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NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2017-CA-000930-MR

DOROTHY CLANCY

APPELLANT

v. APPEAL FROM GRANT CIRCUIT COURT  
HONORABLE REBECCA LESLIE KNIGHT, JUDGE  
ACTION NO. 15-CI-00255

GREEN TREE SERVICING, LLC

APPELLEE

OPINION  
AFFIRMING IN PART,  
VACATING IN PART,  
AND REMANDING

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BEFORE: ACREE, KRAMER AND TAYLOR, JUDGES.

ACREE, JUDGE: Appellant, Dorothy Clancy, appeals the Grant Circuit Court's May 4, 2017, summary judgment and order of sale in favor of Appellee, Green Tree Servicing, LLC. After careful review, we affirm in part, vacate in part, and remand for further proceedings.

## **FACTS AND PROCEDURE**

On October 4, 2001, Dorothy Clancy and her late husband Gurney purchased real property from Terry and Teresa Barlow, along with the manufactured home parked on that property. They financed the transaction with proceeds from a \$112,100 loan from Green Tree's predecessor-in-interest. A promissory note memorialized the loan and a mortgage encumbering the real property secured it. Through apparent oversight, the Barlows never transferred the certificate of legal title for the manufactured home to the Clancys.

After the Clancys defaulted on the loan payments in April 2011, Green Tree brought this foreclosure lawsuit.<sup>1</sup> The principal balance due on the loan was \$97,574.24. The Clancys filed an answer and counterclaim, asserting the defense that neither Green Tree nor its predecessor-in-interest had a valid security interest in the manufactured home and that Green Tree's failure or inability to provide payoff information resulted in a lost sale of the real property.

That lost sale had begun on July 9, 2011, when the Clancys entered into a contract to sell the real property for \$100,000, the closing to take place no later than August 18, 2011. Gurney Clancy requested the exact amount due to obtain a payoff in order to complete the sale of the property. The payoff quote,

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<sup>1</sup> The case was initially filed by GMAC as *GMAC Mortgage, LLC v. Dorothy Clancy, et al.*, Grant Circuit Court, Case Number 11-CI-396. GMAC filed bankruptcy and Green Tree Servicing, LLC assumed the mortgage as GMAC's successor-in-interest.

issued on July 25, 2011, was for \$103,116.80. The quote was good through August 11, 2011. The Clancys did not make the payoff, nor did they complete the sale of the real property. Consequently, the sale contract lapsed.

Gurney Clancy passed away in September 2016, at which time sole legal and equitable title to the subject real property passed to Dorothy Clancy.

Green Tree filed a motion for summary judgment on January 6, 2017, and the motion was heard on February 8, 2017. At the hearing, the circuit court granted Green Tree's motion to dismiss the Barlows as parties because they disclaimed any ownership in the manufactured home, executed the certificate of legal title in blank, and deposited the certificate with the court. (Record (R.) 528). The docket sheet order of February 8, 2017 reflects the Barlows' dismissal, the finding that the Clancys were the equitable owners of the manufactured home, and the circuit court's instruction that Green Tree prepare and tender an order. (*Id.*).

When Green Tree tendered its proposed judgment and order of sale, the circuit court struck a paragraph that read:

The Court finds that Plaintiff [Green Tree] has established its claim to the mobile [manufactured] home as additional security for its loan. Therefore, the mobile home shall be sold together with the land. The manufactured home is permanently affixed to the land.

(R. 541). Nevertheless, the court retained the paragraph authorizing the Master Commissioner "to release the original executed Certificate of Title [executed in

blank by the Barlows] to whoever purchases the property at a subsequent foreclosure auction [and that purchaser] will thereafter become the record owner of the mobile home . . . .” (R. 542). The circuit court entered the remainder of the tendered judgment and order of sale. This appeal followed.

### **STANDARD OF REVIEW**

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.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996); CR<sup>2</sup> 56.03. “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.” *Lewis v. B & R Corporation*, 56 S.W.3d 432, 436 (Ky. App. 2001) (citing *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480-82 (Ky. 1991)). “Impossible,” as set forth in the standard for summary judgment, is meant to be “used in a practical sense, not in an absolute sense.” *Lewis*, 56 S.W.3d at 436 (citations omitted).

