

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001011-MR

KENNETH C. ALLEN AND
MOHAMMAD ALI IQTAIFAN

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 05-CI-004498

MARVIN LORIE AND
SHIRLEY LORIE

APPELLEES

OPINION AFFIRMING

** ** * * * **

BEFORE: COMBS, CHIEF JUDGE; MOORE, JUDGE; HENRY,¹ SENIOR JUDGE.

HENRY, SENIOR JUDGE: Kenneth C. Allen and Mohammad Ali Iqtaifan appeal from the entry of a summary judgment in favor of Marvin and Shirley Lorie in an action in Jefferson Circuit Court arising from a contract to purchase a liquor store. We affirm.

Allen and Iqtaifan (Buyers) were sued by the Lories (Sellers) after they failed to perform a contract to purchase Lories Liquors in Louisville. Buyers made an

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

offer to purchase the business, assets and real estate for \$300,000. Iqtaifan gave Sellers a check for \$6,000 as earnest money, and Buyers formed a corporation, presumably to operate the business. The closing did not take place, and after several months, Sellers found another buyer for \$15,000 less than the original contract price. After the sale was consummated, Sellers sued Buyers to recover the difference between the price they received and the contract sale price. In response to the complaint, Buyers filed an answer which included affirmative defenses and a counterclaim, alleging that Sellers fraudulently induced them to buy the business by misrepresenting the status of their liquor license, by failing to disclose liens on the business real estate, and by including illegal Sunday sales in the store's sales figures. After approximately six months elapsed, Sellers filed a motion for summary judgment supported by exhibits including affidavits of Sellers. Two months after Buyers filed their verified response to the motion for summary judgment, the circuit court granted Sellers' motion and entered summary judgment in their favor, awarding Sellers \$15,000 in damages. This appeal followed.

STANDARD OF REVIEW

“The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” Kentucky Rules of Civil Procedure (CR) 56.03; *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky.App. 1996).

When we review summary judgments, “[t]he record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all

doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary judgment should not be granted unless “it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor.” *Id.* at 482. But “a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial.” *Id.*

ISSUES

Two arguments are presented by Buyers. They are first, that the trial court failed to follow the proper standard on nonjudicial rescission based on fraud in the inducement, and second, that the trial court did not apply the proper standards for summary judgment. We have examined the record and find no merit in either of these arguments.

Buyers' fraud in the inducement arguments are not supported by any evidence in the record. Specifically, Buyers did not prove the existence of any problem with Sellers' liquor license that could have hindered their ability to obtain their own license or to effect a transfer of Sellers' license. It appears that the subsequent purchasers were able to obtain a license. KRS 243.630 provides that a liquor license may not be transferred or acquired without authorization by the director of the Alcoholic Beverage Control Board. Mere statements that Sellers had experienced problems with their license are not sufficient to justify unilateral rescission of a contract of sale without some evidence that Buyers' attempt to obtain a license was frustrated by Sellers' actions. In

response to this contention, Sellers compared Buyers' attempt to renege on the deal because of claimed defects in Sellers' liquor license, to allowing rescission of a contract to buy a used car when the buyer learns that the seller has recently been convicted of infractions of the traffic laws. Although it is perhaps not perfect, we believe that the comparison is an apt one. Licenses to sell alcoholic beverages are specific to the owners and operators of retail establishments at each location and are granted only after scrutiny of the application by the state director. No evidence was presented that any act of Sellers interfered with or prevented Buyers from obtaining a license to operate the business.

The same is true of Buyers' claims that they were justified in unilaterally rescinding the contract because of the existence of undisclosed liens on the property or because illegal Sunday sales inflated the sales figures reported by Sellers. Buyers presented no proof that any liens on the premises that were known to Sellers were not properly recorded, or that Sellers attempted to conceal the existence of valid liens or otherwise to mislead Buyers. In the normal course of such a transaction, Sellers would have been required to present proof that outstanding liens had been extinguished at closing. In this case Buyers never got that far. Sellers' claim that all liens were satisfied in the course of the subsequent sale is un rebutted by Buyers.

Finally, in Buyers' Verified Response to Motion for Summary Judgment, Ken Allen made a statement that the sales volume of Lories Liquors was materially misrepresented as a result of illegal Sunday alcohol sales which were included in the sales figures for the store as if they were legal sales. This information was alleged to

have come from “prior store personnel.” Allen also alleged that the new owners' records “reveal[ed] the existence of the prior illegal Sunday sales.” In its Opinion and Order the trial court stated that “[Buyers] have put forth no affirmative evidence that illegal sale existed on Sunday or how that justifies them backing out on their written agreement to purchase the store.” We are mindful of our obligation to view the record in the light most favorable to Buyers, and to uphold summary judgment only if it appears impossible for them to produce evidence at trial warranting a judgment in their favor. After a careful examination of the record, we agree with the trial court that Buyers presented no genuine issue of material fact on the Sunday sales issue, and that summary judgment was properly entered. It appearing impossible for Buyers to produce evidence at trial warranting judgment in their favor, summary judgment was properly granted. *Steelvest* at 482. “Summary judgment procedure (CR 56) is designed to expedite the disposition of cases and avoid unnecessary trials when no genuine issues of fact are raised.” *Dossett v. New York Min. & Mfg. Co.*, 451 S.W.2d 843, 845 (Ky. 1970).

The Opinion and Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Todd K. Bolus
Louisville, Kentucky

BRIEF FOR APPELLEES:

Gregory Ward Butrum
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