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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2024-CA-1230-MR

GERALD DICK — APPELLANT

v.

APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE TERESA WHITAKER, JUDGE
ACTION NO. 23-CI-00101

LAKE CUMBERLAND RESORT
COMMUNITY ASSOCIATION, INC. — APPELLEE

AND

NO. 2024-CA-1285-MR

LAKE CUMBERLAND RESORT
COMMUNITY ASSOCIATION, INC. — CROSS-APPELLANT

v.

CROSS-APPEAL FROM PULASKI CIRCUIT COURT
HONORABLE TERESA WHITAKER, JUDGE
ACTION NO. 23-CI-00101

GERALD DICK — CROSS-APPELLEE

OPINION
AFFIRMING APPEAL NO. 2024-CA-1230-MR
AND
REVERSING CROSS-APPEAL NO. 2024-CA-1285-MR

** ** ** ** **

BEFORE: CALDWELL, ECKERLE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Gerald Dick brings Appeal No. 2024-CA-1230-MR from a November 30, 2023, order and September 18, 2024, amended order of the Pulaski Circuit Court dismissing Dick's complaint against Lake Cumberland Resort Community Association, Inc. (the Association) without prejudice. The Association brings Cross-Appeal No. 2024-CA-1285-MR from the November 30, 2023, order and the September 18, 2024, amended order. We affirm Appeal No. 2024-CA-1230-MR and reverse Cross-Appeal No. 2024-CA-1285-MR.

Gerald Dick owns residential property in a subdivision known as the Lake Cumberland Resort (Resort) located in Pulaski County. Dick purchased the property in March of 2014. As a property owner in the Resort, Dick is required to pay mandatory assessments to the Association. The governance of the Resort by the Association has been the subject of intense litigation in the past.[1] Dick has

[1] *See Lake Cumberland Resort Cmty. Ass'n, Inc. v. Carter*, No. 2020-CA-0990-MR, 2022 WL 2760345 (Ky. App. Jul. 15, 2022); *Kleman v. Lake Cumberland Resort Cmty. Ass'n, Inc*., No. 2018-CA-0091-MR, 2019 WL 5861908 (Ky. App. Jul. 12, 2019), *withdrawn by deciding authority*. Gerald Dick also previously filed an unsuccessful action against the Lake Cumberland Resort Community Association, Inc. in *Dick v. Lake Cumberland Resort Cmty. Ass'n, Inc.*, No. 2021-CA-1030-MR, 2023 WL 3397479 (Ky. App. May 12, 2023).

repeatedly voiced objection to or criticism of the Association's alleged failure to properly maintain the resort's common areas and provide security for the Resort.

Dick filed a complaint on January 30, 2023, and amended complaint on February 6, 2023, against the Association in the Pulaski Circuit Court. Dick asserted:

> 6. Defendant had/has a duty to maintain its common areas of the resort; to provide on site security within *its* boundaries of *its* neighborhood; to provide maintenance of *its* common areas and provide amenities in *its* designated neighborhood; in the manner *it* has represented to *its* members as identified within their deed as being in the neighborhood *it* is mandated to serve.
>
> 7. Defendant has no such duty to any other members of any other designated neighborhood within Lake Cumberland Resort.
>
> 8. Defendant does not follow its own governing documents in the calculation of assessments, its billing of assessments, its collection of assessments and/or its failure to recognize its separation from other neighborhoods within Lake Cumberland Resort and has caused/causing harm to Plaintiff.
>
> 9. Defendant made material representations or statements; that those material representations or statements were false; that Defendant knew to be false or recklessly made; that Defendant's false misrepresentations or statements induced Plaintiff to act upon reliance of those false or reckless representations or statements; and Plaintiff's reliance on Defendant's false misrepresentations or statements caused him harm.
>
> 10. Plaintiff has repeatedly asked and been denied access to review all records of LCRCA [Lake

Cumberland Resort Community Association]. Defendant's repeated concealment of its records is inconsistent with Plaintiff's right to review all LCRCA records under LCRCA's governing documents.

11. Plaintiff conferred a benefit on Defendant; that there was a direct relationship between Plaintiff and Defendant related to those conferred benefits; and Defendants' unjust enrichment from Plaintiff's conferred benefits caused Plaintiff to suffer loss or harm, and/or Plaintiff failed to receive the benefit of his bargain.

