

RENDERED: NOVEMBER 23, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-000848-MR

DOALL LOUISVILLE COMPANY

APPELLANT

ON REMAND FROM SUPREME COURT OF KENTUCKY
NO. 2004-SC-000941-D

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN RYAN, JUDGE
ACTION NO. 92-CI-006427

FRANK FERRANTE and
HUFF CARBIDE TOOL, INC.

APPELLEES

AND

NO. 2001-CA-000916-MR

HUFF CARBIDE TOOL COMPANY, INC.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN RYAN, JUDGE
ACTION NO. 92-CI-006427

FRANK FERRANTE and
DOALL LOUISVILLE COMPANY

APPELLEES

AND

NO. 2001-CA-001290-MR

DOALL LOUISVILLE COMPANY and
OHIO CASUALTY INSURANCE COMPANY

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN RYAN, JUDGE
ACTION NO. 92-CI-006427

FRANK FERRANTE; HUFF CARBIDE TOOL, INC.;
and SENTRY INSURANCE COMPANY, Surety
for Huff Carbide Tool, Inc.

APPELLEES

AND

NO. 2001-CA-001463-MR

HUFF CARBIDE TOOL COMPANY, INC.
and SENTRY INSURANCE, a Mutual
Company, Surety for Huff
Carbide Tool Company, Inc.

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN RYAN, JUDGE
ACTION NO. 92-CI-006427

FRANK FERRANTE; DOALL LOUISVILLE COMPANY;
and THE OHIO CASUALTY COMPANY, Surety
for DoAll Louisville Company

APPELLEES

OPINION AND ORDER
VACATING

** ** * * *

BEFORE: BUCKINGHAM AND SCHRODER, JUDGES; EMBERTON, SENIOR
JUDGE.¹

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5) (b) of the Kentucky Constitution and KRS 21.580.

EMBERTON, SENIOR JUDGE: This case was remanded to this court by the Kentucky Supreme Court for re-consideration of the supersedeas penalty issue in light of the recent decision in The Elk Horn Coal Corporation v. Cheyenne Resources Inc., 163 S.W.3d 408 (Ky. 2005). As to all other issues raised in the motion for discretionary review, the Supreme Court denied review.

In our unpublished opinion, we held that KRS 26A.300 was constitutional under both the Kentucky and Federal Constitutions and affirmed the imposition of a penalty of 10% of the amount of the original judgment against Huff Carbide Toll Company, Inc. and Doall Louisville Company. After our opinion was rendered, in The Elk Horn Coal Corporation, the Supreme Court held that KRS 26A.300 is unconstitutional because it denies equal protection in violation of both the Kentucky and Federal Constitutions and the separation of powers provisions of the Kentucky Constitution. We have, therefore, reconsidered our prior opinion and conclude that the imposition of the penalty must be vacated.

It is hereby ordered that the judgment of the Jefferson Circuit Court imposing a penalty under KRS 26A.300 is vacated.

ALL CONCUR.

ENTERED: November 23, 2005

/s/ THOMAS D. EMBERTON
Senior Judge

BRIEF AND ORAL AGRUMENT FOR
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ORAL ARGUMENT FOR APPELLEE
FRANK FERRANTE:

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