IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

CORRECTED: JUNE 11, 2009
RENDERED: MAY 21, 2009
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL
DATE 10/11/09 Kelly Kraber D.C.

2007-SC-000769-DG

BRAVO DEVELOPMENT, INC. APPELLANT

V.

ON REVIEW FROM COURT OF APPEALS
CASE NO. 2006-CA-002163-MR
CAMPBELL CIRCUIT COURT NO. 06-CI-00179

SCOT SINGLETON APPELLEE

MEMORANDUM OPINION OF THE COURT

REVERSING

I. FACTS AND PROCEDURAL HISTORY.

Kentucky law prohibits an employer from requiring an employee to remit any portion of the employee's tips to a pool for distribution among other employees.[1] Scott Singleton claims that while working as a server at Bravo

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[1] Kentucky Revised Statutes (KRS) 337.065 provides that:

(1) No employer shall require an employee to remit to the employer any gratuity, or any portion thereof, except for the purpose of withholding amounts required by federal or state law. The amount withheld from such gratuity shall not exceed the amount required by federal or state law.

(2) As used in this section, "gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered.

(3) No employer shall require an employee to participate in a tip pool whereby the employee is required to remit to the pool any gratuity, or any portion thereof, for distribution among employees of the employer.

Development's Brio Tuscan Grille, management there violated this law by requiring him to remit 3 percent of his sales or gratuities[2] to a pool for other restaurant employees. The prohibited practice is called "tipping out." According to Singleton, restaurant management informed him that he was required to tip out as a matter of corporate policy and that he could find a new job if he did not like the policy.

Singleton filed a complaint with the Kentucky Department of Labor,[3] alleging that his employer's policy requiring him to tip out violated Kentucky law. Following an investigation, the Department of Labor agreed with Singleton. The Department of Labor then sent letters to Singleton and other current or former Brio employees, indicating that it had completed its investigation and that the employer was offering "the net amount specified on the enclosed receipt for payment of back wages as full settlement of all wage claims." Singleton determined that the amount offered to him would not fully

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(4) Employees may voluntarily enter into an agreement to divide gratuities among themselves. The employer may inform the employees of the existence of a voluntary pool and the customary tipping arrangements of the employees at the establishment. Upon petition by the participants in the voluntary pool, and at his own option and expense, an employer may provide custodial services for the safekeeping of funds placed in the pool, if the account is properly identified and segregated from his other business records and open to examination by pool participants.

[2] Singleton claims he was required to remit 3 percent of his sales. Bravo states he was required to remit 3 percent of his tips or gratuities. The parties seem to agree that, ultimately, Singleton accepted a check from Bravo for the amount unlawfully withheld from his wages.

[3] The Kentucky Department of Labor was abolished as of June 2008 and is now reorganized within the Labor Cabinet. Exec. Order No. 2008-472, *cited in* Executive Order Notes to KRS 12.020. Since the Department of Labor was in existence as of the time Singleton filed his complaint, we will make reference in this opinion to the Department of Labor rather than to the Labor Cabinet.

compensate him for the amount unlawfully withheld from his wages. So after obtaining legal representation, he then filed in the trial court a complaint on behalf of himself and the purported class of others who had had wages unlawfully withheld by Brio.

Shortly after Singleton filed the complaint, the Department of Labor reopened its investigation. It sent letters to Brio employees, including Singleton, informing them it had recently received new information affecting "the amount of back wages owed" and was performing a new audit, after which employees would be sent new release forms (presumably accompanying new offers from the employer). It later sent re-calculated offers to servers (including Singleton) better to reflect amounts unlawfully withheld.

Singleton signed a document entitled, "Receipt for Payment of Back Wages," which stated that he acknowledged payment of a certain sum as "receipt of payment in full from Bravo . . . for unpaid wages due me as indicated by the Kentucky Revised Statute(s) marked below" for the specified time period. Among a list of Kentucky wage statutes, an X mark was placed beside "Remittance of Gratuity (337.065)," referring to KRS 337.065. The document also recited "[y]our acceptance of these back wages as marked for the period indicated above means you are accepting this amount as a satisfactory settlement and are releasing this employer from any further liability for your claim as indicated above." Singleton eventually cashed the check tendered with this document.