12. Defendant has repeatedly provided services, amenities and other benefits to individuals who were not members of LCRCA causing harm to Plaintiff.

13. Defendant has repeatedly provided services, amenities and other benefits to individuals who were not members of LCRCA, while assessing the cost of those services, amenities and other benefits to the members of LCRCA, causing harm to Plaintiff.

14. Defendant has repeatedly engaged in frivolous litigation which was of no benefit to its members, including Plaintiff, who has been forced to foot the bill, causing harm to Plaintiff.

15. Defendant has repeatedly acted/acting ultra vires, acted/acting outside the scope of its authority pursuant to its governing documents, and acted/acting inconsistently with or refused to follow court orders, each act/acting caused/causing harm to Plaintiff.

16. Venue is appropriate in Pulaski Circuit Court as Lake Cumberland Resort is located in Pulaski County, Kentucky[,] and alleged damages exceed the minimal jurisdictional limits of this Court.

17. Plaintiff demands a trial by jury.

18. Plaintiff reserves the right to amend this Complaint as discovery progresses and justice demands.

WHEREFORE, Plaintiff, Gerald Dick, demands as follows:

1. Damages for Defendant's breach of contract;

2. Damages for Defendant's fraud;

3. Damages for Defendant's unjust enrichment[.]

First Amended Complaint at 2-4.

The Association filed an answer and later a motion to dismiss or for summary judgment. In the motion, the Association asserted that Dick failed to set forth a claim for breach of contract, fraud, or unjust enrichment. The Association claimed that it regularly maintained the common areas of the resort, including the common area adjacent to Dick's property. Also, the Association pointed out that the Revised Declarations of Protective Covenants, Conditions and Restrictions for LCRCA (Covenants) permitted the Association to maintain property that it did not own. The Association also argued that the maintenance of common areas amounted to a business decision that was entitled to the presumption of good faith and that absent fraud, the "courts will not interfere." Memorandum in Support of Motion to Dismiss at 9. As for Dick's assertion that the Association failed to provide security at the Resort, the Association contended that it had no contractual duty with the homeowners of the Resort to provide security; rather, the decision to provide security was completely discretionary. Additionally, the Association

argued that it followed the Covenants in calculating, billing, and using the assessments paid by lot owners of the Resort. The Association also contended that Dick's fraud claims were meritless as Dick failed to demonstrate that it engaged in a misrepresentation or there was reliance thereupon. As to unjust enrichment, the Association argued that Dick's claim that the Association was unjustly enriched by his payments of assessments is without merit. According to the Association, Dick's assessments were due and payable pursuant to the Covenants, and there were no overpayments.

In response, Dick maintained that in return for his payment of assessments, the Association was required "to perform certain duties and obligations outlined in its governing documents." Response at 1. Dick also maintained that the Association misrepresented that the Resort would have "24/7 security to its members as a selling point." Response at 1. In particular, Dick claimed:

> Defendant had/has a duty to maintain its common areas of the resort; to provide on site security within its boundaries of its neighborhood; to provide maintenance of its common areas and provide amenities in its designated neighborhood; in the manner it has represented to its members as identified within their deed as being in the neighborhood it is mandated to serve.

Response at 2. Dick also argued that the Association failed to comply with its "governing documents" and had engaged in frivolous litigation causing the amount

of assessments to be excessive and leaving the fund for upkeep of common areas depleted. Response at 3. Dick pointed out that the Association entered into a contract with Renaissance Enterprises, 484, d/b/a House Doctors to provide security for the Resort. Even though the contract required House Doctors to provide security from 6 p.m. to 8 a.m. on weeknights and around the clock on weekends, Dick maintained that there were many days when no security was provided. Dick also complained that the security gates were nonoperational for prolonged periods of time.

By order entered on November 30, 2023, the circuit court considered the Association's motion as a motion for summary judgment and granted same. The court highlighted that Dick claimed that the Association breached contracts but failed to specify the particular contract and provision that the Association breached. Consequently, the court determined that Dick failed to set forth a claim for breach of contract. Likewise, the court concluded that Dick failed to specify the particular fraudulent misrepresentation by the Association that supported his claim of fraud. As to unjust enrichment, the court held that as Dick asserted claims of breach of contract, the "unjust enrichment [was negated] as a viable cause of action in this case as a matter of law." Order at 2. The court dismissed Dick's claims against the Association with prejudice.

