

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
EIGHTH DIVISION
CIVIL BRANCH
NO. 09-CI-3962

FILED AND ENTERED
ATTEST, WILMA F. LYNCH, CLERK
MAY 05 2010
FAYETTE CIRCUIT CLERK
BY Whiffen DEPUTY

FAYETTE HEATING AND AIR, ET. AL.

PLAINTIFF

V.

OPINION and ORDER

UNIVERSITY OF KENTUCKY, ET. AL.

DEFENDANT

This matter has come before the Court upon the University of Kentucky's Motion for Partial Summary Judgment on the issue of Lien Enforcement. The Court has taken it under advisement and has duly considered the motions and responses, the arguments of counsel, and the applicable law. The Court is of the opinion that the law is clear that property owned by the Commonwealth cannot be encumbered by mechanics liens. Mechanic's liens are a statutory creation and exist only in the circumstances outlined by the statutes that create them. KRS 376.010 relates to mechanic's liens on private property. KRS 376.210 grants lien rights for labor or supplies expended for a public improvement. That statute is likewise inapplicable because the language specially states that property owned by a state is exempt from lien attachment.

While the Court believes that property interests owned by the state cannot be encumbered by mechanic's liens, the law is Kentucky clearly supports the placement of mechanic's liens on privately owned property. In this case, the Commonwealth of Kentucky (the Commonwealth) has a fee simple ownership interest in the Coldstream property¹. The Commonwealth, through its agent University of Kentucky (UK), carved

¹ 1648 McGrathiana Parkway.

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out of that fee simple interest a 100 year leasehold interest². That interest belongs to Lexington DarkStar, LLC or Lexington Holdings One, LLC, as assignee. The Commonwealth and UK maintain fee simple ownership of the Coldstream property. However, neither the Commonwealth nor UK has an ownership interest in the leasehold. The lease agreement, in sections 17.1 and 17.2, clearly allows the leasehold interest to be mortgaged and for that interest to be foreclosed upon. The Court views this as evidence of the parties' intent that the ownership of the leasehold and the underlying property be separate. The parties' own words, as well as a commonsense evaluation of facts, reveal that the leasehold interest is a separate interest from the fee simple interest. Thus, although Coldstream itself is owned by the Commonwealth and is not subject to having liens filed against it, the leasehold interest is privately owned and is within the scope of KRS 376.010.

The University of Kentucky argues, without acknowledging that the leasehold and the fee simple interest do not have a common owner, that liens cannot be filed against the leasehold because the underlying property is owned by the Commonwealth. The Court has not been presented with any binding authority to support that argument. The lease agreement itself supports the proposition that the leasehold may be encumbered by liens. Section 8 of the lease agreement requires the tenant to discharge, within 30 days, any lien that may be filed against the property. Although this section has the obvious purpose of assigning liability for liens that may be filed against the property during the term of the lease, it is also an acknowledgment by the parties that the property and the leasehold could be encumbered by liens.

For the above stated reasons, the Court is of the opinion, that under Kentucky law, mechanic's liens may be filed against privately owned leasehold interests regardless of who owns the fee simple interest in the underlying property. The Court

² The leasehold referred to here is the lease UK entered into with Lexington DarkStar, LLC.

finds that Mechanic's liens may not be placed on the Commonwealth's fee simple interest in the Coldstream property. However, mechanic's liens may be placed on the leasehold interest, originally held by Lexington DarkStar, LLC, in the Coldstream property. It is hereby **ORDERED** that the University of Kentucky's Motion for Summary Judgment is **OVERRULED**.

Entered this 4th day May 2010.


HONORABLE THOMAS CLARK
Fayette Circuit Court, Eighth Division

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