The trial court “must examine the evidence, not to decide any issue of fact, but to discover if a real issue exists.” *Steelvest*, 807 S.W.2d at 480. “The

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<sup>2</sup> Kentucky Rules of Civil Procedure.

moving party bears the initial burden of showing that no genuine issue of material fact exists, 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.’” *Lewis*, 56 S.W.3d at 436 (quoting *Steelvest*, 807 S.W.2d at 482). Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court’s decision and will review the issue *de novo*. *Scifres*, 916 S.W.2d at 781.

### **ANALYSIS**

#### *1. Green Tree had no security interest in the manufactured home.*

Clancy argues the circuit court erred by giving effect to Green Tree’s claim that the manufactured home constituted part of the security for repayment of the loan. We agree; the circuit court did err.

This Court said in *Bowling v. Appalachian Federal Credit Union* that *PHH Mortgage Services v. Higgason*, 345 B.R. 584 (E.D. Ky. 2006) “correctly set[s] forth Kentucky law as to perfecting liens or security interests upon manufactured homes.” 515 S.W.3d 686, 689 (Ky. App. 2017). We here quote relevant portions of *PHH Mortgage Services*:

By filing an affidavit of conversion to real estate and surrendering the Kentucky certificate of title, the manufactured home would be deemed “an improvement to the real estate upon which it is located.” K.R.S.<sup>[3]</sup> §

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<sup>3</sup> Kentucky Revised Statutes.

186A.297. The legal effect of conversion would be to treat the manufactured home as real property, apparently no longer governed by or subject to the certificate of title requirements in KRS § 186A.190(1). Logically, it would also suggest that a lien could not be perfected on the manufactured home as part of the permanent real estate by noting it on the certificate of title, as the certificate of title would apparently no longer govern the property.

Thus, PHH is partially correct when it argues that K.R.S. § 186A.190 is no longer the *sole* means of perfecting a lien on a manufactured home. It is correct to the extent that a lien might be placed on the structure which had once been a “manufactured home” without noting it on the certificate of title. However, because the manufactured home has been converted to real property, it is no longer legally considered a “manufactured home” for purposes of titling. K.R.S. § 186A.190 remains the sole means of perfecting a lien on a (non-attached) manufactured home.

*PHH Mortg. Services*, 345 B.R. at 586-87 (footnote omitted).

With that discussion in mind, we first note that the circuit court struck the paragraph of the tendered judgment that would have found the manufactured home was a fixture. The court did so for good reason – there is, at the very least, a genuine issue whether the manufactured home was permanently affixed to the land. Unless the manufactured home owner complies with KRS 186A.297,<sup>4</sup> the

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<sup>4</sup> KRS 186A.297 provides:

- (1) When a manufactured home is or is to be permanently affixed to real estate, the owner may execute and file an affidavit of conversion to real estate with the county clerk of the county in which the real estate is located. The affidavit shall attest to the fact that the home has been or will be permanently affixed to the real estate and be accompanied by a surrender of the Kentucky certificate

home remains personal property. *Citizens Nat'l Bank v. Washington Mut. Bank*, 309 S.W.3d 792, 796 (Ky. App. 2010). Statutorily, the owner of a manufactured home must meet two requirements to convert it from personal property to permanently affixed real property: (1) place a notation of the lien on a properly issued certificate of title, and (2) file an affidavit of conversion and surrender the certificate of title to the county clerk. Only if these requirements are met does the law consider the manufactured home a fixture and part of the real property. *Bowling*, 515 S.W.3d at 689.

Green Tree's evidence and argument that the manufactured home (personal property) was situated on the Clancys' land (real property) and that it was purchased with the loan proceeds does not fulfill the statutory requirements for perfecting an interest in the manufactured home as a fixture. The manufactured home has never lost its character as personal property and it is not encumbered by Green Tree's mortgage. Under such circumstances, KRS 186A.190 remains the

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of title. The county clerk shall file the affidavit of conversion to real estate in the miscellaneous record book.