Meanwhile, Bravo filed a motion in the trial court to dismiss Singleton's complaint on the ground of failure to exhaust administrative remedies. The trial court granted the motion to dismiss. Singleton appealed but voluntarily dismissed the appeal—apparently after his counsel spoke with a Department of Labor investigator, who stated that the Brio investigation had been closed. Singleton contends that the investigation was improperly closed without notice to the affected employees or the issuance of a final report.

According to Singleton:

> The completion of the Department of Labor's investigation, without notice or a final report, perfects Singleton's claim, and those of the class he seeks to represent, against Brio for liquidated damages mandated by KRS 337.385. The "offer of settlement" is a misnomer, [sic] Bravo is legally required to disgorge and reimburse its employees the entire amount of the unlawfully withheld wages. The [Department of Labor] is not empowered to negotiate a "settlement" for anything less than the entire amount of the unlawfully withheld wages.

Singleton then filed a second complaint in the trial court, alleging that the Department of Labor investigation was closed without notice or factual findings and seeking to obtain liquidated damages, costs, and attorney's fees for himself and a purported class of other Brio employees under KRS 337.385(1).[4] Again, Bravo moved to dismiss the complaint for Singleton's

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[4] KRS 337.385(1) states that:

> Any employer who pays any employee less than wages and overtime compensation to which such employee is entitled under or by virtue of KRS 337.020 to 337.285 shall be liable to such employee affected for the full amount of such wages and overtime compensation, less any amount actually paid to such employee by the employer, for an additional equal amount as liquidated damages, and for costs and such reasonable attorney's fees as may be allowed by the court. Provided, that if, in any action commenced to recover such unpaid wages or liquidated damages, the employer shows to the satisfaction of the court that the act or omission giving rise

failure to exhaust administrative remedies. In the alternative, Bravo moved for summary judgment on the basis that Singleton and "the vast majority of the purported class members" had signed settlement agreements releasing Bravo from any further liability on their wage claims.

The trial court granted the motion to dismiss. In the trial court's view, Singleton could either commence administrative proceedings or file an original court action but could not do both. The trial court found that Singleton had elected the administrative remedy, that Singleton failed to exhaust administrative remedies, and that it lacked jurisdiction to hear the case.

Citing 803 Kentucky Administrative Regulations (KAR) 1:035(1)-(2), the trial court reasoned that once administrative proceedings began, the Department of Labor was required to investigate the dispute and facilitate a remedy, if possible, and was only required to "evaluate the proof" and render findings of fact if a settlement could not be reached. The trial court then stated that an appeal to the circuit court from administrative proceedings was permitted only after the executive director rendered final findings of fact in an order under 803 KAR 1:035 and KRS 13B.140 (providing for judicial review of final administrative orders). So the trial court essentially concluded that since Singleton entered into a settlement rather than obtaining an order from the

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to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of KRS 337.020 to 337.285, the court may, in its sound discretion, award no liquidated damages, or award any amount thereof not to exceed the amount specified in this section. Any agreement between such employee and the employer to work for less than the applicable wage rate shall be no defense to such action. Such action may be maintained in any court of competent jurisdiction by any one (1) or more employees for and in behalf of himself or themselves.

executive director rendering findings of fact, Singleton's case was outside its jurisdiction to hear appeals from administrative decisions. According to the trial court, there really was no administrative decision because the parties had entered into a voluntary agreement resolving their dispute

The trial court's dismissal order also indicated that Singleton's settlement also released Bravo from further liability:

