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Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001567-MR
&
NO. 2006-CA-001679-MR

RICKY STOTTS — APPELLANT/ CROSS-APPELLEE

v.

APPEAL FROM CUMBERLAND CIRCUIT COURT
HONORABLE EDDIE LOVELACE, JUDGE
ACTION NO. 03-CI-00048

BROOKIE SKIPWORTH — APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING IN PART, REVERSING IN
PART, VACATING IN PART, AND REMANDING

** ** ** ** **

BEFORE: CLAYTON AND NICKELL, JUDGES; GRAVES, SPECIAL JUDGE.[1]

GRAVES, SPECIAL JUDGE: Ricky Stotts appeals and Brookie Skipworth cross-appeals from an order of the Cumberland Circuit Court denying various claims for payment and requiring various reimbursements in a judicial dissolution of a sub-chapter S

[1] Senior Judge John W. Graves, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

corporation, Two S, Inc., in which Stotts and Skipworth were each fifty-percent shareholders. For the reasons stated below we affirm in part, reverse in part, vacate in part, and remand.

FACTUAL AND PROCEDURAL BACKGROUND

Skipworth and Stotts first began a business relationship together in 1988 when Skipworth hired Stotts as a manager at her IGA Foodliner grocery store in Burkesville, Kentucky. In 1993 they formed a sub-chapter S corporation together, Two S, Inc., for the original purpose of operating a video store in Burkesville. The incorporation was structured such that Skipworth and Stotts each owned 50 percent of the stock in the company, and Skipworth was designated as its president. The parties agreed that Stotts was to provide general oversight and management of the operations, while Skipworth's principal initial contribution was to secure financing for the startup of the business. Further, Skipworth purchased the properties where the businesses were located and became the landlord of the corporation.

Eventually the corporation expanded to encompass six businesses in two locations in south-central Kentucky. In Burkesville, the Corporation operated a Movieland Video store , a RadioShack franchise, and a tanning bed operation. In Edmonton, the corporation operated a Movieland Video store, a RadioShack franchise, and a Discount Tobacco Store.

In 2003 the business relationship between Stotts and Skipworth collapsed. From Skipworth's perspective, the underpinning of the collapse was her discovery that Stotts had commenced paying himself a salary from Two S, Inc.; that Stotts' wife had received a significant salary increase for her part-time employment duties; that Stotts had

purchased a vehicle, without authorization, with corporate funds which was titled in his name; and that Stotts had paid insurance premiums for the aforementioned vehicle and another personal vehicle from corporate assets.

Upon discovering the foregoing, Skipworth unilaterally closed down the two business locations and chain-locked the doors. Stotts cut the chains and resumed business operations for a few days; however, Skipworth again succeeded in closing the business and hired a security firm to prevent Stotts' reentry.

On May 27, 2003, Stotts filed a Complaint in Cumberland Circuit Court seeking a judicial dissolution of Two S, Inc., pursuant to KRS[2] 217B.14-300. In connection with the dissolution each of the parties submitted both claims for payment from the corporation and claims asserting that the other stockholder owed reimbursement to the corporation. Payments owed to other vendors and creditors by the corporation were generally not disputed.

Following a bench trial, on May 16, 2006, the circuit court entered an order dissolving the corporation, providing for the payment of amounts owed to creditors and vendors, and resolving the various claims of the parties for payments and reimbursements.

Stotts and Skipworth each filed motions to alter, amend or vacate, and on July 11, 2006, an order was entered making minor modifications to the original order. These appeals followed.

STANDARD OF REVIEW

We begin our discussion by noting that this case was tried by the circuit court sitting without a jury. It is before this Court upon the trial court's findings of fact

[2] Kentucky Revised Statutes.

and conclusions of law and upon the record made in the trial court. Accordingly, appellate review of the trial court's findings of fact is governed by the rule that such findings shall not be set aside unless clearly erroneous. CR[3] 52.01; *Largent v. Largent*, 643 S.W.2d 261 (Ky. 1982). A trial court's finding of fact is not clearly erroneous if it is supported by substantial evidence. *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky.1998). "Substantial evidence" is defined as "evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men." *Id.* The trial court's application of law is, of course, reviewed de novo. *Monin v. Monin*, 156 S.W.3d 309 (Ky.App. 2004)

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We first consider the issues raised by Stotts in his appeal.