Thereafter, Dick filed a motion to vacate the November 30, 2023, order. By amended order entered September 18, 2024, the court denied the motion to vacate; nonetheless, the court amended the November 30, 2023, order, by designating the dismissal of Dick's claims to be without prejudice.

Dick filed a notice of appeal (Appeal No. 2024-CA-1230-MR) and the Association filed a notice of cross-appeal (Cross-Appeal No. 2024-CA-1285-MR) from the November 30, 2023, order and the September 18, 2024, amended order. We shall address each appeal *seriatim*.

STANDARD OF REVIEW

In this case, it is uncontroverted that "matters outside the pleading[s] [were] presented to and not excluded by the court"; thus, the motion to dismiss must be treated as a motion for summary judgment**.** Kentucky Rules of Civil Procedure (CR) 12.02. Summary judgment is proper where there exists no material issue of fact, and movant is entitled to judgment as a matter of law. CR 56.03; St*eelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). When considering a motion for summary judgment, all facts and inferences therefrom are to be considered in a light most favorable to the nonmoving party. A party opposing a properly supported motion for summary judgment cannot depend on unsupported allegations of her pleadings but must present affirmative evidence demonstrating a genuine issue of material fact exists. *Sparks v. Trustguard Ins.*

Co., 389 S.W.3d 121, 124 (Ky. App. 2012); *Godman v. City of Fort Wright*, 234 S.W.3d 362, 370 (Ky. App. 2007). As summary judgment looks to questions of law and the circuit court's interpretation thereof, our review is *de novo*. *Ballard v. 1400 Willow Council of Co-Owners, Inc.*, 430 S.W.3d 229, 234 (Ky. 2013).

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Dick contends that the circuit court erred by rendering summary judgment dismissing his claims against the Association. Dick alleges the material issues of fact exist as to his breach of contract claim, fraud claim, and unjust enrichment claim. Dick argues that the Association failed to adequately maintain common areas, failed to provide security at the resort, improperly imposed high assessments, and engaged in frivolous litigation in violation of the governing documents. Dick also maintains that the Association had entered into three separate contracts (Landscaping Contract, Security Services Contract, and Facilities Maintenance Contract) with House Doctors, and Dick has accumulated evidence demonstrating that these contracts were breached as services were not performed as set forth therein. According to Dick, even though the contract required House Doctors to provide security from 6 p.m. to 8 a.m. on weeknights and around the clock on weekends, Dick maintained that there were many days when no security was provided. Dick complained that the security gates were nonoperational for prolonged periods of time. Dick also asserts that he has set

forth sufficient facts as to his claim of fraud. Dick states that the Association knowingly misrepresented that the Resort would have onsite security patrols and locked coded gates and he relied upon such misrepresentations when he purchased his residence within the Resort. Additionally, Dick argues that his unjust enrichment claim is viable. Dick asserts that he would be entitled to damages for unjust enrichment if his breach of contract claim should fail, and the circuit court erred by dismissing the claim. We will initially address the breach of contract claim followed by the fraud claim, and finally the unjust enrichment claim.

(i). Breach of Contract

In Kentucky, a claim for breach of contract requires the claimant to demonstrate: "1) [the] existence of a contract; 2) breach of that contract; and 3) damages flowing from the breach of contract." *Metro Louisville/Jefferson County Gov't v. Abma*, 326 S.W.3d 1, 8 (Ky. App. 2009). Thus, to set forth a valid breach of contract claim, it is axiomatic that the claimant must specify the particular contract and provision that was allegedly breached. Where the claimant fails to cite a particular contractual provision or even the language of the contractual provision allegedly breached, the claimant has not set forth a valid breach of contract claim as a matter of law, and the claim of breach of contract will not withstand a motion for summary judgment. Simply stated, there must be a specific

contractual obligation or promise that allegedly was not performed or not fully performed.

In this case, Dick alleges that the Association breached a contract or contracts by its failure to perform or fully perform several contractual obligations. However, Dick does not cite to any specific contract or to any particular contractual provision that imposed such obligations or duties upon the Association that the Association failed to perform. So, it is impossible for Dick to demonstrate that the Association did, in fact, breach a contract where no specific contractual obligation was particularly identified.[2] Dick generally identifies three contracts (the Covenants, Bylaws, and the Standards) but fails to set forth any particular provision under the Covenants, Bylaws, or the Standards allegedly breached by the Association.

