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Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000275-MR
AND
NO. 2019-CA-000370-MR

SAM STATHIS AND CELEBRITY FARMS, LLC — APPELLANTS

v.

APPEALS FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. TRAVIS, JUDGE
ACTION NO. 18-CI-00269

LEXINGTON SELECTED YEARLING SALES CO., LLC;
ERNIE MARTINEZ; AND AL CRAWFORD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, GOODWINE, AND TAYLOR, JUDGES.

DIXON, JUDGE: Sam Stathis and Celebrity Farms, LLC ("Celebrity Farms") appeal the orders of the Fayette Circuit Court entered on September 27, 2018, January 23, 2019, and February 20, 2019, granting Lexington Selected Yearling

Sales Co., LLC ("LSYSC") summary judgment. Following review of the record, briefs, and law, we affirm.

FACTS AND PROCEDURAL BACKGROUND

On October 6, 2017, Stathis and Celebrity Farms purchased three standardbred yearlings—METTLE, FOOL TO BELIEVE, and ITALIAN STYLE—at auction from LSYSC. Each horse had a "sales ticket," titled "ACKNOWLEDGMENT OF PURCHASE AND SECURITY AGREEMENT." Conditions of sale were provided to Stathis who, by his signature "Sam Stathis Celebrity Farm" on each sales ticket, acknowledged reading them and agreed they were binding. Stathis did not note on the sales tickets that he was acting as an agent, nor did he provide an "Authorized Agent Form" to LSYSC. Stathis took possession of the three horses but only paid for FOOL TO BELIEVE and ITALIAN STYLE. The purchase price for FOOL TO BELIEVE was $30,000, ITALIAN STYLE was $45,000, and METTLE was $180,000.

Stathis claims, prior to the auction, he entered an equal partnership with Ernie Martinez and Al Crawford to share METTLE's costs and profits on the condition that Martinez was to select the trainer for the horse.[1] Stathis alleges LSYSC was aware of this partnership at the time he purchased METTLE on behalf of the partnership. By their own admission, all parties are experienced in the horse

[1] There is no written partnership agreement.

racing industry. Stathis further claims, but Martinez explicitly denies, that LSYSC told Martinez that Stathis selected a trainer for METTLE, and as a result, Martinez and Crawford refused to pay for METTLE. Stathis also refused to pay for METTLE, despite having already taken possession of the horse. Consequently, and pursuant to the conditions of sale, LSYSC withheld the registration certificates for all three horses.

On January 25, 2018, LSYSC filed the instant action to recover its secured interest in METTLE. On February 24, 2018, Stathis and Celebrity Farms answered and filed their counterclaims against LSYSC alleging breach of contract, tortious interference with contractual relations, conversion, and unjust enrichment. After some discovery was conducted, the court permitted Stathis and Celebrity Farms to file a third-party complaint against Martinez and Crawford for contribution, breach of contract, and promissory estoppel. Thereafter, Martinez executed an affidavit stating, "I did not advise Mr. Stathis that anyone at LSYSC had told me anything about who was training [METTLE]." On June 20, 2018, LSYSC provided the registration certificates for FOOL TO BELIEVE and ITALIAN STYLE to Stathis and Celebrity Farms, accompanied by a letter advising that providing the certificates did not negate LSYSC's right to withhold them under the conditions of sale.

Eventually, Crawford moved the court to dismiss the third-party complaint, primarily alleging there was no partnership agreement, or in the alternative, the agreement violated the statute of frauds. Thereafter, LSYSC moved the court for summary judgment and filed an affidavit of Randy Manges, its sales manager, in support. On August 27, 2018, the court entered its order declining to grant Crawford's motion to dismiss the third-party complaint as premature. Stathis and Celebrity Farms then filed their response to LSYSC's motion for summary judgment, as well as Stathis's supporting affidavit.