ENTITLEMENT TO UNPAID COMPENSATION

In connection with the dissolution proceedings Stotts submitted a claim contending that he was entitled to a payment of $65,076.00, which represents 10,846 hours of labor at a compensation rate of $6.00 per hour, for management services provided to the corporation during its period of operations.

The trial court made a finding that "there was never an agreement, oral or written, between the parties with regard to Stotts receiving payment for working as operational manager of Two S, Inc." Stotts cites us to no written or oral agreement, but, rather, bases his claim upon the doctrines of quantum meruit and implied contract. We accordingly construe the trial courts finding regarding the lack of an agreement to be accepted by Stotts. Nevertheless, Stotts contends that he is entitled to compensation

[3] Kentucky Rules of Civil Procedure.

under either (1) an implied contract theory or (2) quantum meruit (which is a form of implied contract). We disagree.

There are two types of implied contracts, those implied in fact and those implied by law. A contract implied in fact is a true contract, shown by evidence of facts and circumstances from which a meeting of minds concerning the mutual promises may be reasonably deduced. *Perkins v. Daugherty*, 722 S.W.2d 907, 909 (Ky.App.1987), (citing *Thompson v. Hunter's Ex'r*, 269 S.W.2d 266 (Ky.1954)), *see also Rider v. Combs*, 256 S.W.2d 749, 750 (Ky.1953). A contract implied by law allows for recovery quantum meruit for another's unjust enrichment. *Id*

Quantum meruit is an equitable doctrine granting one who has rendered services in a quasi-contractual relationship the reasonable value of services rendered.

> The elements of a claim for quantum meruit are as follows:
>
> 1. that valuable services were rendered, or materials furnished;
>
> 2. to the person from whom recovery is sought;
>
> 3. which services were accepted by that person, or at least were received by that person, or were rendered with the knowledge and consent of that person; and
>
> 4. under such circumstances as reasonably notified the person that the plaintiff expected to be paid by that person.

66 Am.Jur. 2d Restitution and Implied Contracts § 38 (2001) (footnotes omitted).

We believe Stotts' quantum meruit claim fails, at minimum, under prong four of the above test. In its findings, the trial court stated as follows:

> In the present action, Stotts was not only providing services for Skipworth but also for himself. Additionally, this Court did not receive any proof that Skipworth believed that Stotts expected to be paid a salary by Two S, Inc. The services

> provided by Stotts were to protect his investment in the profits of the corporation, which will inure to his benefit if there are any monies remaining after payment of the corporation's debts.

The foregoing findings of fact are not clearly erroneous. Under these facts, we find no error in the circuit court's denial of Stott's claim for compensation under the doctrine of quantum meruit. "[T]he expectation of a future business advantage or opportunity cannot form the basis of a quantum meruit claim[.]" 66 Am.Jur.2d Restitution and Implied Contracts § 47. Stotts was not providing management services for Two S, Inc., and co-shareholder Skipworth alone. He stood to gain from his management services through the success of the business by growing his own equity in the company and through profit distributions. If such promise of future wealth was insufficient, his remedy was to seek immediate compensation for his service by agreement with his co-shareholder.

Nor do we believe that there was a contract implied in fact. As previously noted, a contract implied in fact is a true contract, shown by evidence of facts and circumstances from which a meeting of minds concerning mutual promises may be reasonably deduced. *Perkins v. Daugherty*, *supra*. "Where one performs labor or renders services for another with his assent and under circumstances which ordinarily call for payment, there is a presumption that the one benefited intended payment." *Corbin's Ex'rs v. Corbin,* 302 Ky. 208, 214, 194 S.W.2d 65, 68 (Ky. 1946). However, "where there was duty or moral obligation, natural affection or *mutuality of benefit*, the presumption is that the services were gratuitous and there can be no recovery under the implied contract doctrine." *Id.* (citing *Nicely v. Howard*, 195 Ky. 327, 242 S.W. 602 (1922), *Kellum v. Browning's Adm'r*, 231 Ky. 308, 21 S.W.2d 459 (1929), and *Stacy's*

Adm'r v. Stacy, 296 Ky. 619, 178 S.W.2d 42 (1944). (Emphasis added). Here, for reasons previously discussed, there was a mutuality of benefit implicit in the work Stotts performed for Two S, Inc. As such, there was no contract implied in fact.

