

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2015-CA-000931-MR

HARGUS S. SEXTON, AS AND IN HIS  
CAPACITY AS TRUSTEE OF THE HARGUS S.  
SEXTON REVOCABLE TRUST DATED  
JANUARY 7, 1992, AS AMENDED

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE THOMAS L. CLARK, JUDGE  
ACTION NO. 13-CI-00705

REBECCA R. BEAN, as Executrix of  
the ESTATE OF PATRICK C. BEAN;  
REBECCA R. BEAN, INDIVIDUALLY, and  
PATRICK C. BEAN, INC. f/k/a  
PATRICK C. BEAN, P.S.C.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: KRAMER, CHIEF JUDGE; COMBS AND JONES, JUDGES.

COMBS, JUDGE: Hargus S. Sexton, in his capacity as trustee of the Hargus S.

Sexton Revocable Trust, appeals from the summary judgment of the Fayette

Circuit Court entered in favor of Rebecca R. Bean (both individually and as Executrix of The Estate of Patrick C. Bean) and Patrick C. Bean, Inc., f/k/a Patrick C. Bean, P.S.C. Sexton also appeals from the subsequent order that awarded Bean and the estate of her late husband \$13,027.00 in attorney's fees, costs, and travel expenses pursuant to our civil rules. After a careful review of the record and the applicable law, we affirm.

The transaction at the center of this controversy commenced in July 2003. At that time, pursuant to a written agreement, Sexton agreed to lease the property at 300 West Maxwell Street in Lexington from his revocable trust to Patrick Bean. Bean, Sexton's long-time friend, accountant, and advisor, agreed to pay to Sexton \$5,000.00 in annual rent beginning on December 31, 2003. He also agreed to pay *ad valorem* taxes, assessments, and utilities -- and to maintain the property at his own expense. Finally, Bean agreed to pay the insurance premiums on the property, naming Sexton as the insured.

In addition to possession of the property, Sexton granted to Bean an exclusive right to purchase the property at any time during the lease term for a purchase price of \$75,000.00. In order to exercise the option, Bean was required to tender all necessary documents, closing costs, and the purchase price. The annual rent, which was paid in advance, was to be prorated in the event of purchase. Bean operated his accounting firm from the property and helped to manage a wide variety of Sexton's financial affairs.

On June 26, 2007, Bean executed an offer to purchase the property pursuant to the option. Sexton's wife, Sandra Sexton, signed and dated an acceptance of the offer on her husband's behalf. She also signed the deed that conveyed the property to the Beans on July 2, 2007. The deed was duly recorded.

Patrick Bean died on June 28, 2012. Hargus Sexton claimed that the property had not been transferred to the Beans; that neither he nor anyone authorized by him had signed the option and lease or the offer to purchase; and that he had never received the required rent payments or purchase price.

On February 18, 2013, Sexton, in his capacity as trustee, filed a civil action against Rebecca R. Bean (both individually and in her capacity as executrix of her late husband's estate) and her late husband's accounting firm. In his complaint, Hargus sought rescission of the deed that transferred the Maxwell Street property to the Beans. Hargus alleged that Bean had breached his fiduciary obligations with respect to the transfer of the property and that the Beans had been unjustly enriched by the transaction. He sought a declaration that the real property remained vested in the trust.

In response, Rebecca Bean and Bean's accounting firm filed a motion to dismiss the complaint for failure to state a claim or, in the alternative, for summary judgment. Following a hearing on the motion, Sexton was permitted to amend his complaint to include a claim for fraud against Bean's estate and a claim for *respondent superior* liability against Bean's accounting firm.

Bean and the accounting firm answered Sexton's amended complaint and

filed a counterclaim. There followed a period of extraordinarily contentious pre-trial practice, which included a series of bitter discovery disputes culminating in a court order requiring Sexton and his wife, Sandra Sexton, to appear for depositions. In their depositions, the Sextons admitted to having signed the 2003 option and lease agreement and the 2007 offer to purchase and deed. The trial court granted judgment in favor of Bean and the accounting firm. The trial court determined that Bean and the firm were entitled to judgment as a matter of law since there was no evidence of fraud or forgery. Additionally, the trial court granted the estate's motion for reasonable expenses incurred in making the proof pursuant to the provisions of CR<sup>1</sup> 37. This appeal followed.