A hearing was held on September 14, 2018, and on September 27, 2018, the trial court entered an order finding:

> In this case, there is no genuine issue of material fact concerning LSYSC's breach of contract claims against [Stathis and Celebrity Farms]. The Defendants signed a valid purchase agreement which obligates them to pay the purchase price of METTLE; however, despite the fact that they now possess the horse, they have failed to fulfill their obligation to pay for the horse. These facts are undisputed. Thus, summary judgment is appropriate on this issue in favor of LSYSC.

The trial court declined to grant summary judgment on the counterclaims of Stathis and Celebrity Farms concerning FOOL TO BELIEVE and ITALIAN STYLE, concluding further discovery was required. Nonetheless, on October 22, 2018, the court entered another order:

> [t]hat LSYSC recover from the Defendants, Sam Stathis and Celebrity Farms, LLC, jointly and severally, the sum

> of $204,300.00 plus interest thereon at the agreed rate of 1.50% per month from August 16, 2018 until paid, plus its costs herein expended, including its attorneys' fee incurred in such amount as may be approved by the Court.

Soon thereafter, LSYSC renewed its motion for summary judgment on the remaining claims. Stathis and Celebrity Farms responded with a second affidavit of Stathis, alleging he was unable to train and race FOOL TO BELIEVE and ITALIAN STYLE absent registration certificates. LSYSC replied with another affidavit of Manges, stating registration certificates are not required to train standardbred horses.

On January 23, 2019, the court granted summary judgment in favor of LSYSC on the remaining claims concerning FOOL TO BELIEVE and ITALIAN STYLE. The court found LSYSC was entitled to withhold the certificates under the terms of the contract provided in the conditions of sale; thus, the counterclaims of Stathis and Celebrity Farms failed as a matter of law. On January 25, 2019, LSYSC moved the court to make its October 22, 2018, order final and appealable. A hearing was conducted, and on February 20, 2019, the trial court entered a judgment and order making its September 27, 2018, order of partial summary judgment final and appealable, as well as the amount recoverable by LSYSC. These consolidated appeals followed.

STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR[2] 56.03. An appellate court's role in reviewing a summary judgment is to determine whether the trial court erred in finding no genuine issue of material fact exists and the moving party was entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). A grant of summary judgment is reviewed *de novo* because factual findings are not at issue. *Pinkston v. Audubon Area Community Serv., Inc.*, 210 S.W.3d 188, 189 (Ky. App. 2006).

It is well-established that a party responding to a properly supported summary judgment motion cannot merely rest upon the allegations in his pleadings. *Continental Casualty Co. v. Belknap Hardware & Mfg. Co.*, 281 S.W.2d 914, 916 (Ky. 1955). "[S]peculation and supposition are insufficient to justify a submission of a case to the jury, and . . . the question should be taken from the jury when the evidence is so unsatisfactory as to require a resort to surmise and speculation." *O'Bryan v. Cave*, 202 S.W.3d 585, 588 (Ky. 2006) (citation omitted). "[T]he proper function of summary judgment is to terminate litigation

[2] Kentucky Rules of Civil Procedure.

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." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991).

SUMMARY JUDGMENT REGARDING METTLE

Stathis and Celebrity Farms contend the trial court erred in granting summary judgment in favor of LSYSC concerning the contract for sale of METTLE for multiple reasons. We will address each, in turn.

Initially, Stathis and Celebrity Farms contend the trial court erred in granting summary judgment prior to allowing a reasonable opportunity for the parties to conduct discovery. "[S]ummary judgment is only proper after a party has been given ample opportunity to complete discovery, and then fails to offer controverting evidence." *Pendleton Bros. Vending, Inc. v. Commonwealth, Fin. & Admin. Cabinet*, 758 S.W.2d 24, 29 (Ky. 1988) (citing *Hartford Ins. Group v. Citizens Fidelity Bank & Trust Co*., 579 S.W.2d 628 (Ky. App. 1979)). Here, ample opportunity was provided to discover the terms of the parties' agreement; yet, Stathis and Celebrity Farms fail to point to any discovery which would preclude summary judgment. Stathis and Celebrity Farms claim they need to obtain discovery from Martinez and Crawford, as well as additional discovery from Manges. However, the trial court correctly found that such discovery is

irrelevant to the contract between Stathis and Celebrity Farms and LSYSC for the sale of METTLE.