We accordingly are constrained to affirm upon this issue.

REIMBURSMENT OF COMPENSATION

In January 2003 Stotts began paying himself a salary of $400.00 per week. The payments continued for 20 weeks until the collapse of the business relationship between the parties, resulting in a total payments to Stotts of $8,000.00. In its May 16, 2003, order the trial court made a finding that this compensation was unauthorized. It accordingly ordered Stotts to repay this amount back into the corporation's escrow account.

For the reasons similar to those stated in the preceding section, we find no error. As previously noted, there was no agreement under which Stotts was entitled to draw compensation for his management duties, nor is he entitled to compensation under an implied contract or quantum meruit theory.

Stotts argues, however, that in filing her claim seeking reimbursement for his January 2003 - May 2003 compensation in the corporate dissolution proceedings Skipworth failed to request the full $8,000.00 amount the circuit court ordered him to reimburse. However, we construe the judicial dissolution proceedings contained in KRS Chapter 271B, Subtitle 14, as placing a duty upon the circuit court to marshal all of the assets of the corporation under dissolution. The corporation's entitlement to reimbursement for the unauthorized compensation to Stotts is an asset of the corporation. Any misstatement by Skipworth as to the actual unauthorized withdrawal does not, we

believe, entitle Stotts to the excess. In summary, the trial court did not err in requiring Stott's to repay the unauthorized compensation back to Two S, Inc., as part of the judicial dissolution process.

REIMBURSMENT OF VEHICLE TRADE-IN PROCEEDS

In the course of the Two S business venture Stotts purchased a 1995 Chevrolet Blazer for $17,500.00. The vehicle was titled in Stotts' name. Stotts later traded-in the Blazer for another personal vehicle and received a $4,500.00 trade-in allowance. The trial court determined that the purchase was unauthorized. However, the trial court further concluded that "the depreciation value of the vehicle inured to the benefit of the corporation for tax purposes[.]" Based upon this conclusion the circuit court ordered reimbursement of only the $4,500.00 trade-in credit received rather than the full $17,500.00 original purchase price.

The circuit court made a finding that the purchase "was not authorized by the corporation." Evidence was presented at trial the Skipworth was unaware of the purchase; hence this finding is supported by the record and is not clearly erroneous. The trial court further found "the $4,500.00 Stotts personally received for the sale of the vehicle should be refunded into the [corporate] account due to the fact that Stotts personally received that amount and no evidence was shown pertaining to the replacement of this amount into the business." Subject to our discussion of this issue in Skipworth's cross-appeal,[4] we further conclude that this finding is not clearly erroneous.

Stotts argues, however, that he should not be required to make the reimbursement because "the $4,500.00 was paid to Mr. Stotts as part of the distribution

[4] *See infra* at pgs. 19 - 20 wherein we conclude that the trial court understated the reimbursement due the corporation in relation to the unauthorized purchase of the Blazer.

of profits made to him and because his share of profits, even with the $4,500.00, was less than Ms. Skipworth's distribution of profits." However, we believe the the unequal distribution of profits is a separate issue from the issue of his unauthorized purchase of a vehicle with corporate funds and, accordingly, are unpersuaded by this argument. We further note that the issue of the unequal distribution of profits is addressed in the next section and need not be intermingled with the issue of the unauthorized purchase of the Blazer.

FAILURE TO EQUALIZE CORPORATE DISTRIBUTIONS

Stotts' next assignment of error is that the trial court failed to equalize the corporate distributions between the co-equal shareholders. This argument is summarized in Stotts' brief as follows:

> Debra Bradley testified at trial that both shareholders, Mr. Stotts and Ms. Skipworth, received periodic distributions from the Corporation. She testified that she reviewed the Corporation's tax records and accounting statements and calculated the total distributions made to both shareholders. Mr. Stotts received $25,631.00, inclusive of the $4,500.00[5] distribution for the vehicle discussed above, and Ms. Skipworth received $28,014.00. Both shareholders received $17,314.00 on February 24, 2000. Therefore, Ms. Skipworth received total distributions of $45,328.00 from the Corporation and Mr. Stotts only received $42,925.00, a difference of $2,383.00.

