

RENDERED: October 31, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001083-MR

CHARLES T. LANDERS

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
ACTION NO. 00-CI-00093

BILLY SPEER; GREEN RIVER
BROADCASTING CO., INC.;
JERE DAVIDSON, SR.; AMERICAN
CHESTNUT TELEVISION, INC.;
KENTUCKY HEARTLAND TELEVISION
OF BARDSTOWN; AND CAROL LAFEVER

APPELLEES

OPINION

AFFIRMING

** ** * * * * *

BEFORE: DYCHE AND KNOPF, JUDGES; AND HUDDLESTON, SENIOR JUDGE.¹

DYCHE, JUDGE. In this matter, we are called on to review the Findings of Fact and Conclusions of Law of the Taylor Circuit Court after a bench trial was held in basically a breach of

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

contract case complicated by several corporate transfers involving television stations. An appellate court will not set aside a trial court's findings of fact unless they are clearly erroneous. CR 52.01; A&A Mechanical, Inc. v. Thermal Equipment Sales, Inc., Ky. App., 998 S.W.2d 505, 509 (1999). On the other hand, conclusions of law are subject to independent appellate determination. A&A Mechanical, 992 S.W.2d at 509.

The underlying facts of this matter are somewhat complex; however, the issues before this Court do not compel a rehash of all the facts at this juncture. Instead, our attention is directed to the narrow arguments and facts presented by appellant, Charles T. Landers.

The initial issue before this Court is a relatively simple contract issue unfortunately complicated by procedural issues. We begin by a basic statement of the contract at issue. In June of 1980, appellee Billy Speer incorporated Green River Broadcasting Company, Inc., to obtain a Federal Communications Commission license to operate a television station. Speer owned one hundred percent of Green River's stock.

In September of 1982, Landers and Speer memorialized an earlier oral contract into a written agreement. The basic terms included that, in exchange for Landers's engineering services and other expertise in helping Speer set up the station to the point of being operational, Landers was to receive ten

percent of the annual income of the net profits of Green River. Additionally, in the event Green River was sold, Landers was to receive ten percent of the gross sales price, less the initial capital investment.

Landers's first argument to this Court is that the trial court erred in concluding that Green River was not a party to the contract. We note, however, that Landers has not asked this Court to review the underlying merits of the contract, including who was bound under it. At this point we face the first twist in an otherwise basic contract question.

Procedurally, the history of this issue includes that in his deposition, Speer admitted liability under the contract and that Landers was owed money. Based on this admission, Landers moved for partial summary judgment only on the issue of liability under the contract. The circuit court entered partial summary judgment and concluded that "Speer and Green River have breached the terms of their Agreement." However, the issue of whether Green River was actually a party to the contract was not briefed on the motion for partial summary judgment.²

Landers argues to this Court that this was unnecessary because this fact had been admitted in Speer and Green River's

² This issue was, however, included in a concurrently pending Motion to Dismiss by appellees Jere Davidson, Sr., American Chestnut Television, Inc., Kentucky Heartland Television, Inc., and Carol LaFever. The circuit court denied the motion, but did not specifically rule on the issue of whether Green River was a party to the contract. It is important to note that Landers does not include reference in his appeal to the Motion to Dismiss.

answer to Paragraph I and II in the complaint. The complaint states in relevant part as follows:

That Defendant, Billy Speer, is a citizen and resident of Taylor County, Kentucky and that Defendant, Green River Broadcasting Company, Inc. (Green River) is a domestic corporation

That on or about September 27, 1982 in Taylor County, Kentucky, the parties entered into a contract whereby Plaintiff, in exchange for his services to be provided to Defendants, was granted the right to a ten percent (10%) annual income of the net profits of Green River and ten percent (10%) of the gross sales price of Green River, if sold

This issue, however, came up again at the bench trial with Landers arguing that it had been resolved by the circuit court's earlier judgment.³ The appellees argued to the contrary. During the bench trial, the circuit court did not make a ruling on this issue. However, in its Findings of Fact and Conclusions of Law, the circuit court held that Green River was not a party to the contract. Landers argues that this has been admitted, and the circuit court erred in concluding otherwise.

A judicial admission is "a formal act done in the course of judicial proceedings which waives or dispenses with the necessity of producing evidence by the opponent and bars the

³ Neither party presents arguments before this Court that this judgment was final and appealable but was not timely appealed. However, a motion to amend was timely filed on other grounds. The trial court did not rule on the motion to amend until January 10, 2002, the same day the court issued its Findings of Fact and Conclusions of Law, finding that Green River was not a party to the contract.

party himself from disputing it.'" Goldsmith v. Allied Building Components, Inc., Ky., 833 S.W.2d 378, 382 (1992)(Leibson, J., concurring)(quoting Sutherland v. Davis, 286 Ky. 743, 151 S.W.2d 1021, 1024 (1941)).

A judicial admission is a deliberate, clear, unequivocal statement of a party about a fact within that party's peculiar knowledge. See Schoenbaechler v. Louisville Taxicab & Transfer Co., Ky., 328 S.W.2d 514, 515 (1959); Greenwell v. Boatwright, 184 F.3d 490, 498 (6th Cir. 1999). Whether a statement is a judicial admission is a question of law. See Strouse v. K-Tek, Inc., 930 P.2d 1361, 1363 (Idaho App. 1997).