The conditions of sale explicitly list the documents that comprise the entire agreement. The first paragraph provides, "[t]his sale is governed by these Conditions of Sale[.]" It further states, "[t]he Company shall not be bound by any oral or written agreement or alleged agreement varying from these Conditions of Sale[.]" The last paragraph of the conditions of sale provides:

> The entire agreement for sale is embodied in these Conditions of Sale, the Important Notices on the preceding pages of this Catalogue, the Agent Authorization Form (if any), the announcements, and the Acknowledgment of Purchase. Any attempt on the part of the Buyer to unilaterally alter or modify these Conditions of Sale by making changes on the Acknowledgement of Purchase is prohibited and shall be invalid and unenforceable. These aforementioned documents, as modified by the announcements made pursuant to Condition 10, constitute the final expression of the parties' agreement and are a complete and exclusive statement of that agreement.

Stathis signed the sales ticket "Sam Stathis Celebrity Farm" without indicating he was acting as an agent, and no "Authorized Agent Form" was provided to LSYSC to advise that Stathis was purchasing METTLE on behalf of a partnership. Directly above Stathis's signature, the sales ticket states:

> The individual signing this agreement, regardless of the form of the signature or his signing capacity agrees to be personally liable, jointly and severally with the purchaser, for the full price if the purchaser does not

> make settlement within thirty minutes or have approved credit *or if Lexington Selected Yearling has not been provided with a signed buyer's authorized agent form granting purchase authority during this sale to the individual signing this agreement*.

(Emphasis added.)

"A fundamental rule of contract law holds that, absent fraud in the inducement, a written agreement duly executed by the party to be held, who had an opportunity to read it, will be enforced according to its terms." *Conseco Finance Servicing Corp. v. Wilder*, 47 S.W.3d 335, 341 (Ky. App. 2001) (citation omitted). Additionally, "'[i]n the absence of ambiguity a written instrument will be enforced strictly according to its terms,' and a court will interpret the contract's terms by assigning language its ordinary meaning and without resort to extrinsic evidence." *Frear v. P.T.A. Industries, Inc*., 103 S.W.3d 99, 106 (Ky. 2003) (citations omitted). It is also well-settled that "[t]he construction and interpretation of a contract, including questions regarding ambiguity, are questions of law to be decided by the court." *First Commonwealth Bank of Prestonsburg v. West*, 55 S.W.3d 829, 835 (Ky. App. 2000) (citation omitted). Because the construction and interpretation of a contract is a matter of law, it is reviewed under the *de novo* standard. *Nelson v. Ecklar*, 588 S.W.3d 872, 878 (Ky. App. 2019), *disc. rev. denied* (Ky. Dec. 13, 2019).

Here, the terms of the contract were clear and unambiguous. Under the sales ticket and conditions of sale, Stathis and Celebrity Farms owed LSYSC $180,000 in exchange for METTLE. Their failure to pay this amount when due further obligated them to pay interest, as well as costs and attorneys' fees and expenses incurred to recover under the contract. The trial court correctly found no genuine issue of material fact regarding this sale and correctly interpreted the contract. Thus, the trial court did not err in granting summary judgment in favor of LSYSC as a matter of law.

