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No. 14-111,418-A

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

JORDAN PATTERSON AMERICAN LEGION POST #319

Plaintiff/Appellant

vs.

QUALITY CONTRACTORS, LLC, et al.

Defendants/Appellees

BRIEF OF APPELLEES QUALITY CONTRACTORS, LLC,
And J.D. PRITCHARD

APPEAL FROM
THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Honorable Franklin R. Theis, Judge
District Court Case No. 07-CV-919

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NATURE OF THE CASE

This case arises out of the sale of certain real property that was owned by the Jordan Patterson Post No. 319 of the American Legion (hereinafter "the Post") to Quality Contractors, L.L.C. The defendant, Quality Contractors, L.L.C. entered into a real estate contract to purchase the Post property. After the contract terms had been agreed to and the contract executed by the parties, several disgruntled members of the Post asserted that the officers of the Post did not have authority to sell the property. After a second vote confirmed the intent of the Post to sell the property to Quality Contractors, the parties closed on the real estate transaction. After the closing was completed, and the transaction was fully paid for, the disgruntled Post members filed the current action.

ISSUES ON APPEAL

1. Whether Dan E. Turner and Phillip L Turner have standing to prosecute this appeal.
2. Whether the defendants were entitled to summary judgment.
3. Whether the Turners have an attorney's lien on the sale proceeds.

STATEMENT OF FACTS

Defendants Jerry Pritchard and Quality Contractors, L.L.C., incorporate by reference the Statement of Facts of Defendants Charles Yunker, Adjutant, American Legion Kansas Department, Verdell Bugg and the Estate of James Anderson and provide these additional facts.

The Post is a non-profit corporation organized under the laws of the State of Kansas. (ROA Vol. 12, p.1062) The bylaws of the Jordan Patterson Post contain no provisions concerning the sale of Post property. (ROA Vol. 18:2337-2380) There are

also no rules or regulations in the bylaws for the American Legion, Kansas Department, or the national organization of The American Legion dealing with the sale of Post property or real estate belonging to an American Legion Post. (ROA Vol. 12, p.1062)

The Jordan Patterson Post lodge, which was located at 811 SE 15th, Topeka, Kansas, was at the time of sale a dilapidated building with no water, lights, and no gas. (ROA Vol. 12, p.1062) The Jordan Patterson Post lodge had had some interaction with law enforcement during the last few years of its use by the Post. (ROA Vol. 12, p.1063) There were times when there was gunfire at the lodge and the police were called and people were arrested. The Jordan Patterson Post lodge had developed a reputation at that location, which was not positive to the ongoing operations of the Post. (ROA Vol. 12, p.1063)

The Jordan Patterson Post members did not regularly meet in the lodge during the two years prior to the demolition of the property. (ROA Vol. 12, p.1063) Some meetings were held there in the summer when it was warmer, although the building did not have electricity, water, or heat. ((ROA Vol. 12, p.1063)

Jerry Pritchard, president of Quality Contractors, L.L.C., approached Jordan Patterson Post member Verdell Bugg about purchasing the Post property in June or July of 2005, approximately 6 months before a contract was signed for the sale of the Post property. (ROA Vol. 12, p.1063) Because of the condition of the Jordan Patterson Post property and the fact that the Post could not keep the lodge open, there were multiple meetings in which the Post discussed the sale of the Post property. (ROA Vol. 12, p.1063)

Willie Jackson, who was Post commander until Nov. 12, 2005, had also been talking to Mr. Pritchard about selling the Jordan Post property to Quality Contractors, L.L.C. (ROA Vol. 12, p.1063) Mr. Bugg told Mr. Pritchard that he would take an offer to the Post, but that the Post probably would not sell the Post property for less than the appraised property value. (ROA Vol. 12, p.1064)

James Anderson was elected Commander of the Jordan Patterson Post on November 12, 2005. At the same time that James Anderson was made the Commander of Post 319, Robert Taylor, Wayne Wright and Ervin Jones were appointed to serve on the Executive Board. (ROA Vol. 12, p.1064) Commander Anderson replaced Willie Jackson. The district deputy for the Kansas American Legion attended the meeting where Anderson was elected to be the Commander. The state representative asked Mr. Jackson to resign as Commander and, when he refused, he was voted out of the position. (ROA Vol. 12, p.1064)

Mr. Bugg was voted by the membership to act as liaison for the Jordan Patterson Post in handling the sale of the Post property. (ROA Vol. 12, p.1064) Mr. Bugg determined that Shawnee County's assessed value for the Jordan Patterson Post property was \$115,000.00. (ROA Vol. 12, p.1064)