In his prehearing statement, Sexton identified two issues for appeal: (1) whether the conveyance had been procured through fraud and forgery and (2) whether expenses, including attorney fees and costs, had been properly awarded according to our civil rules. In his brief, Sexton contends that the trial court erred by concluding that Bean and the firm are entitled to an award of expenses pursuant to CR 37.03. Sexton also argues that the trial court erred by concluding that Bean and the firm were entitled to judgment as a matter of law because he contends that there was evidence supporting his claim that the conveyance of the property was procured through fraud. He offers three theories in support of this contention. We shall address these arguments in the order in which they were presented to the court.

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<sup>1</sup> Kentucky Rule of Civil Procedure.

CR 37.03 provides as follows:

If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (a) the request was objectionable pursuant to Rule 36.01, or (b) the admission sought was of no substantial importance, or (c) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (d) there was other good reason for the failure to admit.

In response to the Bean Estate's requests for admission, Sexton denied: that he had signed or authorized any other person to sign the 2003 lease and option; that \$75,000.00 had been paid to the trust and deposited into Sexton's bank account on or about July 2, 2007; that \$5,000.00 in annual rent payments had been made to the trust in 2003, 2004, 2005, and 2006 and deposited into Sexton's bank account; and that he had signed or authorized any other person to sign the 2007 offer to purchase.

However, during the course of discovery, Sexton eventually admitted that he had signed the 2003 option and lease agreement and that his wife, Sandra Sexton, had signed his signature on the 2007 option and purchase agreement. Mrs. Sexton confirmed her signature on the 2007 agreement and confirmed that her husband was aware that she was transacting his business affairs on that date. Sexton finally conceded receipt of both the \$75,000.00 purchase price for the

disputed property and the annual rent payments. He even admitted that he had been aware that Bean had paid these sums **before** he filed the action against Bean's widow and accounting firm.

The admissions made during the Sextons' depositions directly contradict their unqualified denials made in response to the estate's discovery requests. Sexton's clear attempt to resist acknowledging the truth resulted in the expenditure of both time and money. His excuses for refusing to admit the truth of the basic facts underlying the civil action do not fit within any exception provided by CR 37.03.

Sexton contends that his refusal to admit receipt of the purchase price and annual rent payments is justified because he "had no way of confirming the validity of the [bank] deposit." This excuse is wholly lacking in credibility under the circumstances since Sexton had ready access to this information and admitted that he was aware of the deposits even before he filed suit. Equally unavailing are Sexton's excuses for refusing to admit that he had signed the 2003 lease and option agreement and the 2007 purchase agreement or that he authorized his wife to execute either of them on his behalf. Sexton had no reasonable basis to believe that he might prevail with respect to any issue related to the genuineness of the documents or the truth of any matter concerning his receipt of the purchase price of the property or annual rent payments. There was no good reason for Sexton's failure to admit in written discovery either what he later conceded or what was

duly proven in deposition testimony. As a result, we conclude that the trial court did not err by awarding the expenses and attorney fees incurred to make the proof.

Sexton additionally argues that the trial court erred by granting summary judgment with respect to his fraud claim. His contention is based on three claims: (1) that he was unaware of the transfer of the disputed property until after Bean's death; (2) that Sandra Sexton could not have executed the July 2007 documents as his agent; and (3) that Sandra Sexton was fraudulently induced by Bean to sign the documents. However, an examination of each of these assertions reveals that summary judgment was properly entered in favor of Bean and her late husband's firm.

Upon our review of the entry of summary judgment, we must decide whether a trial court correctly determined that there were no genuine issues of material fact and that the moving party was entitled to judgment as a matter of law. CR 56; *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476 (Ky. 1991). "The moving party bears the initial burden of showing that no genuine issue of material fact exists, and then the burden shifts to the party opposing summary judgment to present 'at least some affirmative evidence showing that there is a genuine issue of material fact for trial.'" *Lewis v. B&R Corp.*, 56 S.W.3d 432, 436 (Ky.App. 2001)(quoting *Steelvest*, 807 S.W2d at 482). "The party opposing summary judgment cannot rely on their own claims or arguments without significant evidence in order to prevent a summary judgment." *Wymer v. JH*

*Properties, Inc.*, 50 S.W.3d 195, 199 (Ky. 2001)(citing *Harker v. Federal Land Bank of Louisville*, 679 S.W.2d 226 (Ky. 1984)).

