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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002431-MR

TAMMY HOSKINS — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE REBECCA M. OVERSTREET, JUDGE
ACTION NO. 03-CI-01634

THE HUNTINGTON NATIONAL BANK — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BARBER, MINTON, AND TACKETT, JUDGES.

TACKETT, JUDGE: Tammy Hoskins appeals from the judgment of the Fayette Circuit Court granting summary judgment in favor of The Huntington National Bank (Huntington). Hoskins argues that she was entitled to a jury determination on the issue of whether there existed an apparent agency relationship between Huntington and Hopper & Associates (Hopper), a now bankrupt Versailles car dealership from whom she leased a Mercedes. We disagree and affirm the trial court.

Hopper primarily leased high end vehicles with credit approval coming from Huntington. In August 1997, Hoskins looked

at a 1994 Mercedes S500 Sedan that Hooper had in its inventory. Mason Moore, an employee of Hopper, discussed leasing the vehicle with Hoskins. The term of the lease was forty-eight months with payments of $684.94 per month, and a residual value of $31,810.00. Hoskins says that Moore told her she would not owe any money at the end of the lease, regardless of whether or not she returned the car early. Moore stated that he could not recall whether they discussed money that might be due at the end of the lease. The lease agreement clearly reflected that Hoskins would be liable for the difference if the car sold for less than the residual value at the end of the lease.

Hoskins kept the car one additional month after the lease expired and made an additional lease payment of $684.94. She returned the car on September 4, 2001. As stated in the lease agreement, the car was then sold at auction. Huntington received $17,000.00 from the sale of the car. The additional lease payment and the sale proceeds were subtracted from the residual value agreed to in the lease, leaving a balance of $14,414.17. In addition, Hoskins was billed for auction fees, property taxes and 6% sales tax. Huntington sent Hoskins an invoice for $15,979.44. After she failed to pay the invoice, Huntington brought suit against Hoskins pursuant to terms of the lease agreement.

Hoskins answered, asserting defenses of fraud and negligence. She claimed that Moore and Hopper were agents of Huntington, and that Moore deceived her with regard to the car's residual value, inducing her to sign a lease for much less than she would ultimately be expected to pay. Huntington provided the N.A.D.A. Official Used Car Guide for September 2001 which valued the Mercedes at $31,475.00, a figure within $400.00 of the residual value Hoskins agreed to in the lease. After discovery was complete, Huntington asked for summary judgment. The trial court granted Huntington's motion, and this appeal followed.

Summary judgment is proper only "when as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor." Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment is designed "to expedite the disposition of cases . . . when no genuine issues of material fact are raised." Steelvest at 480. Hoskins argues that a genuine issue of material fact existed regarding the question of Hopper's/Moore's apparent agency relationship to Huntington. We disagree. It is a settled proposition in Kentucky law that:

> When an apparent authority is claimed to arise from representation or conduct, the acts or statements of the principal must be looked to for the requisite foundation and

> not to those of the agent. The principal must affirmatively hold the agent out to the public as possessing sufficient authority to modify the contract, or else voluntarily, and with due awareness, permit the agent to act as if he has the required authority. The person claiming reliance on an agent's apparent authority must take heed to warnings and inconsistent circumstances.

Savannah Sugar Refinery v. RC Canada Dry, 593 S.W.2d 880, 883 (Ky. App. 1979). Hoskins has introduced no evidence that Huntington held Hopper or its employees out to be agents of Huntington, nor that Huntington was aware of any statements Moore may have made regarding amounts that could be due at the end of the lease. Moreover, Hoskins was presented with explicit evidence in the lease agreement she signed that Moore had no authority to bind Huntington to terms not contained in the lease. Right above the line where Hoskins signed her name, the lease contained the following language in bold, capitalized text:

> YOU AGREE TO ALL THE PROVISIONS OF THIS LEASE, INCLUDING THE ADDITIONAL TERMS ON THE REVERSE SIDE. YOU REPRESENT THAT YOU HAVE READ THIS LEASE. . . .
>
> NO EMPLOYEE OR REPRESENTATIVE OF THE DEALER OR LEASING COMPANY IS AUTHORIZED (I) TO BIND THE HUNTINGTON NATIONAL BANK TO ANY TERMS AND CONDITIONS OR SIDE AGREEMENTS THAT ARE INCONSISTENT WITH, OR NOT COVERED BY, THE PROVISIONS OF THE LEASE AS SET FORTH IN THIS DOCUMENT; OR (II) TO ALTER OR CHANGE ANY OF THE PREPRINTED PROVISIONS OF THIS LEASE.

Hoskins admits that she had an opportunity to review the terms of the lease before signing it, and that the explicit terms of the lease contradicted Moore's alleged statement that she would owe nothing when the lease ended. In fact the lease explained that, at its conclusion, Huntington might owe the lessee or the lessee might owe Huntington depending on any difference between the vehicle's residual value and the amount it sold for at auction.

Hoskins cites numerous cases involving apparent agency. All are easily distinguishable from the facts at hand in that, whenever our courts have found such a relationship to exist, it is because of affirmative actions taken by the principal which appeared to clothe the agent with authority. In Sims v. Marriott Int'l Inc., 184 F.Supp.2d 616 (W.D.Ky. 2001), the Court found that the plaintiffs were entitled to present their theory of apparent agency between Marriott and the Nassau Marriott hotel, which was in fact operated by a franchisee. The Court's opinion held that a genuine issue of material fact existed as to the question of apparent agency because the plaintiffs chose the hotel based on their assumption that it was operated by Marriott and there were no indications to the contrary other than the agreement between Marriott and the franchisee of which the plaintiffs had no knowledge. In Johnson v. Tansky Sawmill Toyota, 642 N.E.2d 9 (Ohio App. 1994), a case

which also involved a vehicle leased with credit from Huntington, the Court found no evidence that anyone ever told the lessee that Tansky's employee was not an employee or agent of Huntington. In fact, unlike the case at hand, the lease in Johnson included language under the lessor's signature line stating that the person signing was an agent of the bank. All of the cases cited by Hoskins on the issue of apparent agency have sufficiently different facts from the case at hand to prevent their holdings from controlling the outcome here.

Hoskins raises further grounds of appeal asserting that Huntington is liable for the harm caused by its apparent agent, that she was induced to enter the lease by Moore's alleged misrepresentations, and that Huntington was negligent in the supervision and training of its agent. Because we have already determined that Hoskins failed to introduce evidence of an apparent agency relationship, these issues are all without merit.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

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