A special meeting was then called on December 6, 2005, to vote on the sale of the Jordan Patterson Post property. (ROA Vol. 12, p.1064) Commander Anderson conducted the meeting of the Post on December 6, 2005, at which members of the Post discussed the sale of the Post property located at 811 SE 15th Street, Topeka, Kansas, to Quality Contractors, L.L.C. During this discussion, Mr. Bugg provided the Post members with the value of the property as determined by the Shawnee County

Appraiser's Office. (ROA Vol. 12, p.1065) The minutes for the meeting of December 6, 2005, indicate that the officers of the Post reviewed the real estate contract for the sale of the property, and then passed it to the members present at the meeting for their review. There was a discussion of the matter, and then all of the members present at the meeting voted on a motion to accept the developer's offer to purchase the property for \$115,000.00. The motion passed unanimously. (ROA Vol. 12, p.1065) The vote at the December 6, 2005, meeting was 17 members of the Post in favor of selling the Post property to Quality Contractors, L.L.C., and zero against. All members of the Jordan Patterson Post that were in attendance voted affirmatively to sell the Post property. (ROA Vol. 12, p.1065)

There are no rules or regulations in the bylaws of the Post which would require the Adjutant of the Post to sign off on any contracts for the sale of property. (ROA Vol. 12, p.1065) The sales price for the Jordan Patterson Post property then increased from \$115,000 to \$120,000, because Mr. Pritchard had agreed that Quality Contractors, L.L.C., would give the Shawnee County appraised value on the Post property, and the same had been increased by \$5,000.00. As such, when the parties entered into a contract for the purchase of the Post property, the price was set at \$120,000.00 (ROA Vol. 12, p.1066)

A contract for sale of the Post property dated January 5, 2006, was signed by Commander James Anderson, Robert Taylor, Ulysses Wright and Ervin Jones for the Jordan Patterson Post, and Jerry Pritchard as president of Quality Contractors, L.L.C. (ROA Vol. 12, p.1066) At the time that the contract was executed and signed, Commander Anderson, Robert Taylor, Ulysses Wright, Ervin Jones, Jerry Pritchard, Ken Elliot, and Verdell Bugg were present. (ROA Vol. 12, p.1066)

The contract was signed because:

everybody that - in the Legion at that meeting, they were willing to sell this dilapidated tenement, they wanted to move on to try to better themselves as far as getting rid of the stigma over there and most of them thought that the price that was offered was more than enough. They jumped for joy when I told them what the appraised value was and they were ready to accept it.

(ROA Vol. 12, p.1066)

Commander Anderson prepared and sent out to the membership of the Post, a letter dated January 27, 2006, discussing the sale of the Post property so that members would know what was going on. The letter stated that there was an offer to buy the Post property for \$120,000.00, a description of why the Post should sell the property, a description of what the Post intended to do with the sale proceeds, and notice that the sale of the property required a majority vote. The letter included ballots for a second vote on the sale of the property. (ROA Vol. 12, p.1067)

The Post held a second vote on the sale of the Post property because the State headquarters instructed them that not all members had been notified of the first vote, only the persons present at the meeting were notified, and therefore the Post needed to have a second vote so that all of the members could voice their opinion on the sale. (ROA Vol. 12, p.1067)

At the February 17, 2006, Post meeting the ballots were officially opened and counted. The ballot vote was 20 members of the Jordan Patterson Post in favor of selling the property, and nine members opposed. This ballot reaffirmed the intent of the Post to sell the property to Quality Contractors, L.L.C., in accordance with the January 5, 2006, contract. (ROA Vol. 12, p.1067)

James Anderson remained the undisputed Commander of Post 319 and Robert Taylor, Wayne Wright and Ervin Jones remained on the Executive Board throughout the time frame in which the oral vote on December 6, 2007, and the ballot vote on February 17, 2006, took place. (ROA Vol. 12, p.1068) On August 11, 2006, the day of the closing, Commander Anderson called Mr. Bugg and Frank Ingram, and asked them to pick him up at the VA hospital to take him to the closing at Capital Title Insurance Company, L.C. (ROA Vol. 12, p.1068)

Commander Anderson signed the closing documents on behalf of the Jordan Patterson American Legion Post No. 319. At the time of the sale, Anderson was still the resident agent for the Post. (ROA Vol. 12, p.1068) At all times between December 6, 2005, and August 11, 2006, Mr. Anderson held himself out as the Commander of the Jordan Patterson American Legion Post No. 319. (ROA Vol. 12, p.1069) At all times between December 6, 2005, and August 11, 2006, Mr. Anderson was acting as the proper Commander of the Jordan Patterson American Legion Post No. 319. (ROA Vol. 12, p.1069)