Stotts and Skipworth were co-equal shareholders in Two S, Inc. It follows that they are entitled to equal distributions of the corporate profits. We construe it to be a fundamental task of the trial court in the winding-up the affairs of a corporation pursuant

[5] Stotts has again intermingled the unauthorized purchase of the Blazer in with the issue of corporate distributions. Further, it is unclear why, if the Blazer is to be considered a distribution the full purchase price of $17,500.00 would not be considered the distribution rather that the $4,500.00 Stotts has used in the present calculations.

to a judicial dissolution to equalize on a pro rata basis the distribution of profits to the shareholders.[6]

Advancing the argument as stated herein, in his motion to alter, amend, or vacate Stotts requested, pursuant to CR 52, additional findings by the trial court upon the issue of corporate distributions. However, in its July 11, 2006, order addressing Stott's CR 52 motion, the trial court failed to make the requested findings.

As the trial court is assigned the task of fact-finder in a corporate dissolution proceeding and it did not make findings of fact upon the matter of the equalization of corporate distributions, we are unable to meaningfully review this issue. We accordingly remand upon this issue for findings of fact upon the issue of the equalization of corporate distributions. Upon remand, if the trial court determines that there was an unequal distribution of corporate profits, it should make adjustments as necessary to equalize the distributions.

CORPORATE DEBT TO SKIPWORTH'S IGA

In its May 16, 2003, order the trial court determined that Two S, Inc., owed a $36,033.43 debt to the IGA Foodliner store owned by Skipworth. Of this amount Stotts disputes an amount of $23,279.50 the store claimed was owed for shelving.

The trial court made the following finding concerning this issue:

> 8. This Court concludes that Two S, Inc., owes IGA Foodliner the amount of $36,033.43. This amount includes the $23,279.30 amount (which was in dispute as to whether it had been previously paid). The Court determines that the deposit amounts testified to by Debbie Bradley, the

[6] In her brief Skipworth contends that this argument is not properly preserved because Stotts did not raise the issue in the trial proceedings but, rather, raised the issue for the first time in his motion to alter, amend or vacate. However, a claim for the equalization of distributions is inherent in a corporate dissolution, and, accordingly, we believe the issue was properly preserved.

> accountant for Two S, Inc., and believed by Stotts as having been payment of this portion of the IGA debt, were from other sources rather than from Two S, Inc. Additionally, Stotts did not dispute the receipts introduced by Skipworth at trial, which reflected charges by Two S, Inc's, different stores. Therefore, this Court holds that the IGA claim is valid and should be paid.

There was conflicting evidence upon this issue. $23,279.50 had been recorded as a debt to the IGA on the books of the corporation, and the parties disputed whether the debt had been satisfied. "It is within the province of the fact-finder to determine the credibility of witnesses and the weight to be given the evidence." *Uninsured Employers' Fund v. Garland*, 805 S.W.2d 116, 118 (Ky. 1991). Skipworth's testimony and evidence supports the theory that the debt had not been paid. While we, if we were the fact-finder, may have determined the issue differently, the finding of the trial court was supported by substantial evidence, is not clearly erroneous, and, accordingly, we are constrained to affirm upon this issue.

PREJUDGMENT INTEREST ON IGA DEBT

In connection with the foregoing argument Stotts alleges that the trial court abused its discretion in awarding prejudgment interest upon the IGA debt. Stotts' argument, in part, rehashes his previous argument upon the validity of the $23,279.50 debt (which we do not further address), but also argues that the circuit court's allowance of prejudgment interest is, under the circumstances, inequitable.

"The determination as to whether or not to award prejudgment interest is based upon the foundation of equity and justice. It is a determination to be made by the trial court and to be disturbed by an appellate court only upon a showing of abuse of discretion." *Fields v. Fields*, 58 S.W.3d 464 (Ky.2001), quoting *Church and Mullins*

Corporation v. Bethlehem Minerals Company, 887 S.W.2d 321 (Ky.1992). The test for abuse of the circuit court's discretion is whether the decision was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575 581 (Ky.2000). No abuse of discretion has been shown, and accordingly we find no error.

TELEPHONE EXPENSE REIMBURSMENT

Stotts claims that the trial court erred in failing to award him a payment from the corporation of $958.59 which he claims was transferred from the final bill of the Two S, Inc., Edmonton store to the telephone account of another business he owned. Stotts alleges that he paid the bill from his own funds and, accordingly, is entitled to reimbursement from the corporation.

