

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-000908-MR

LUKE KEITH, JR.

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE GREGORY A. LAY, JUDGE
ACTION NO. 05-CI-00168

DEPOSIT BANK AND TRUST COMPANY, INC., F/K/A
GREENSBURG DEPOSIT BANK AND TRUST COMPANY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: DIXON, VANMETER AND WINE, JUDGES.

DIXON, JUDGE: Luke Keith appeals from a judgment against him in the Laurel Circuit Court claiming he was entitled to a jury trial and change of venue in this collection action. Finding no error, we affirm.

On February 4, 2005, Deposit Bank and Trust Company, Inc. (Deposit) filed suit against Keith and his wife in Laurel Circuit Court seeking to collect on a promissory note they executed with Deposit on August 17, 1996. Keith failed to make

timely payments on the note ultimately resulting in the underlying action. The Keith's chose to represent themselves. On November 2, 2005, the Court entered an Order of Partial Summary Judgment against the Keith's adjudging them in default under the terms of their note with Deposit. However, the Court ruled that a trial was necessary to determine the appropriate amount owed to Deposit and a bench trial was scheduled for March 21, 2006.

On February 28, 2006, Keith filed a “MOTION FOR TRIAL BY JURY AS WELL AS THE TRIAL TO BE REMOVED TO GREEN COUNTY CIRCUIT COURT.” This motion was not verified as required by KRS¹ 452.030. The Court denied this motion without hearing, and at the conclusion of the bench trial on damages, ordered the Keith's to pay \$7,514.84 as of March 1, 2005, plus interest, court costs and attorney's fees. Luke Keith now appeals claiming he was entitled to a jury trial and a change of venue. Keith's wife has not appealed the judgment against her.

Keith first claims he was entitled to a trial by jury. The facts clearly reflect however, that pursuant to CR² 38.02 the time had long since passed when Keith was entitled to a jury trial. CR 38.02 states in part,

“Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue.”

¹Kentucky Revised Statutes.

²Kentucky Rules of Civil Procedure.

Here, Deposit filed its action against Keith on February 4, 2005. Keith filed his response on March 15, 2005. Consequently, Keith's jury demand was required to be filed no later than March 25, 2005. *See Empire Metal Corp. v. Wohlwender*, 445 S.W.2d 685, 689 (Ky. 1969) and *Scudamore v. Horton*, 426 S.W.2d 142, 144 (Ky. 1968). Keith did not file his jury request until February 28, 2006, nearly a year too late. As such, the Circuit Court correctly denied Keith's motion.

Lastly, Keith contends that he was entitled to a change of venue to Green County. However, Keith again failed to comply with proper procedure entitling him to such relief. KRS 452.030 requires any application for change of venue to be made by *verified* motion. While Keith signed his motion for change of venue, he did not verify it as required by statute. A petition for a change of venue which is not verified is fatally defective. *Rand, McNally & Co., v. Turner*, 29 Ky. L. Rptr. 696, 94 S.W. 643, 644 (1906). As such, the Court correctly denied Keith's motion for change of venue.

The judgment of the Laurel Circuit Court is hereby affirmed.

WINE, JUDGE, CONCURS.

VANMETER, JUDGE, CONCURS IN RESULT.

BRIEF FOR APPELLANT:

Luke Keith, Jr.
London, Kentucky

BRIEF FOR APPELLEE:

Jeffery R. Tipton
Corbin, Kentucky