At the closing of the sale on August 11, 2006, Anderson accepted the proceeds of the sale of the Post property on behalf of the Jordan Patterson Post. These proceeds consisted of Check No. 10-73376 drawn on the escrow account of Capital Title Insurance Company, L.C., and payable to Jordan Patterson Post 319 American Legion, Inc., aka Jordan Patterson Post #319 American Legion in the amount of \$120,000.00. (ROA Vol. 12, p.1069)

The various parties to this case filed motions for summary judgment. The District Court, in its Memorandum Opinion and Order of June 16, 2010, found that the James

Anderson was properly elected as commander of the Post (ROA Vol. 18, p. 2351) and the Post properly voted for sale of the Post property. (ROA Vol. 18, p. 2360)

ARGUMENTS AN AUTHORITIES

1. THE TURNERS LACK STANDING TO APPEAL

STANDARD OF REVIEW

The question of standing is one of law over which this court's scope of review is unlimited. *Gannon v. State*, 298 Kan. 1107, 1122, 319 P.3d 1196, 1210 (2014).

The Notice of Appeal in this case states that Dan E. Turner and Phillip L. Turner of Turner & Turner are bringing this appeal. They signed the appeal on their own behalf and without mention of any party. The Turners no longer have any client because Post 319 has been dissolved and any assets of Post 319 are now held by the American Legion Kansas Department, an intervenor in this case.

The Turners have no standing to pursue this appeal. Defendants Jerry Pritchard and Quality Contractors, L.L.C., adopt the arguments of Defendants Charles Yunker, Adjutant, American Legion Kansas Department, Verdell Bugg and the Estate of James Anderson as set forth in their appeal brief as well as the arguments of Defendants 15th Street Investments, Commerce Bank & Trust n/k/a CoreFirst Bank & Trust, Capital Title Insurance Company, LC and Deanna Zimmerman set forth in both their Appeal Brief and the Joint Motion for Involuntary Dismissal in regards to this issue and incorporate them herein.

2. THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT IN THIS CASE

STANDARD OF REVIEW

The standard of review on appeal from summary judgment is well settled:

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The trial court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to dispute must be material to the conclusive issues. *Saliba v. Union Pacific R.R. Co.*, 264 Kan. 128, 131-32, 955 P.2d 1189 (1998).

**THE DISTRICT COURT CORRECTLY DETERMINED THAT
THE POST'S AUTHORIZATION OF THE SALE OF THE POST
PROPERTY WAS LEGAL AND VALID**

The uncontroverted facts establish that the members of the Jordan Patterson Post authorized the sale of the Post property. Members of the Post voted on two separate occasions to authorize the sale of the property. The Jordan Patterson Post bylaws contain no requirements for the sale of Post property. Accordingly, a majority vote of the members was sufficient to authorize Commander Anderson to enter into the contract for sale of the property and to sign the closing documents.

An officer of a corporation is an agent for the corporation; a corporation is usually bound by a contract made on its behalf by its officers if the contract appears to be within the usual and ordinary lines of the corporation's business. *Brown v. Skate Junction, Inc.*, 761 P.2d 334 (Ct. App. 1988). Because a corporation can only act through its agent, an agent acting within the scope of his agency is merely the corporation itself acting.

Morriss v. Coleman Co., 761 P.2d 1269 (Kan. Ct. App. 1986) aff'd sub nom. *Morriss v. Coleman Co., Inc.*, 241 Kan. 501, 738 P.2d 841 (1987).

The law recognizes two distinct types of agency, actual and ostensible or apparent. *Bucher & Willis Consulting Engineers, Planners & Architects v. Smith*, 7 Kan. App. 2d 467, 469, 643 P.2d 1156 (1982). In this case, Commander Anderson had actual authority from the membership of the Post to enter into the contract to sell the Post's property and to sign the closing documents for the sale.

K.S.A. 17-6306 provides that:

A corporation may agree to submit a matter to a vote of its stockholders whether or not the board of directors determines at any time subsequent to approving such matter that such matter is no longer advisable and recommends that the stockholders reject or vote against the matter.

The question of whether the Post property should be sold was submitted to the members of the Post. The members of the Post voted twice, once on December 6, 2005, and once on February 17, 2006, to sell the Post property. The vote on December 6, 2005, was 17 persons in favor of selling the property and zero against the proposal. The vote on February 18, 2006, was 20 persons in favor of selling the property and nine opposed. Accordingly, Commander Anderson had actual authority to enter into and complete the contract for the sale of the property by the membership of the Jordan Patterson Post.