In support of his argument Stotts cites us to an August 1, 2003, South Central RTC telephone bill for the Discount Tobacco Center in Munfordville, Kentucky. The bill contains the following line items: "TSF BAL FR 432-4661 07/11 275.94" and "TSF BAL FR 432-544 0/7/11 682.65[.]" The two line items total $958.59, which is added into the grand total for the August 1, 2003 bill. It appears undisputed that 432-4661 was the telephone number of the Two S, Inc., Discount Tobacco store in Edmonton and that 432-5444 was the telephone number of the Two S, Inc., Movieland Video in Edmonton. However, the trial court denied the claim, stating as follows:

> This Court determines that the claim by Stotts for the phone bill cannot be validated, due to the fact that the amount of the initial claim by Stotts was $767.22 while the only evidenced [sic] presented at trial was for two (2) amounts which totaled $958.59, neither of which included the $767.22 amount. Therefore, said claim is barred.

Stotts testified at trial that he had the Two S, Inc., accounts transferred to his Munfordville tobacco store to avoid having the Munfordville store's telephone service adversely affected. He further testified that he paid the transferred amounts.

We conclude that the uncontradicted evidence is that the accounts were transferred and paid by Stotts. Further, we conclude that the mere discrepancy between the amount originally listed on the claim sheet and the amount proven at trial is not a sufficient basis to deny the claim. We accordingly conclude that the trial court's finding that Stott's claim for reimbursement for the telephone bill he paid on behalf of Two S, Inc., is barred is clearly erroneous. As such, we reverse this portion of the trial court's order and remand for an award of payment to Stotts of $958.59.

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We next consider the issues raised by Skipworth in her cross-appeal.

DENIAL OF RENTS FOLLOWING CLOSURE OF BUSINESS

As previously noted, Skipworth was the landlord of the two Two S, Inc., business locations. In connection with the judicial dissolution proceedings Skipworth, as landlord, sought payment for unpaid rents, including rents for the period after the business had closed its doors at the two locations. In its May 16, 2006, order the trial court awarded Skipworth rents up until the time of closure, but denied rents for the period following closure, stating as follows:

> The Court concludes that Skipworth is entitled to recover rent due from Two S, Inc., for the property she leased to the company. However, the amount of rent asserted by Skipworth is more than should be awarded. Skipworth is requesting past due rent for the time period prior to her taking possession of the property along with rent for the time after her possession until the present suit was filed. This Court

> determines that Skipworth is entitled to the past due rent up until the time she took possession.

The foregoing denial of post-closure rents is somewhat conclusory, and we are unable to determine the trial court's precise reasoning for its decision. Stated differently, this is a complex issue dependent upon multiple factors, and the trial court's findings of fact are insufficient for us to review this argument.

While in her post-judgment motion to alter, amend or vacate Skipworth did request that the trial court reverse its determination upon the issue of post-closure rents, she did not request additional findings concerning the trial court's underlying rationale for its decision. CR 52.04 provides that "[a] final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by written request for a finding on that issue or by a motion pursuant to Rule 52.02." Skipworth made no such motion. Skipworth's failure to request additional findings of fact upon this issue is fatal to this argument. *See Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982).

LEIN ON PAST DUE RENTS

In connection with the awarding of back rents, Skipworth alleges that she is entitled to the placement of a lien upon the proceeds of the liquidated inventory of the corporation pursuant to KRS 383.070(2). KRS 383.070(2) provides as follows:

> Every other landlord shall have a lien on the fixtures, household furniture, and other personal property of the tenant or undertenant, from the time possession is taken under the lease, to secure the landlord in the payment of four (4) months' rent, due or to become due, but such lien shall not be

> effective for any rent which is past due for more than one hundred and twenty (120) days.

The trial court addressed the issue as follows:

> The Court further determines that Skipworth does not hold a secured claim with regard to four (4) months rent pursuant to KRS 383.070(2). In *Louisville Gayety Theater Co. v. Ragan*, 186 Ky. 672, 217 S.W. 929 (Ky. 1920), the Court held that the lessor did not have a prior lien on the proceeds of tickets sold by the lessee because the term "personal property" under KS 2317 (now KRS 383.070) was intended to only include tangible personal property. Intangible property as defined in Black's Law Dictionary (4th Ed. Rev. 1968) at page 946, means property as has no intrinsic and marketable value, but is merely the representative or evidence of value. Therefore, the proceeds from the sale of the tangible personal property do not come under the ambit of the secured lien.