> On July 1, 2005, Plaintiff signed a receipt acknowledging "payment in full" and releasing Defendant from "any further liability for your claim."
>
> Plaintiff initiated this action for himself and the purported class members seeking liquidated damages against the Defendant pursuant to KRS 337.385. The facts in this matter are undisputed and the issue before this Court is whether the Plaintiff and the class he seeks to represent have abrogated their right to statutorily mandated liquidated damages, costs and attorney's fees by utilizing the administrative process to secure a settlement and signing their individual "settlement agreements."
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> Plaintiff argues that he could not have waived his right to liquidated damages because he did not know KRS 337.385 existed. However, in Plaintiff's original complaint filed in May of 2005, which was verified, he specifically sought to require the Defendant to pay pursuant to KRS 337.385. Plaintiff signed his settlement agreement about two (2) months after that complaint was filed. Further, even if Plaintiff did not know about KRS 337.385, it has been a [longstanding] rule that such alleged ignorance would not render this settlement agreement invalid. [*Barker v. Stearns Coal & Lumber Co.*, 291 Ky. 184, 163 S.W.2d 466 (1942)].

Singleton then appealed the trial court's dismissal order to the Kentucky Court of Appeals. The Court of Appeals reversed the trial court's dismissal on two grounds. First, the Court of Appeals determined that the release Singleton signed, "by its own terms," referred only to KRS 337.065 damages and not to

damages available under KRS 337.385. Second, the Court of Appeals concluded that the doctrines of exhaustion of administrative remedies and election of remedies did not apply because it found Singleton could only obtain KRS 337.385 damages through a court action and not through the administrative process.

II. ANALYSIS.

We have reviewed the record and the applicable law, and we now reverse the decision of the Court of Appeals and reinstate the trial court's judgment dismissing the action. We reverse because we agree with the trial court that the agreement signed by Singleton effectively released Bravo from any further liability for unlawfully remitting his gratuities during the specified time period in violation of KRS 337.065. We reverse despite the release's failure to mention KRS 337.385 or the availability of liquidated damages, costs, or attorney's fees under KRS 337.385.

Because we conclude that the trial court's judgment should be reinstated on the basis of Singleton's having validly settled his claim, we need not address arguments of election of remedies or exhaustion of administrative remedies. In so doing, we recognize that questions will remain about whether original court actions and administrative proceedings are mutually exclusive avenues of relief and whether liquidated damages are only allowed in court. Answering these lingering questions is not necessary to resolve this case. So we must decline to

address them. We believe such questions could be better answered by legislative action amending and clarifying the governing statutes.

Trial Court Reached Proper Resolution Because of Release of "Any Further Liability" for KRS 337.065 Violation.

When accepting a check for his previously unpaid wages from Bravo, Singleton signed a completed Kentucky Department of Labor form entitled, "Receipt for Payment of Back Wages." The document began with the statement that Singleton acknowledged "receipt of payment in full from" Bravo (doing business as Brio) "for unpaid wages due me as indicated by the Kentucky Revised Statute(s) marked below" for a specified time period. Several wage statutes were listed, an "X" was placed by "Remittance of Gratuity (337.065)," and the amount of the payment was specified. The document then contained a "NOTICE TO EMPLOYEE" stating that "[y]our acceptance of these back wages as marked for the period indicated above means you are accepting this amount as a satisfactory settlement and are releasing this employer from **any** further liability for your claim as indicated above."[5] Singleton's signature then followed directly under this notice.

Our precedent establishes that settlement agreements are construed according to the same rules of construction applicable to other contracts:

> An agreement to settle legal claims is essentially a contract subject to the rules of contract interpretation." *Cantrell Supply, Inc. v. Liberty Mutual Insurance Co.*, 94 S.W.3d 381, 384 (Ky.App. 2002). The primary objective is to effectuate the intentions of the parties. *Id.* When no ambiguity exists in the contract, we look only as far as the four corners of the document to determine the parties'

[5] Emphasis added.