At the time the closing occurred in August of 2006, Commander Anderson was simply completing the sale of the property as he had been authorized to do by the membership of the Jordan Patterson Post on two separate occasions. Commander Anderson received the check of \$120,000.00 for the sale of the proceeds, which he then attempted to have turned over to other members of the Post on several occasions.

Following the initiation of this litigation, the proceeds were deposited into an account at CoreFirst Bank, opened by plaintiff's counsel, and were available to Jordan Patterson Post.

There was never any evidence produced which would indicate that Commander Anderson or any other member of the Post profited from the sale of the Post property. In fact, the evidence shows that Commander Anderson, Mr. Bugg, Mr. Jones, Mr. Taylor and Mr. Wright, received no benefit or gain from the sale of the property, and that those individuals simply moved forward in an attempt to sell the property as they had been authorized to do by the membership of the Jordan Patterson Post. It was in that capacity Commander Anderson entered into the contract for sale of the property and signed the closing documents. The fact that there have been disgruntled members of the Jordan Patterson Post who have attempted to block the sale of the Post property from being completed, does not, and cannot, alter the fact that the sale of this property was fully authorized by the Jordan Patterson Post, and carried out accordingly.

There is a presumption of regularity in regard to the sale. Where the president and secretary of a corporation execute a contract in behalf of the company, which is regular on its face, and not shown to be outside of the regular business of the corporation, it is prima facie evidence that it was executed with authority; and those who deny the authority take upon themselves the burden of establishing their claim. *Town V. Swigart*, Syl. ¶ 1, 43 Kan. 292, 23 P. 569 (1890). Plaintiff in this case failed to overcome its burden to show that the transactions involving the sale of the Post property were invalid.

**3. THE TURNERS HAVE NO LIEN AGAINST
THE SALE PROCEEDS UNDER K.S.A. 7-107**

The Appellate Court's interpretation and construction of statutory language is governed by an unlimited standard of review. *In re Lemons*, 289 Kan. 761, 762, 217 P.3d 41, 42 (2009).

The Turner's are not owed money by their client, because they prevailed in nothing. Their alleged client, the Post always had access to the sale proceeds. The sale proceeds were accepted by the Post and placed into an account with CoreFirst for the Post. Thus the money has never been in the hands of an adverse party. Secondly, despite all of this litigation, the Turners have done nothing to improve their client's standing under a contingency arrangement. The Turner's acquired nothing that the Post did not already have and did nothing to improve the \$120,000.00 sale price. It is therefore difficult to see how the Turner's have earned a fee or are entitled to any lien on money that was already the Posts.

To the extent necessary, Defendants Jerry Pritchard and Quality Contractors, L.L.C., adopt the arguments of Defendants Charles Yunker, Adjutant, American Legion Kansas Department, Verdell Bugg and the Estate of James Anderson set forth in their Appeal Brief as well as the arguments of Defendants 15th Street Investments, Commerce Bank & Trust n/k/a CoreFirst Bank & Trust, Capital Title Insurance Company, LC and Deanna Zimmerman set forth in both their Appeal Brief in regards to this issue and incorporate them herein.

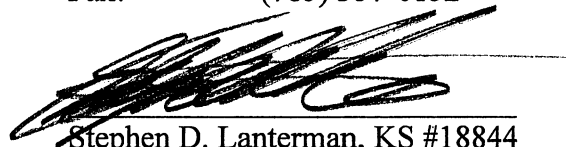
CONCLUSION

This case should be dismissed because the Turners have no standing to prosecute his appeal. As to the decision of the district court, this should be affirmed. The sale of the

Post property was approved by members of the Post and sold subject to the Post's approval of the sale. Commander Anderson was properly authorized to execute and transfer the property be deed to Quality Contractors, LLC. Finally, the Turners' "notice of lien" is void and of no effect, because they have not met he requirements of K.S.A. 7-108, and moreover, have recovered nothing for their former client upon which any claimed lien could attach.

Respectfully Submitted by:

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CERTIFICATE OF SERVICE

I do hereby certify that I have served two true and correct copies of the above referenced matter by:

placing the same in the U.S. mail, postage prepaid,

placing the same in Federal Express Overnight

facsimile to the phone number(s) listed below, and that the transmission was reported as complete and without error, or

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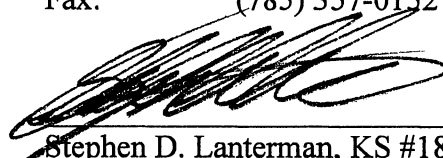
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