In its order, the circuit court, likewise, pointed out that Dick failed to set forth specific contractual provisions that the Association breached, and as a result, the circuit court believed that summary judgment was appropriate. In his brief, Dick curiously responds:

> The [circuit] Court erroneously rendered a finding that Mr. Dick should have specifically identified the exact section of the covenants . . . in order to survive the summary judgment finding. Such demand was more akin

[2] It is not the function of this Court to research, construct, or articulate a party's argument on appeal. *Harris v. Commonwealth*, 384 S.W.3d 117, 131 (Ky. 2012) (citing *Doherty v. City of Chicago*, 75 F.3d 318, 324 (7th Cir. 1996)).

> to Plaintiff's "failure to state a claim," than the "there are no genuine issues of material fact" standard.

Dick's Brief at 7. Dick is mistaken as to the summary judgment standard. The Association was entitled to summary judgment because it showed that Dick did not set forth a valid breach of contract claim as he failed to identify a specific contractual provision allegedly breached. In so doing, the Association demonstrated that no genuine issue of material fact existed, and it was entitled to judgment as a matter of law. *See Steelvest, Inc*., 807 S.W.2d at 480.

Dick also asserts that the Association breached the Landscaping Contract, Security Services Contract, and Facilities Maintenance Contract entered into between it and House Doctors. Dick was not a party to these contracts, and he fails to allege how he could maintain an action for breach of these contracts. *See Ping v. Beverly Enterprises, Inc.*, 376 S.W.3d 581, 595 (Ky. 2012); *Presnell Constr. Managers, Inc., v. EH Constr., LLC*, 134 S.W.3d 575, 579 (Ky. 2004). Therefore, we conclude that the circuit court properly rendered summary judgment dismissing Dick's breach of contract claims.

(ii). Fraudulent Misrepresentation

The Kentucky Supreme Court has recognized that fraud through misrepresentation contains six elements:

> (1) the defendant made a material representation to the plaintiff; (2) the representation was false; (3) the defendant knew the representation to be false or made it

> with reckless disregard for its truth or falsity; (4) the defendant intended to induce the plaintiff to act upon the misrepresentation; (5) the plaintiff reasonably relied upon the misrepresentation; and (6) the misrepresentation caused injury to the plaintiff.

Giddings & Lewis, Inc. v. Indus. Risk Insurers, 348 S.W.3d 729, 747 (Ky. 2011). Additionally, the misrepresentation must concern a "past or present material fact." *Giddings*, 348 S.W.3d at 748 (quoting *Flegles Inc. v. TruServ Corp.*, 289 S.W.3d 544, 549 (Ky. 2009)). And, "'a mere statement of opinion or prediction may not be the basis of an action.'" *Flegles Inc.*, 289 S.W.3d at 549 (quoting *McHargue v. Fayette Coal & Feed Co.*, 283 S.W.2d 170, 172 (Ky. 1955)). Relevant herein, a claim of fraud must set forth the circumstances with particularity and "must set forth the time, place, and substance of the allegedly fraudulent statements." *Keeton v. Lexington Truck Sales, Inc*., 275 S.W.3d 723, 726 (Ky. App. 2008); CR 9.02; *see also Scott v. Farmers State Bank*, 410 S.W.2d 717, 722 (Ky. 1966).

In his brief, Dick asserts that he set forth the circumstances underlying his claim of fraud:

> Mr. Dick outlined as an example of LCRCA's [the Association's] fraud when he stated in his Response and stated with more detail in his sur-reply that LCRCA made material representations that it provided in person, on site security to its membership, that members could expect on site, in person security patrols and code controlled gates to protect their property; that those material representations or statements were false; that LCRCA knew to be false or recklessly made when it claimed in open court and in its motion here, that any

> security provided was solely for the benefit of LCRCA and not the membership; that LCRCA's false misrepresentations or statements induced Plaintiff to act upon reliance of those false or reckless representations or statements by being lulled into a false sense of security that induced Mr. Dick to purchase his property; and Mr. Dick's reliance on LCRCA's false misrepresentations or statements caused him harm. . . .

