forgiveness of debt owed to them by Gulf Coast. However, Fifth Third also failed to name Gulf Coast as a party to the cross-appeal in its notice of appeal. Undoubtedly, this issue directly impacts Gulf Coast's financial interests and complete relief cannot be granted in its absence. *See Browning*, 392 S.W.3d 388; *West*, 830 S.W.2d 379. For these reasons, we conclude that Gulf Coast is an indispensable party in both the direct appeal and cross-appeal.

Therefore, be it ORDERED that Appeal No. 2014-CA-001819-MR and Cross-Appeal No. 2014-CA-001835-MR are hereby DISMISSED for failure to name an indispensable party to these appeals.

ALL CONCUR.

ENTERED: July 7, 2017

/s/ Jeff S. Taylor

JUDGE, COURT OF APPEALS

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