

RENDERED: NOVEMBER 4, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001477-MR

JYL LAND AND CATTLE CO., INC.

APPELLANT

v.

APPEAL FROM BUTLER CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 00-CI-00190

PNC, N.A., TRUSTEE UNDER THE
SUE S. HINTON TRUST, AND
H.L. HINTON, AND
STEPHEN S. HINTON

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; BUCKINGHAM AND KNOPF, JUDGES.

BUCKINGHAM, JUDGE: JYL Land and Cattle Co., Inc., appeals from an order and judgment of the Butler Circuit Court determining that the litigation between the parties had been settled. We affirm.

The underlying dispute was over the use of a roadway that runs through property owned by JYL. The appellees' (Hintons) property is land-locked and may be reached only by way

of the roadway that runs through the JYL property. The dispute arose when JYL fenced the road closed. As a result, the Hintons filed a civil complaint in the Butler Circuit Court.

On July 7, 2003, the parties met to take the depositions of H.L. Hinton and Stephen S. Hinton. Instead of deposing those parties, a settlement agreement was discussed and the terms were recorded on videotape. Those present at the deposition were the two parties to be deposed, their attorney, JYL's attorney, and Joseph Longmire. Longmire was a shareholder and director of JYL.

A review of the videotape revealed that Longmire agreed with the settlement terms. He also indicated that he would encourage the other JYL shareholder to agree. However, Longmire made it clear that he did not have the authority to commit the other shareholder to the agreement without his review.

The parties agreed, at Longmire's suggestion, that a copy of the agreement be presented to the other shareholder for his review. The parties also agreed that the other shareholder would be required to express his objection if he disagreed. As for a date, the Hintons' attorney suggested that a response be made within a week so that the trial date would not have to be cancelled. Alternatively, JYL had six months to resolve an

issue with a former owner. Both dates passed without objection by the other JYL shareholder.

On February 2, 2004, the Hintons filed a motion to enter the settlement agreement. On May 12, 2004, the court entered an order finding that there was "a legal, binding and enforceable agreement." JYL's motion to reconsider was denied, and the circuit court entered an order setting forth the terms of the settlement agreement. JYL's appeal followed.

JYL argues that the court abused its discretion by holding it to a proposed settlement that was never approved by its directors. JYL maintains that "[t]he parties left the meeting without a definite agreement and there are no records indicating subsequent approval by [JYL]." Among several arguments, the Hintons respond that there was a valid settlement agreement because the other JYL shareholder failed to object within the set date.

Having reviewed the videotape, we find no error in the court's ruling. It is clear that Longmire agreed on behalf of JYL that the other shareholder would enter any objection he had by a date certain.¹ No objection was communicated by that date.

The order and judgment of the Butler Circuit Court is affirmed.

ALL CONCUR.

¹ JYL has not argued that this was in excess of Longmire's authority.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

Mike McKown
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