- (2) A county clerk shall not accept a surrender of a Kentucky certificate of title which displays an unreleased lien unless it is accompanied by a release of the lien. When the county clerk files the affidavit of conversion to real estate, the county clerk shall furnish a copy to the property valuation administrator for inclusion in the real property tax rolls of the county. A filing of an affidavit of conversion to real estate and a surrender of a Kentucky certificate of title shall be deemed a conversion of the property as an improvement to the real estate upon which it is located.

sole means of perfecting a lien on a manufactured home. *Hiers v. Bank One, West Virginia, Williamson, NA*, 946 S.W.2d 196, 198 (Ky. App. 1996) (quoting KRS 186A.190(2)).

The next part of our review – whether there is compliance with KRS 186A.190 – is made simpler by Green Tree’s brief where it admits “it has no direct legal right to the mobile home on the Property since its lien is not noted on the certificate of title under KRS 186A.190.” (Appellee’s brief, p. 10). However, Green Tree calls Clancy’s statutory non-compliance argument a “red herring” anyway and says “this case is not about legal perfection of a lien.” (*Id.*). Green Tree claims its right to the lien on equitable grounds. We reject this argument.

Green Tree cannot claim equitable relief where the law establishes the means to the desired relief. As our Supreme Court recently said:

Equity is only a supplement to the law for when there is no remedy at law. But it is a simple tenet that if there *is* a statute or case precedent or rule going a certain way, a trial court may not depart from it on the basis of equity. Law trumps equity. *See S.J.L.S. v. T.L.S.*, 265 S.W.3d 804, 820 (Ky. App. 2008) (“It is well settled that equitable considerations and estoppel cannot be permitted to prevail when in conflict with positive written law.” (quoting *Louisiana State Troopers Ass’n., Inc. v. Louisiana State Police Retirement Bd.*, 417 So.2d 440, 445 (La. Ct. App. 1982))).

*Bell v. Commonwealth, Cabinet for Health and Family Services, Dept. for Community Based Services*, 423 S.W.3d 742, 747-48 (Ky. 2014). Neither the



circuit court nor this Court can depart, on equitable grounds, from the statutes and precedent set forth above. Equitable relief does not exist to save a party who fails to avail itself of the protections provided by law.

Therefore, we hold that the circuit court erred as a matter of law by giving effect to Green Tree's claim of a lien as to the manufactured home. We vacate that part of the judgment.

*2. Green Tree was not responsible for a lost sale of the encumbered real estate.*

In the circuit court, Clancy asserted a defense that Green Tree's failure or inability to promptly provide loan payoff information resulted in a lost sale of the property and that had the sale proceeded, the deficiency between the net amount of the sale and the amount owed on the loan would have been inconsequential. Clancy recounts that upon entering into a contract for the sale of the real property on July 9, 2011, Gurney Clancy contacted Green Tree's legal counsel to determine the current balance of the loan. Clancy claims counsel said it would take three to five weeks to obtain an exact payoff. Furthermore, Clancy claims that counsel provided two different payoff amounts and that this discrepancy made the amount necessary for payoff uncertain and ultimately caused the contract for the sale of land to lapse. We find no merit in Clancy's argument.

Clancy received a letter from Green Tree's counsel, the law firm of Lerner, Sampson & Rothfuss, dated July 12, 2011, which stated:

The amount of the debt as of July 7, 2011 is \$100,005.93. Because of interest, late charges, and other charges that vary from day to day, the amount due on the day you pay will be greater. Hence, if you pay the amount shown above, an adjustment will be necessary after we receive your check.

(R. at 50). Pursuant to a request from Clancy, the law firm provided an updated payoff quote for \$103,116.80, on July 25, 2011. The quote was held open until August 11, 2011. The law firm clearly provided a timely payoff quote to Clancy as stated earlier in this opinion and repeated here. Clancy failed to create a genuine issue of material fact that the proper payoff amount was not provided. Therefore, summary judgment on this issue was proper.

### **CONCLUSION**

For the foregoing reasons, the judgment and order of sale entered May 4, 2017, by the Grant Circuit Court is affirmed in part, vacated in part, and remanded. On remand, the circuit court shall vacate the judgment and order of sale to the extent it authorizes the sale of the manufactured home. The circuit court shall order rescission of any certificate transferring legal title to the manufactured home to any party or non-party to this action other than Appellant, by the exercise of the authority granted pursuant to CR 70 and CR 71, if necessary, and restore title for the manufactured home to Appellant. The remainder of the judgment and order of sale are affirmed.

ALL CONCUR.

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