> intentions. *Hoheimer v. Hoheimer*, 30 S.W.3d 176, 178 (Ky. 2000). "The fact that one party may have intended different results, however, is insufficient to construe a contract at variance with its plain and unambiguous terms." *Cantrell*, 94 S.W.3d at 385. "Generally, the interpretation of a contract, including determining whether a contract is ambiguous, is a question of law for the courts and is subject to *de novo* review." *Id.*[6]

The document entitled, "Receipt of Back Wages," actually consists of two parts: (1) accepting payment of previously unpaid wages for unlawful remittance of gratuity for specified time period and (2) releasing Bravo from "any further liability" for the claim "indicated above," with the only indication as to the claim being that it arose under KRS 337.065. Applying a *de novo* standard of review to this legal question of contract interpretation, we conclude that Singleton had effectively released Bravo from further liability on his wage claim and that the Court of Appeals erred in determining that the release did not cover claims Singleton may have had under KRS 337.385.

The language of the release is clear: Singleton released Bravo from "any further liability" on his "claim"[7] as indicated above—his claim relating to violation of KRS 337.065 during the specified time period. Without an ambiguity, there is no need to look beyond the four corners of the document.

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[6] 3D Enterprises Contracting Corp. v. Louisville and Jefferson County Metropolitan Sewer District, 174 S.W.3d 440, 448 (Ky. 2005).

[7] BLACK'S LAW DICTIONARY (8th ed. 2004) provides the following general definitions of *claim*:

> 1. The aggregate of operative facts giving rise to a right enforceable by a court <the plaintiff's short, plain statement about the crash established the claim>. -- Also termed *claim for relief*. 2. The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional <the spouse's claim to half the lottery winnings>. 3. A demand for money, property, or a legal remedy to which one asserts a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asks for.

Although Singleton may now claim he intended to release Bravo from liability only as to back wages, he explicitly released Bravo from "any further liability" on his claim "indicated above," which clearly refers to the marked statute (KRS 337.065, forbidding mandatory tip pools). Use of the term "any further liability" plainly means that Singleton reserved no causes of action or types of remedies against Bravo. We also note that Singleton did not expressly reserve any right to hold Bravo liable for liquidated damages or attorney's fees under KRS 337.385.

We are not persuaded by Singleton's argument that he was not aware of the possible availability of liquidated damages and attorney's fees because of the lack of mention of KRS 337.385 on the document. Longstanding precedent in Kentucky establishes that one cannot escape legal consequences or voluntarily assumed legal responsibilities based on ignorance of the law.[8] This rule is perhaps even more squarely applied to those who are represented by counsel, as Singleton was at the time he signed the release.

We further reject Singleton's argument that any settlement was void because the Department of Labor lacked authority to settle cases but instead was required to obtain full payment of unpaid wages as well as liquidated damages. Technically, the Department of Labor did not enter into a settlement in this case, although the settlement reached might be considered to be supervised by the Department of Labor. Rather, the Department of Labor investigated Singleton's claim and tried to help the parties resolve their dispute

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[8] Barker, 163 S.W.2d at 470.

through reaching a voluntary agreement between employee and employer—acts that were clearly within its authority as established by regulation.[9] By the terms of a voluntary agreement, Singleton accepted payment of "back wages" and, in return, released Bravo from any further liability on his claim arising from the KRS 337.065 violation. The fact that the Department of Labor facilitated a possible settlement by providing forms and communicating Bravo's offer to Singleton does not change the fact that the settlement or release contract was between Bravo and Singleton and did not involve the Department of Labor settling anyone else's rights.

In our view, the Court of Appeals erred in distinguishing KRS 337.065 damages from KRS 337.385 damages and in determining that Singleton did not release Bravo from liability under KRS 337.385. KRS 337.065 does not establish the availability of any particular type of damages. Rather, it is a substantive wage provision that simply states that requiring employees to remit tips is prohibited. The employer's potential liability and the employee's

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[9] 803 KAR 1:035 provides, in pertinent part:

(1) The Executive Director of Workplace Standards, or his authorized agent, shall investigate any complaint or routinely inspect records relating to an alleged violation of KRS 337.020 to 337.405.