Next, Stathis and Celebrity Farms argue genuine issues of material fact exist regarding whether rescission is available under the doctrine of unclean hands, breach of good faith, and/or the first breach rule. However, "[i]t is elementary that a contract may not be rescinded unless the non-performance, misrepresentation or breach is substantial or material." *Evergreen Land Co. v. Gatti*, 554 S.W.2d 862, 865 (Ky. App. 1977). "The court does not look lightly at rescission, and rescission will not be permitted for a slight or inconsequential breach." *Id*. In the case herein, LSYSC performed its obligations under the contract when it delivered METTLE to Stathis. By contrast, Stathis and Celebrity Farms failed to perform under the contract by refusing to pay for the horse. Because LSYSC did not breach the parties' contract, Stathis and Celebrity Farms are not entitled to rescission as a matter of law.

Additionally, Stathis and Celebrity Farms argue genuine issues of material fact exist regarding whether reformation is available due to mutual mistake or subsequent oral modification. The obvious and key component for reformation due to mutual mistake is that a mistake be *mutual*. To reform a written contract on grounds of mutual mistake, the proponent of reformation must satisfy three elements. "First, it must show that the mistake was mutual, not unilateral." *Nichols v. Zurich American Ins. Co*., 423 S.W.3d 698, 702-03 (Ky. 2014) (citation omitted). Moreover, the mistake, if any, must be *the same*. Stated another way, the parties must make the same mistake. Here, the only argued "mistake" is unilateral. Stathis and Celebrity Farms believed the cost of METTLE would be borne equally among the partners, based on an unwritten partnership agreement; however, this was in no way documented in the sales contract. By contrast, LSYSC believed the cost of METTLE was to be paid by Stathis and Celebrity Farms based on the written sales contract, comprised of the sales ticket and conditions of sale. Consequently, and due to the lack of mutual mistake, reformation is unavailable. Nevertheless, Stathis and Celebrity Farms claim LSYSC orally agreed to the purchase of METTLE by the partnership before and after execution of the sales agreement. This assertion is contrary to the terms of the contract itself which provides: "These aforementioned documents . . . constitute the final expression of the parties' agreement and are a complete and

exclusive statement of that agreement." Therefore, reformation is unavailable on the grounds of oral modification.

Stathis and Celebrity Farms next maintain that genuine issues of material fact exist regarding whether Stathis can be held individually liable for the purchase of METTLE. As previously noted, directly above Stathis's signature, the sales ticket states:

> The individual signing this agreement, regardless of the form of the signature or his signing capacity agrees to be personally liable, jointly and severally with the purchaser, for the full price if the purchaser does not make settlement within thirty minutes or have approved credit *or if Lexington Selected Yearling has not been provided with a signed buyer's authorized agent form granting purchase authority during this sale to the individual signing this agreement*.

(Emphasis added.) It is undisputed that Stathis signed his name to the sales ticket and provided no authorized agent form to LSYSC. Contrary to assertions by Stathis and Celebrity Farms, this provision is not ambiguous; there is no doubt Stathis can be held individually liable. Thus, the trial court did not err in granting summary judgment on this issue.

Stathis and Celebrity Farms also contend genuine issues of material fact exist regarding whether they are entitled to an offset due to LSYSC's failure to mitigate its damages. The duty to mitigate contract damages only requires reasonable care. Another case discussed by the Court held:

> Under the doctrine of minimizing damages, it was her imperative duty, after she had knowledge of the breach of the contract, to take such steps as an ordinary prudent person under similar circumstances ordinarily takes to protect himself from such damages as might arise from the failure of the contractor to comply with his contract, or within a reasonable time thereafter. The rule is that a party to a contract, upon finding that the other party to it has breached it, must use reasonable exertion and reasonable expense and exercise reasonable diligence to minimize the loss resulting from its breach. He cannot stand idly by and permit the loss to accrue or increase, then hold him who breached it liable for the loss which he might have prevented by the use of reasonable efforts, expense, and diligence to prevent, or arrest, the loss.