Upon a review of Landers's complaint and the answer thereto, we cannot say that the admissions of Paragraph I and II were unequivocal or deliberate admissions that Green River was a party to the contract. Paragraph II did not specifically reference Green River individually as a party to the contract. Instead, it stated that "the parties entered into a contract." (Emphasis added.) This is ambiguous as to whether it means that only Speer and Landers entered into the contract or whether Green River also entered into the contract. Landers never specifically pled that Speer signed in his official capacity or that Green River was a party to the contract.

While judicial admissions are not to be taken lightly, they should be narrowly construed. Lewis v. Kenady, Ky., 894 S.W.2d 619, 622 (1994). We interpret the answer, which is consistent with the testimony in the record, to mean that the admission was only to liability under the contract and that Landers was due money under the contract, not that Green River was a party it.

Next, Landers argues that the circuit court's earlier decision on the motion for partial summary judgment operated as issue preclusion, and the circuit court could not revisit the issue at the bench trial. For issue preclusion to operate, the issues must be the same; the issue must have been actually litigated; the issue must have been actually decided; and the decision on the issue must have been necessary to the court's judgment. Yeoman v. Com., Health Policy Bd., Ky., 983 S.W.2d 459, 465 (1998).

While there are a variety of reasons issue preclusion would not apply presently, the most important one is that the circuit court was not asked on summary judgment to rule on the specific issues of whether Green River was a party to the contract or whether the admission in the answer was binding on this point. Accordingly, the determination of whether Green River was a party to the contract was not necessary to the circuit court's decision. Thus, the circuit court was not

precluded from making an alternate conclusion after the bench trial.

While it might seem that the next logical step for this Court's review would be a determination on the merits of whether Green River was a party to the contract, Landers does not present this issue for our review. Having not been requested to review whether Green River was a party to the contract, we decline to review such and affirm the trial court on this issue.

Our having made this determination, Landers concedes we need not review his second argument. On page seven of his brief, Landers states that "Had the trial court's determination that [Green River] was not a party to the Agreement been right, its failure to award damages for the total sale price against all Defendants would have been correct" Landers incorrectly gambled that this Court would accept his arguments on admissions and issue preclusion. We have not, and Landers conceded therefore that he cannot prevail under his second argument.

Nonetheless, after a thorough review of the record, we conclude that the circuit court's Findings of Fact are not clearly erroneous. The lower court found that consideration had in fact been paid for the assets of Green River, including at least \$120,171.56 in liabilities. While the circuit court did

not in precise language state that a merger had not occurred nor that American Chestnut was a mere continuation of Green River, this is in fact the essence of its findings. We agree that the evidence supports this conclusion.

We also agree with the trial court's finding that there was no proof that Speer received anything more than a note for \$2,500,000.00 for the assets of Green River. Accordingly, Landers was only entitled to ten percent of \$2,500,000.00 on the sale of Green River.

The final argument presented by Landers is that the individual appellees are personally liable. This argument is flawed for a variety of reasons, but fundamentally because Landers inadequately states the facts of this matter as his argument is presented.

First, at page eleven in his brief, Landers claims that Jere Davidson "as a director of [American Chestnut] knew about the contractual obligation of Speer and [Green River] to Landers by virtue of his extensive contact with Speer and additional sources such as his involvement with the operation of WGRB TV. He cannot be said to have acted in good faith as stated in KRS 271B.8-300(4) and is liable for damages sustained by Landers by breach of the Agreement." Landers apparently is claiming that Davidson is liable therefore for unjust enrichment and fraud.

Landers also claims that Carol LaFever, manager of Green River, also knew of the "existence and details of Landers's Agreement." (Landers's Brief p. 11.) Landers makes a claim of unjust enrichment against her as well.

Landers presented no proof at trial of prior knowledge on the part of LaFever or Davidson. In fact, their deposition testimony unquestionably denies such, and Landers presents no contrary evidence.

The circuit court dismissed all claims against LaFever and Davidson apparently finding no fraud or grounds for piercing the corporate veil. We cannot say that this was clearly erroneous based on the record before this Court. For the reasons so stated, we hereby affirm on all matters.

HUDDLESTON, SENIOR JUDGE, CONCURS.

KNOFF, JUDGE, CONCURS IN RESULT.

BRIEF AND ORAL ARGUMENT
FOR APPELLANT:

Jerry F. Safford
Bowling Green, Kentucky

BRIEF AND ORAL ARGUMENT FOR
APPELLEES JERE DAVIDSON, SR.;
AMERICAN CHESTNUT TELEVISION,
INC.; KENTUCKY HEARTLAND
TELEVISION, INC., OF
BARDSTOWN; AND CAROL LAFEVER:

John Douglas Hubbard
Bardstown, Kentucky

BRIEF FOR APPELLEES BILLY
SPEER AND GREEN RIVER
BROADCASTING CO., INC.:

Bryan E. Bennett
David A. Nunery, P.S.C.
Campbellsville, Kentucky

ORAL ARGUMENT FOR APPELLEES
BILLY SPEER AND GREEN RIVER
BROADCAST CO., INC.:

David A. Nunery, P.S.C.
Campbellsville, Kentucky