(2) Where a settlement cannot be reached between the employer and employee and if an investigation reveals that questions of fact are in issue or the complaint or routine inspection gives the executive director, or his authorized agent, good cause to believe that factual issues need to be resolved, then the executive director, or his authorized agent, shall evaluate all proof submitted and render his tentative findings of fact. The proof to be evaluated by the executive director, or his authorized agent, shall include, but is not limited to: the findings of the investigator, sworn affidavits, contractual agreements, payroll records, and other evidence relating to an alleged violation of KRS 337.020 to 337.405.

potential remedies for violations of this substantive wage provision are set forth in other statutes, namely KRS 337.990 and KRS 337.385.

KRS 337.990(5) states that: "[a]ny employer who violates the provisions of KRS 337.065 shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each offense and shall make full payment to the employee by reason of the violation." KRS 337.385(1) provides that employers in violation of wage statutes including KRS 337.065 "shall be liable to such employee affected for the full amount of such wages and overtime compensation, . . . for an additional equal amount as liquidated damages, and for costs and such reasonable attorney's fees as may be allowed by the court." But the statute also states that liquidated damages may be reduced or eliminated by the court if the employer shows that it acted in good faith.[10]

We note that the release makes no reference to the statutes providing remedies for violations of KRS 337.065, KRS 337.990(5), or to KRS 337.385. Nonetheless, Singleton explicitly released Bravo from "any further liability" for

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[10] In construing these two statutes together, interesting questions obviously might arise, such as (1) if KRS 337.990 (which clearly refers to the Department of Labor's ability to enforce statutory wage laws through civil penalties "in accordance with KRS 336.985") requires "full payment" to the employee of unpaid wages only or could also encompass liquidated damages or attorney's fees under KRS 337.385(1) and (2) if the employer "shall be held liable" for liquidated damages, as well as back wages, only in court actions or potentially also in cases resolved in the administrative process. Nonetheless, because Singleton released Bravo from any further liability for violating KRS 337.065, it simply is not necessary to the resolution of this case that we answer such questions. Again, perhaps such questions could best be answered by legislative action amending and clarifying these statutes than by this Court addressing such questions in dicta. So we decline to opine in dicta whether the Department of Labor may, or is required to, seek or award liquidated damages or attorney's fees in these types of cases.

his claim "as indicated above" as relating to the substantive wage provision of KRS 337.065 (prohibiting employer-mandated tip pools). Clearly, the release operated to release Bravo from any further liability for violating KRS 337.065 for the specified time period. Since the applicable damage provisions of KRS 337.385 and 337.990 flow from, and are available only if, a violation of KRS 337.065 (or other substantive wage provision) has occurred, then a release from "any further liability" under KRS 337.065 necessarily encompasses a release from any damages available under KRS 337.385 and KRS 337.990. So by releasing Bravo from "any further liability" for his KRS 337.065 claim, Singleton also released Bravo from any additional obligations it may have owed to Singleton under the damages provisions of KRS 337.385 and 337.990.

III. CONCLUSION.

The trial court properly resolved the case in Bravo's favor[11] because Singleton had settled his wage payment dispute with Bravo, and the Court of Appeals erred in reversing the trial court. Therefore, we now reverse the

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[11] We note that Bravo moved for summary judgment under Kentucky Rules of Civil Procedure (CR) 56.03 on the settlement issue in the alternative to his motion to dismiss for lack of subject matter jurisdiction under CR 12.02(a). The trial court granted the motion to dismiss for lack of subject matter jurisdiction, which we affirm on the alternative ground of settlement and release of any further liability. Because the facts are not in dispute, whether the trial court should have granted a motion to dismiss or a motion for summary judgment in favor of Bravo makes no difference in terms of the ultimate resolution of this case. *See* CR 56.03 (stating summary judgment shall be granted if the pleadings and discovery evidence on file "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.").

opinion of the Court of Appeals; and we reinstate the trial court's order because the trial court properly resolved the case in Bravo's favor.

All sitting. All concur.

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SCOT SINGLETON — APPELLEE

ORDER OF CORRECTION

The Memorandum Opinion of the Court, rendered May 21, 2009, is CORRECTED on its face by the substitution of the attached opinion in lieu of the original opinion. Said correction does not affect the holding.

ENTERED: June 11, 2009.

CHIEF JUSTICE JOHN D. MINTON, JR.