Dick's Brief at 10. Viewing the facts most favorable to Dick, Dick asserts that the Association made a material misrepresentation that it provided onsite security, including security patrols and locked coded gates, to its membership at the Resort. Dick further maintains that this representation concerning security was false. Dick then claimed that the Association "knew [the representation] to be false or recklessly made when it claimed in open court and in its motion here, that any security provided was solely for the benefit of LCRCA [the Association] and not the membership[.]" Dick's Brief at 10. Dick stated that the Association's false representations as to security induced him to purchase property at the Resort.

As noted, a claim of fraud must be set forth with particularity. CR 9.02; *Keeton*, 275 S.W.3d at 726. Two essential elements of fraudulent misrepresentation require that "the defendant knew the representation to be false or made it with reckless disregard for its truth or falsity[,]" and the plaintiff relied upon the misrepresentation to his detriment. *Giddings & Lewis, Inc.*, 348 S.W.3d at 747. Dick alleges that the Association affirmatively represented that the Resort had security and that the Association knew the representation as to security was

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false when the Association claimed in court and by motion in this case that security was only provided for the Association and not its members. And Dick claims to have relied upon the Association's representation as to security in purchasing his property at the Resort. However, it is impossible for Dick to have relied upon such representation as Dick purchased his property in March of 2014, and this action was not commenced in the circuit court until 2023. It was incumbent upon Dick to allege the particular circumstances prior to his acquisition of his property in 2014, demonstrating that the Association made the representation to provide security to Dick. He must also show the Association knew the representation was false at the time Dick purchased his property in 2014 or that the Association made such representation with a reckless disregard for the truth at the time Dick purchased his property. *See Scott*, 410 S.W.2d at 722; *Sparks*, 389 S.W.3d at 124; *Keeton*, 275 S.W.3d at 726. Dick failed to do so. His amended complaint fails to set forth any specific allegations of fraudulent misrepresentation that may have occurred prior to Dick purchasing his property. Consequently, we are of the opinion that the circuit court properly rendered summary judgment dismissing Dick's fraudulent misrepresentation claim.

(iii). Unjust Enrichment

Unjust enrichment is rooted in equity and "'is applicable as a basis of restitution to prevent one person from keeping money or benefits belonging to

another.'" *Rose v. Ackerson*, 374 S.W.3d 339, 343 (Ky. App. 2012) (quoting *Haeberle v. St. Paul Fire and Marine Ins. Co.*, 769 S.W.2d 64, 67 (Ky. App. 1989); *see also* RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT, § 1 (2011). To succeed upon a claim of unjust enrichment, it must be demonstrated that a "'(1) benefit conferred upon defendant at plaintiff's expense; (2) a resulting appreciation of benefit by defendant; and (3) inequitable retention of [that] benefit without payment for its value.'" *Superior Steel Inc. v. Ascent at Roebling's Bridge, LLC*, 540 S.W.3d 770, 778 (Ky. 2017) (quoting *Furlong Dev. Co. v. Georgetown-Scott Cnty. Planning & Zoning Comm'n*, 504 S.W.3d 34, 39-40 (Ky. 2016)). Where the terms of an express contract control, a claim of unjust enrichment will not be available. *Superior Steel Inc*., 540 S.W.3d at 778. As set forth more specifically in RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT, § 2(2) (2011), a claim for unjust enrichment is not viable where:

> A valid contract defines the obligations of the parties as to matters within its scope, displacing to that extent any inquiry into unjust enrichment.

The comments to the above rule recognize that a claim of unjust enrichment is subordinate to a breach of contract claim:

> *c*. *Restitution subordinate to contract.* Judicial statements to the effect that "there can be no unjust enrichment in contract cases" can be misleading if taken casually. Restitution claims of great practical significance arise in a contractual context, but they occur at the margins, when a valuable performance has been

> rendered under a contract that is invalid, or subject to avoidance, or otherwise ineffective to regulate the parties' obligations. Applied to any such circumstance, the statement that there can be no unjust enrichment in contract cases is plainly erroneous. See §§ 31- 36.
>
> Properly interpreted, however, the same statement acknowledges an important limit to liability in unjust enrichment. Contract is superior to restitution as a means of regulating voluntary transfers because it eliminates, or minimizes, the fundamental difficulty of valuation. Considerations of both justice and efficiency require that private transfers be made pursuant to contract whenever reasonably possible, and that the parties' own definition of their respective obligations—assuming the validity of their agreement by all pertinent tests—take precedence over the obligations that the law would impose in the absence of agreement. Restitution is accordingly subordinate to contract as an organizing principle of private relationships, and the terms of an enforceable agreement normally displace any claim of unjust enrichment within their reach.

RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT, § 2 cmt. c (2011).

In considering Dick's argument set out in his brief, the exact factual basis for Dick's claim of unjust enrichment is unclear. It appears that Dick is generally alleging that he was contractually obligated to pay assessments, and in return the Association was contractually obligated to provide security and to maintain common areas. Although Dick did not cite to specific contractual provisions, the basis of his claims revolved around three contracts (the Covenants, Bylaws, and the Standards). As set forth above, restitution (unjust enrichment) is

subordinate to contract, and valid contractual terms or obligations supplant equity actions based upon restitution. Here, none of the three contracts have been adjudicated invalid or unenforceable, and Dick has particularly alleged that his claims for relief are grounded in contractual duties or obligations on the part of the Association. We, thus, conclude that the circuit court properly rendered summary judgment dismissing Dick's unjust enrichment claim as the contracts control the parties' claims.

(iv). Forum Shopping

On pages 17-18 of Dick's Brief, he argues that the Association has engaged in forum shopping. Dick asserts that the Association attempted to intervene in another action (*Lake Cumberland Resort Community Association, Inc. v. Carter*, No. 2020-CA-0990-MR, 2022 WL 2760345 (Ky. App. Jul. 15, 2022)), but its attempt was apparently denied. Dick maintains that the Association then improperly failed to inform the circuit court of such fact in this action. According to Dick, the Association also improperly filed a separate action in circuit court and improperly consolidated that action with the *Carter* action. Dick contends that the Association has not sought to consolidate this action with the other actions, which demonstrates that the Association is guilty of forum shopping.

In his brief, Dick fails to set forth a cogent legal analysis and fails to cite to any legal authority to support this argument. It is not the function of the

Court to construct legal arguments for a party. *Harris v. Commonwealth*, 384 S.W.3d 117, 131 (Ky. 2012) (citing *Doherty v. City of Chicago*, 75 F.3d 318, 324 (7th Cir. 1996)). Moreover, Dick filed the underlying complaint that initiated this action. We conclude that Dick's allegation of forum shopping was properly dismissed by the summary judgment. Additionally, we view any remaining contentions of error raised by Dick as moot or without merit.

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The Association contends that the circuit court erred by amending its order rendering summary judgment to be without prejudice. The Association argues that the summary judgment constitutes an adjudication of the merits and should have been with prejudice. For the following reasons, we agree.

Under Kentucky law, "'[d]ismissals of actions without prejudice ordinarily indicate that such judgments of dismissal affect no right or remedy of the parties and that there has been no decision of the case on the merits.'" *Overstreet v. Greenwell*, 441 S.W.2d 443, 447 (Ky. 1969) (quoting 27 C.J.S. *Dismissal and Nonsuit* § 73, p. 471). Conversely, "[a] dismissal with prejudice, of course, acts as a bar to again asserting the cause of action so dismissed. It thus has the effect of a judgment on the merits constituting the cause res judicata." *Polk v. Wimsatt*, 689 S.W.2d 363, 364 (Ky. App. 1985).

To grant a motion for summary judgment, the court must conclude that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. Thus, a summary judgment necessarily adjudicates the merits of an action. Such adjudication is not dependent upon disputed facts, but rather is an adjudication of the merits as a matter of law. In this case, the circuit court erred by amending the order granting summary judgment and designating it to be without prejudice. We, thus, reverse the circuit court's September 18, 2024, amended order, thereby fully reinstating the November 30, 2023, order, which correctly stated that the action was dismissed with prejudice.

SUMMARY

In summation, we hold that the circuit court properly rendered summary judgment dismissing Dick's claims against the Association and affirm Appeal No. 2024-CA-1230-MR. Additionally, we are of the opinion that the circuit court improperly amended the summary judgment by designating it to be without prejudice. We, thus, reverse the September 18, 2024, amended order challenged in Cross-Appeal No. 2024-CA-1285-MR, thereby fully reinstating the November 30, 2023, order, which correctly stated that the action was dismissed with prejudice.

For the foregoing reasons, we affirm Appeal No. 2024-CA-1230-MR and reverse Cross-Appeal No. 2024-CA-1285-MR.

ALL CONCUR.

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