In summary, the trial court determined that the cash proceeds obtained through the liquidation of the corporation's inventory was not subject to the lien provisions of KRS 383.070 because such proceeds are not tangible personal property. As we construe the trial court's ruling, it concluded that cash is not personal property under the holding in *Louisville Gayety Theater* and, thus, is never subject to the lien provisions of KRS KRS 383.070(2). Since this issue involves the interpretation of a statute, we review the issue de novo. *Wheeler & Clevenger Oil Co., Inc. v. Washburn*, 127 S.W.3d 609, 612 (Ky. 2004).

We began by noting that we disagree with the trial court's reliance upon *Louisville Gayety Theater*. The decision itself notes its unusual and distinguishing circumstances from the normal case:

> This case has one very distinguishing feature from all other receivership suits that have come under our notice. While on the face of the petition it was made to appear that the corporation whose affairs the court was asked to take charge of possessed some assets, the facts as disclosed by the

> testimony are that it did not possess one farthing's worth of property, either tangible or intangible. As it turned out, the court appointed a receiver to continue to operate a similar business to that which had been operated by the company for whom the receiver was appointed. He began with nothing and quit with less; and so the ordinary rules governing the distribution of funds of an insolvent in the hands of a receiver as between general and preferred creditors have no application here, because all of the debts are those contracted by the receiver as a part of the necessary expenses of the receivership.

In summary, the funds at issue in *Louisville Gayety Theater*, along with the general creditor debts at issue, were earned and incurred, respectively, by the receiver after his appointment. Moreover, the funds generated were from ticket sales to view an intangible theatrical performance, not the liquidation of inventory. As such, we believe the trial court's reliance upon *Louisville Gayety Theater* was misplaced.

If the language of a statute is clear and the application of its plain meaning would not lead to an unreasonable result, then further interpretation is unnecessary. *Overnite Transp. Co. v. Gaddis*, 793 S.W.2d 129, 131 (Ky.App. 1990). Furthermore, our interpretation of the statute should neither add to nor subtract from it; should not produce an absurd result; and should produce a result that is both practical and reasonable. *Walker v. Kentucky Dept. of Education*, 981 S.W.2d 128, 130 (Ky.App.1998).

By its plain language the lien provisions of KRS 383.070 apply to "other personal property of the tenant." Personal property is defined "[i]n [a] broad and general sense, [as] everything that is the subject of ownership, not coming under [the] denomination of real estate . . . [including] . . . money." Black's Law Dictionary 1217, (6th ed. 1990).

Here, the tenant, Two S, Inc., held inventory at the time of its default upon its lease obligation to Skipworth in her capacity as landlord. It is clear that the lien provisions of KRS 383.070(2) would apply to the inventory holdings of Two S, Inc. Pursuant to the above stated definition, inventory is personal property. As part of the corporate dissolution proceedings the inventory was, as would be expected in the normal course of events, converted to cash. We believe that the interpretation of the statute to exclude application of KRS 383.070(2) to the cash obtained from the liquidated inventory would produce an absurd result.

As such, we believe the trial court erred in its holding that the lien provisions of KRS 383.070(2) were inapplicable to the past-due rent of Two S, Inc. We accordingly reverse this section of the trial court's order and remand for additional proceedings consistent with the above discussion.

POST-CLOSURE SECURITY EXPENSES

As previously noted, following the collapse of the parties' business relationship, Skipworth unilaterally closed the businesses and padlocked the doors. Stotts thereafter cut the chains and attempted to continue operations. Skipworth then rechained the doors and hired a security firm to police the premises and prevent reentry thereto. Skipworth personally paid for the security firm expenses and filed a claim for payment of same in the amount of $15,750.00. The trial court denied the expenses, stating as follows:

> This Court concludes that the monies Skipworth paid for around the clock security on the property locations were excessive and therefore does not constitute a valid claim and should not be awarded. No authority was cited for this proposition and this Court knows of none.

Before us Skipworth argues that her expenditures for security were necessary and reasonable and, even if construed as excessive "at least some portion of those expenses should have been allowed as 'reasonable' by the trial court."