U.S. Bond & Mortg. Corp. v. Berry, 249 Ky. 610, 61 S.W.2d 293, 298 (1933) (citations omitted). However, KRS[3] 355.2-709 allows a seller to recover the price of goods accepted when the buyer fails to pay. That is precisely what happened here. The price of METTLE is evidenced by the sales ticket. LSYSC was under no duty to repossess and resell METTLE. Therefore, the trial court did not err in ordering Stathis and Celebrity Farms to pay the amount owed under their sales agreement.

SUMMARY JUDGMENT ON REMAINING CLAIMS

Stathis and Celebrity Farms contend the court erred in granting summary judgment in favor of LSYSC concerning the delay in providing

[3] Kentucky Revised Statutes.

registration certificates for FOOL TO BELIEVE and ITALIAN STYLE for various reasons. We will address each, in turn.

First, Stathis and Celebrity Farms argue the seventh of the conditions of sale is commercially unreasonable and, therefore, unenforceable. The pertinent part of condition seven provides, "[t]he Company shall hold the registration certificates for all horses purchased by any Buyer until the Buyer's account, including late charges and any other fees, have been paid in full." "The construction and interpretation of a contract, including questions regarding ambiguity, are questions of law to be decided by the court." *First Commonwealth Bank of Prestonsburg*, 55 S.W.3d at 835 (citations omitted). The trial court found condition seven to be commercially reasonable, stating, "This appears to be a fairly standard term in similar contracts, and merely because the provision could ultimately be carried out to a seemingly harsh outcome does not render the provision unenforceable." We agree with this analysis and conclusion and further note that the outcome of this case was not unreasonable. Stathis and Celebrity Farms were never deprived ownership, possession, or title to these horses. Nonetheless, they only paid LSYSC $75,000 of the combined purchase price of $255,000 for the three horses. By August 15, 2018, with monthly late charges accruing at 1.5%, they owed $204,300. That amount has continued to increase. Moreover, although LSYSC was entitled to hold the registration certificates for

FOOL TO BELIEVE and ITALIAN STYLE, it eventually provided them to Stathis and Celebrity Farms. Considering the facts and totality of the circumstances, we hold condition seven is neither commercially unreasonable on its face nor as applied here.

Next, Stathis and Celebrity Farms argue condition seven in the conditions of sale is ambiguous regarding whether the certificates for FOOL TO BELIEVE and ITALIAN STYLE could be withheld to collect upon METTLE. However, the conditions of sale clearly state, "The Company shall hold the registration certificates for all horses purchased by any Buyer until the Buyer's account, including late charges and any other fees, have been paid in full." Stathis and Celebrity Farms were the listed buyers for all three horses and failed to pay LSYSC for METTLE. The terms of the contracts are clear and unambiguous—LSYSC was entitled to withhold the certificates for all three horses until Stathis and Celebrity Farms paid the purchase price, plus interest, owed for METTLE. The trial court correctly found no genuine issue of material fact regarding the withholding of the certificates for FOOL TO BELIEVE and ITALIAN STYLE. Thus, the trial court did not err in granting summary judgment in favor of LSYSC as a matter of law.

Finally, Stathis and Celebrity Farms contend the trial court erred in granting summary judgment prior to allowing a reasonable opportunity for the

parties to conduct discovery. As previously discussed, "summary judgment is only proper after a party has been given ample opportunity to complete discovery, and then fails to offer controverting evidence." *Pendleton Bros.*, 758 S.W.2d at 29. Ample opportunity was provided to discover the terms of the parties' agreements. Nonetheless, Stathis and Celebrity Farms fail to point to any discovery which would preclude summary judgment. Consequently, the trial court did not err by finding additional discovery irrelevant to the contract between the parties for the sale and subsequent withholding of registration certificates for FOOL TO BELIEVE and ITALIAN STYLE.

CONCLUSION

Therefore, and for the foregoing reasons, the orders entered by the Fayette Circuit Court are AFFIRMED.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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BRIEF FOR APPELLEE LEXINGTON SELECTED YEARLING SALES CO., LLC:

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