

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-000989-MR

LUTHER C. CONNER, JR.

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE JOHN D. MINTON, JR., JUDGE  
ACTION NO. 97-CI-01010

KENTUCKY HIGHLANDS  
INVESTMENT CORPORATION

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND DYCHE, JUDGES.

DYCHE, JUDGE. Ky. R. Civ. Pro. 8.01(2) states:

In any action for unliquidated damages the prayer for damages in any pleading shall not recite any sum as alleged damages other than an allegation that damages are in excess of any minimum dollar amount necessary to establish the jurisdiction of the court; provided, however, that all parties shall have the right to advise the trier of fact as to what amounts are fair and reasonable as shown by the evidence. **When a claim is made against a party for unliquidated damages, that party may obtain information as to the amount claimed by interrogatories;**

**if this is done, the amount claimed shall not exceed the last amount stated in answer to interrogatories.**

(Emphasis added.) In the present case, appellant, Luther C. Conner, had made a claim against appellee, Kentucky Highlands Investment Corporation, for unliquidated damages. He had responded to interrogatories from Kentucky Highlands as follows:

9. What damages do you claim to have suffered as a result of the alleged wrongful conduct of KHIC?

ANSWER: Lost dividends from LCH and value of LCH stock as a going concern; legal services provided to LCH up to the time I was excluded by KHIC; legal services to be provided to LCH as a going concern; payment of loan to Citizens Bank of Albany in the amount of \$6,429.60, plus accrued interest.

10. Identify and itemize each element of damages you claim to have suffered as a result of the alleged wrongful conduct of KHIC.

ANSWER: See answer to Interrogatory 9.

At a later deposition, Mr. Conner was unable to give amounts of the claimed damages when asked specifically by counsel for Kentucky Highlands, and his attorney indicated that, "We'll supplement the interrogatories with that number prior to trial." No supplementation was made.

The trial commenced, and during *voir dire* of prospective jurors counsel for Kentucky Highlands objected to

any mention of the existence of any claim for unliquidated damages by Conner against Kentucky Highlands. The court deferred a ruling on the objection, completed jury selection, and then conducted a hearing on a motion by Conner to supplement his answers with claims for \$600,000.00.

The court denied Conner's motion, finding that the "case has been pending for four and one half years; the trial date had been set for nine months." It further found that the attempt to supplement the interrogatories at that late date was "unseasonable," and granted Kentucky Highlands's motion to preclude any evidence of damages in excess of the \$6,429.60 previously given. As support for its ruling, the trial court cited *Fratzke v. Murphy, Ky.*, 12 S.W.3d 269 (1999). Conner's claims were eventually dismissed, and this appeal followed.

Conner asks us to find exceptions to the holding in *Fratzke* and a subsequent similar case, *LaFleur v. Shoney's, Inc.*, Ky., 83 S.W.3d 474 (2002). His argument is as follows:

- A. The pretrial Conference and subsequent Pretrial Conference Order r[e]lating to the July 3, 2001, Pretrial Conference established that no further discovery was necessary;
- B. KHIC would have been fully aware of that amount of Conner's claim for unliquidated damages as a result of the three hour mediation conference; and

C. The Trial Court should have allowed Appellant to file his Supplemental Answers to Interrogatories.

Unfortunately for Conner, *Fratzke* is explicit: “[W]e merely hold that CR 8.01(2) means what it says. The language of the rule is mandatory and gives a trial court no discretion as to its application.” 12 S.W.3d at 273. *LaFleur* reemphasizes this point. While Conner’s arguments are not unappealing, and perhaps worthy of consideration by our highest court, we, like the trial court, are bound by the above-cited decisions of that court. SCR 1.030(8). The order of the Warren Circuit Court is affirmed.

ALL CONCUR.

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