Again, the trial court's findings upon this issue are scant and Skipworth failed to request additional findings sufficient for us to meaningfully review the issue. *Cherry v. Cherry, supra.*

However, the trial court's finding of excessiveness is not clearly erroneous. If Skipworth's concern was with Stotts, a relatively inexpensive legal injunction preventing him from entering onto the premises, it appears, could have accomplished the same objective as the hiring of the security firm. Without additional findings concerning other risk factors beyond any threat presented by Stotts, we are simply unable to evaluate whether any security expenditure at all was justified or not. As such, we are constrained to affirm upon this issue.

VEHICLE/INSURANCE REIMBURSMENT

As previously noted, Stotts purchased a 1995 Blazer for $17,500.00 with corporate funds and titled the vehicle in his own name. The trial court determined that the purchase was unauthorized by the corporation, and that finding is not clearly erroneous. The trial court's findings upon the issue in its May 16, 2006, order were, in full, as follows:

> The Court further concludes that the purchase of Stotts' 1995 Chevrolet Blazer vehicle by Two S, Inc., was not authorized by the corporation, however, the depreciation value of the vehicle inured to the benefit of the corporation for tax purposes. Therefore, this Court holds that the purchase price of $17,500.00 for the vehicle should not be refunded into the escrow account of Two S, Inc. However, the $4,500.00 Stotts received for the sale of the vehicle should be refunded into

> the account due to the fact that Stotts personally received that amount and no evidence was shown pertaining to the replacement of this amount into the business. Stotts has thirty (30) days in which to pay the $4,500.00 into the escrow account.

Skipworth, of course, agrees that the purchase was unauthorized, but argues that the trial court erred in requiring Stotts to pay back only the $4,500.00 he received as a trade-in when he purchased a new vehicle and not the full $17,500.00 he originally diverted to purchase the Blazer.

It appears from the above findings that the trial court's intent was to make the corporation whole, and that it perceived the corporation's taking of depreciation on the vehicle provided a dollar for dollar recovery through taxes.[7] Stated differently, it appears that the trial court concluded that the corporation had taken, and therefore recovered, $13,000.00 in depreciation expense, and, thus, all that was required to make it whole was the remaining $4,500.00 Stotts received at the time he traded in the Blazer.

We believe the trial court's reasoning to be flawed. Assuming the corporation had taken $13,000.00 in depreciation expense on the Blazer, this means that its taxable income had been reduced by that amount. Thus, assuming the maximum corporate tax rate of 35% applied, *see* 26 U.S.C.A. § 11, the corporation's tax expense was reduced by $4,550.00 (13,000.00 x 35%). This was (at most) the amount of actual cash savings to the corporation - not $13,000.00 as appears to have been supposed by the trial court.

[7] It is unclear why, if the vehicle was titled in Stotts', rather than the corporation's, name, the corporation was taking depreciation expense on the vehicle.

Stated differently, it appears that the trial court treated the depreciation deduction as a dollar for dollar tax credit rather than a mere reduction in taxable income.

As the principal underpinning of the trial court's reasoning upon this issue was flawed, its implicit finding that the corporation was made whole by requiring Stotts to reimburse the company in the amount of only $4,500.00 was clearly erroneous. We accordingly vacate this section of the trial court's order. Upon remand, the trial court should adjust Stotts' reimbursement requirement to make the corporation whole.

Under this argument heading Skipworth also contends that the trial court erred by failing to require Stotts to provide reimbursement for automobile insurance premiums paid by the corporation on the Blazer in the amount of $6,401.85. In connection with this argument the trial court found as follows:

> This Court additional [sic] concludes, that since the company received the benefit of the purchase of the 1995 Blazer that any insurance premiums paid regarding this vehicle were business expenses of Two S, Inc. Therefore, this Court concludes that amount should not be refunded into the company escrow account.

While we believe that there may be an inconsistency between the trial court's conclusion that Stotts' purchase of the Blazer was "not authorized by the corporation" and the allowing of the insurance expense thereon, the findings upon this issue are lacking in detail. Skipworth, however, did not request additional findings concerning the "benefit" the company received from Stotts' unauthorized purchase of the vehicle so as to permit meaningful review, and, accordingly, we will not disturb the trial court's determination that any insurance funds on the Blazer should not be reimbursed. CR 52.02.

CONCLUSION

For the foregoing reasons the judgment of the Cumberland Circuit Court is affirmed in part, reversed in part, vacated in part, and remanded.

ALL CONCUR.

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