Sexton claimed that he did not know about the transfer of the disputed property until after Bean's death since he could not recall signing the lease and option agreement. However, that argument is insufficient to create a genuine issue of material fact with respect to his claim of fraud. After Bean and the firm met their initial burden of persuading the trial court that the documents of conveyance were duly signed and recorded, Sexton was required to present some affirmative evidence of fraud in order to defeat the motion for summary judgment. Sexton's self-serving testimony that he could not remember signing the lease and option agreement cannot overcome the substantial evidence of record (including his own admission) which indicated that he did, in fact, sign the documents. *See Brooks v. Lexington-Fayette Urban County Housing Auth.*, 132 S.W.3d 790 (Ky. 2004).

We also reject Sexton's assertion that Sandra Sexton could not have executed the July 2007 documents as his agent. The 2007 offer to purchase and deed satisfied the contractual terms arising from Sexton's execution of the 2003 lease and option agreement. Pursuant to the option agreement, Sexton agreed that Bean could purchase the disputed property by: providing notice of his intention to buy the building; tendering the \$75,000.00 purchase price; and presenting the documents necessary to complete the conveyance. Having met these requirements, Bean was entitled to specific performance of the agreement. Sexton attempted to repudiate the July 2007 documents after the fact by contending that he could not



have delegated his authority to transfer ownership of the property to his wife. His argument is wholly unavailing under the clear facts underlying every aspect of the transaction.

As trustee, Sexton was authorized to delegate the performance of the ministerial act necessary to complete the transaction to his agent, Mrs. Sexton. *See Ball v. Consolidated Realty Co.*, 246 Ky. 458, 55 S.W.2d 60 (1932). The record indicates that Mrs. Sexton executed the July 2007 documents pursuant to the actual and apparent authority granted by her husband. In 2006, Sexton suffered a stroke that left him impaired on his right side. He was in and out of the hospital during the summer of 2007. He was aware that his wife met Bean in his office on a weekly basis to sign documents and checks.

Moreover, Sexton's claim that he did not know that his wife had signed the July 2007 documents until later does not create an issue of fact as to her authority. Agency "can be established by circumstantial evidence including the acts and conduct of the parties such as the continuous course of conduct of the parties covering a number of successive transactions." *Mill St. Church of Christ v. Hogan*, 785 S.W.2d 263, 267 (Ky.App. 1990). Mrs. Sexton routinely signed documents on her husband's behalf, and she signed the July 2007 documents as part of that course of conduct.

Sexton's third contention is that an issue of material fact exists concerning his allegation that his wife was fraudulently induced by Bean to sign the documents. In order to succeed on this claim, Sexton was required to prove -- by

clear and convincing evidence: “(a) a material representation; (b) which is false; (c) known to be false or made recklessly; (d) made with inducement to be acted upon (e) acted in reliance thereon; and (f) causing injury.” *United Parcel Serv. Co. v. Rickert*, 996 S.W.2d 464, 468 (Ky. 1999). The only representation identified by Sexton in his brief as inducing Mrs. Sexton’s signature on the 2007 offer to purchase was a remark allegedly made by Bean indicating that it was “all right” for her to sign her husband’s name. This representation in no way satisfied any of the elements for fraud because both Sexton and his wife testified that Mrs. Sexton routinely signed documents and checks when he was unable to do so.

Sexton’s arguments with respect to the trial court’s decision to grant summary judgment on his claim for breach of fiduciary duty and his claim for unjust enrichment were not identified as issues in the prehearing statement. CR 76.03. Therefore, we shall not address them.

We affirm the order and final judgment of the Fayette Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert E. Maclin  
Mastin Childers  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Carroll M. Redford  
Michelle Lynn Hurley  
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