

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002296-MR

SHELBY G. PRUITT AND JOSEPHINE PRUITT

APPELLANTS

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE THOMAS L. WALLER, JUDGE
ACTION NO. 02-CI-00004

GILFRED E. HILL; BARBARA V. HILL;
DOROTHY E. BOLIN; HOWARD E. BOLIN;
JAMES R. NALLEY AND
NANCY K. NALLEY

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: KNOFF AND TACKETT, JUDGES; ROSENBLUM, SENIOR JUDGE.¹

TACKETT, JUDGE: Shelby Pruitt and Josephine Pruitt appeal from the judgment of the Bullitt Circuit Court finding them liable to Gilfred E. Hill, Barbara V. Hill, Dorothy E. Bolin, Howard E. Bolin, James R. Nalley and Nancy K. Nalley, who were the

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

Pruitts' tenants in common in real property purchased with the intent of leasing to a real estate business venture operated by Barbara Hill, Josephine Pruitt, Nancy Nalley and Dorothy Bolin. Disagreement between the parties led to a partition action in which the property was sold at auction to the lienholder bank for \$100,000. The Appellees paid the balance due on the note and filed this action seeking reimbursement from the Pruitts for their 1/3 share of the judgment, plus costs and expenses associated with preparing the property for sale. The Pruitts argue on appeal that the Uniform Partnership Act applies, and that the actions which led to the partition were in violation of partnership law. They also argue that there was no legal obligation for the Appellees to pay the Pruitts' share of the balance due, and that the Pruitts should not be held liable for the Appellees' decision to do so. We reject Appellants' contentions and affirm the judgment.

The property in question was originally purchased in 1997 by the Hills, Pruitts, and another couple, the Jarvises, with the intent of leasing it to a proposed business venture run by the three wives. The Jarvises sold their interest in the property to the Bolins and the Nalleys, who each held a 1/6 share. The Bolins and the Nalleys were briefly involved in the real estate business, which operated under the name RE/MAX First Choice. After a short time, the Bolins and the Nalleys left the

business and only Barbara Hill and Josephine Pruitt remained. At that point, Hill and Pruitt sought to continue the business under the name Realty Market Place, but apparently Realty Market Place tried to change the terms of its rental agreement and pay less than the amount of the mortgage in rent.² Realty Market Place and the majority of the property owners could not come to terms, and the property was soon without a paying tenant. The relationship between the property owners swiftly deteriorated when no tenant could be found to pay the amount of rent necessary to cover the payments, and the Hills, Bolins and Nalleys soon sought a partition of the property. The property was ordered sold at auction and the purchaser was the mortgaging bank, Peoples Bank of Mt. Washington, for \$100,000, which was less than the amount remaining on the note. The Appellees repurchased the property from the bank, repaying the full amount remaining on the note. The Appellees then sought contribution from the Pruitts, and after a bench trial the Pruitts were ordered to pay 1/3 of the expenses, mortgage payments, and the deficiency remaining after the commissioner's sale. This appeal followed.

The Pruitts make a rather convoluted argument attempting to apply partnership law to the partition and sale of

² It is not clear from either party's brief whether this decision was made by Hill or Pruitt, or if it was a decision made at a higher level within the parent corporation.

the property, apparently challenging after the fact the decision not to accept less than the mortgage payment in rent from Realty Market Place. Unfortunately for the Pruitts, no partnership existed between the property owners, as it is clear both from applicable case law and from the partnership act itself, Kentucky Revised Statute 362.180(2), that tenancy in common by itself is not sufficient to constitute a partnership, even if those property owners share the profits made from use of the property. In our opinion, this type of arrangement is intended to be excluded from the definition of partnerships by our statutes. This resolution of the basic question underpinning the Pruitts' arguments, namely whether a partnership existed at all, eliminates most of the arguments advanced by the Pruitts on appeal in a single stroke.

The only argument remaining to be considered is whether the Pruitts were obligated to pay the other property owners for the deficiency, when

. . . with no action filed and with no demand for payment being received from the People's Bank of Mount Washington, the Appellees unilaterally made the decision to purchase the subject property back from the People's Bank of Mount Washington in an amount in excess of the deficiency. Unarguably[sic], the Appellees made a bad business decision with regard to this transaction, but they are not entitled, as a matter of law, to Judgment against the Appellants by the terms of the Promissory Note, the mortgage, or any other legal obligation.

The Appellants cannot seriously believe that no obligation to pay the deficiency on the mortgage existed without a written demand or other action from the bank. Indeed, they cite no authority for this proposition. The obligation to pay under the terms of the note did not change with the commissioner's sale of the property, and equity demands that where their co-obligors paid the deficiency on their behalf, they should repay them so as not to be unjustly enriched. The Appellants complain that it is not clear whether the trial court's decision is based on law or equity, to which this Court responds that it does not matter - it is the correct result, and must be affirmed.

For the foregoing reasons, the judgment of the Bullitt Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Louis E. Reinhart, III
Shepherdsville, Kentucky

BRIEF FOR APPELLEES:

Rodney Burress
Shepherdsville, Kentucky