

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002433-MR

UNINSURED EMPLOYERS' FUND

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE KELLY MARK EASTON, JUDGE
ACTION NO. 06-CI-01778

COUNTY OF HARDIN PLANNING AND
DEVELOPMENT COMMISSION AND
POPLAR BROOK DEVELOPMENT, LLC

APPELLEES

OPINION AND ORDER DISMISSING

** **

BEFORE: TAYLOR AND THOMPSON, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Uninsured Employers' Fund (UEF) brings this appeal from a November 14, 2006, Order of the Hardin Circuit Court which dissolved a lien upon real property in favor of UEF. For the reasons hereinafter elucidated, we dismiss this appeal as being taken from an interlocutory order.

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Hardin County Planning and Development Commission (Hardin County) filed a complaint in the Hardin Circuit Court against, *inter alios*, Poplar Brook Development, LLC (Poplar Brook) seeking an injunction to restrain Poplar Brook from conveying or transferring lots located in the Oak Forest Estates Subdivision.² Hardin County also named the UEF as a defendant because it held a lien upon the property pursuant to Kentucky Revised Statutes (KRS) 342.770. Subsequently, Poplar Brook filed an answer and cross-claim against UEF. Therein, Poplar Brook specifically claimed:

1. The Defendant, Poplar Brook Development, LLC, was named as a Defendant in a Worker's [sic] Compensation action filed in 2004 with the Office of Worker's [sic] Claims, Timothy Hanna vs. Calvin Baker and Brian D. Terry and Poplar Brook Development, LLC, and Uninsured Employers Fund; Claim No. 04-00504. At the commencement of that action, the Commonwealth of Kentucky Department of Worker's [sic] Claims filed a lien on any and all property owned by Poplar Brook Development, LLC, in Lien Book 0079, Page 366[,] in the Hardin County Clerk's Office (a copy of which is attached hereto as Exhibit A).

2. The Defendant, Poplar Brook Development, LLC, was found by Judge Landon Overfield, Administrative Law Judge in the Worker's [sic] Compensation Case, to have very little involvement in the Worker's [sic] Compensation Case and that Court specifically found Brian Terry to be the employer liable for compensation. See Opinion and Order of Judge Landon Overfield at page 15 and page 18, attached hereto as Exhibit B.

3. The Defendant, Poplar Brook Development, LLC, made a motion for partial release of the lien filed against it in the Workers' Compensation Case. See Motion for Partial

² The Oak Forest Estates Subdivision was located in Hardin County, and the County required Poplar Brook Development, LLC to maintain a development bond to secure completion of street and drainage projects. The record indicates that Poplar Brook had posted the development bond, but such bond terminated before completion of the subdivision.

Release of Lien attached hereto as Exhibit C. After receiving and reviewing objections to that motion, the Administrative Law Judge entered an Order overruling the motion for partial release of the lien. See Order of Judge Landon Overfield attached as Exhibit D.

4. The continued existence of the Certificate of Lien filed by the Uninsured Employers Fund constitutes a cloud and slander on the title of the property of Poplar Brook Development, LLC, who has not been held liable as an employer of Timothy Hanna by the Administrative Law Judge, Landon Overfield.

5. As a direct and approximate result of the slander of title alleged above, the Defendant, Poplar Brook Development, LLC, has incurred damages in the form of interest payments, lost opportunities to sell the property, diminished fair market value of the property due to its inability to secure bonds to continue construction of streets and roads; increased construction costs on the streets and roads; attorney fees in continuing to defend the Workers' Compensation action and in defending this action; future damages resulting from the imposition of a temporary order or injunction as requested by the Plaintiff in this case; and other damages as yet undetermined, all in excess of the jurisdictional limit of this Court.

On October 13, 2006, the circuit court entered a temporary injunction against Poplar Brook thereby enjoining the sale or transfer of any property in the subdivision. Also, Hardin County and Poplar Brook both filed motions seeking discharge of the lien in favor of UEF under KRS 342.770. By order entered November 14, 2006, the circuit court determined the lien to be invalid. This order did not include Kentucky Rules of Civil Procedure (CR) 54.02 language.

Generally, a final judgment or order adjudicates all the rights of all the parties. CR 54.01; *King Coal Co. v. King*, 940 S.W.2d 510 (Ky.App. 1997). In an action

involving multiple claims or multiple parties, CR 54.01 permits a circuit court to make an otherwise interlocutory order final and appealable under limited circumstances. The November 14, 2006, order appealed from did not adjudicate all the rights of all the parties in this action and did not include CR 54.02 language.³ The order simply determined the validity of the lien. In its cross-claim, Poplar Brook specifically raised the claim of slander of title against Hardin County and sought damages.⁴ We have searched the record and do not find where the circuit court disposed of the claim. And, the parties do not direct this Court otherwise. As such, a claim remains unadjudicated between Poplar Brook and Hardin County.

Now, therefore, be it ORDERED that Appeal No. 2006-CA-002433-MR is DISMISSED as interlocutory.⁵

ALL CONCUR.

ENTERED: April 18, 2008

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

³ We offer no opinion upon whether the November 14, 2006, order would have been final and appealable by inclusion of Kentucky Rules of Civil Procedure 54.02 language by the circuit court. *See Hook v. Hook*, 563 S.W.2d 716 (Ky. 1978).

⁴ Our opinion should not be misconstrued as passing upon the ultimate validity of the slander of title claim.

⁵ Previously, a motion to dismiss this appeal as interlocutory was denied by a motion panel of this Court by order entered March 9, 2007. As that panel was not privy to the entire court record and as the order is inherently interlocutory, we believe the order was improvidently entered.

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