

RENDERED: MARCH 7, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-002168-MR

JAMOS CAPITAL, LLC; JAMOS FUND, I, LP;
AND JAMOS FINANCIAL SOLUTIONS, LLC

APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 12-CI-003380

ENDURANCE AMERICAN SPECIALTY
INSURANCE COMPANY

APPELLEE

OPINION REVERSING AND REMANDING

** ** * * * * *

BEFORE: COMBS, NICKELL AND STUMBO, JUDGES.

STUMBO, JUDGE: Jamos Capital; Jamos Fund, and Jamos Financial Solutions (collectively referred to as the Jamos Appellants) appeal from an opinion and order of the Jefferson Circuit Court which denied a motion for declaratory judgment.

The Jamos Appellants were seeking a declaration that Endurance American

Specialty Insurance Company was obligated to defend and indemnify them under the terms and provisions of a professional liability insurance policy. Specifically, the Jamos Appellants believed Endurance was required to defend and indemnify them against claims presented against them in a pending class action lawsuit. We find that the trial court must first determine whether Kentucky or Ohio law applies in this case. This issue was addressed at the trial level, but the court did not rule upon it. We therefore reverse and remand for further proceedings.

Jamos Capital is the sole owner of Jamos Fund and Jamos Financial. Jamos Fund is in the business of collecting delinquent property taxes. Jamos Fund purchased certificates of delinquency against various Jefferson County, Kentucky, properties. A number of Plaintiffs filed a class action lawsuit against all three Jamos Appellants alleging improper practices in the collection of property taxes.

Jamos Capital had a professional liability insurance policy through Endurance. The policy requires Endurance to defend and indemnify Jamos Capital. Jamos Capital informed Endurance of the pending lawsuit and Endurance retained a lawyer to defend all the Jamos Appellants. After about a year, Endurance denied it had a contractual obligation to defend the Jamos Appellants and refused to continue to pay the cost of the defense. Jamos then filed the underlying motion for declaratory judgment against Endurance. The trial court found that Endurance was not required to defend or indemnify the Jamos Appellants due to some exclusions outlined in the policy. The motion for declaratory judgment was denied and this appeal followed.

“It is well established that construction and interpretation of a written instrument are questions of law for the court. We review questions of law *de novo* and, thus, without deference to the interpretation afforded by the circuit court.” *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky. App. 1998). Because we review the issues in this appeal *de novo*, we believe we cannot fully and judiciously analyze this case without first knowing which state’s laws to apply. Endurance cites to Ohio law in its brief, while the Jamos Appellants cite to Kentucky law in their briefs. Endurance claims that the laws of Ohio apply because the insurance policy was entered into in Ohio. The Jamos Appellants claim that Kentucky law applies because the issues pertaining to the class action lawsuit revolve around Kentucky.

In order to determine whether Kentucky or Ohio law applies to this case, the trial court must determine “which state has the most significant relationship to the transaction and the parties.” *Lewis v. American Family Ins. Group*, 555 S.W.2d 579, 581 (Ky. 1977) (citation omitted). This will require a factual inquiry best suited to the trial court. The laws of Kentucky and Ohio are different and the ultimate outcome of this case may depend on which law to apply. For example, part of the class action lawsuit against the Jamos Appellants includes punitive damages. Punitive damages are not insurable in Ohio, *see Casey v. Calhoun*, 531 N.E.2d 1348 (Ohio App. 1987), but punitive damages are insurable in Kentucky, *see Continental Ins. Companies v. Hancock*, 507 S.W.2d 146 (Ky. 1974).

For the foregoing reasons, we reverse and remand for further proceedings.

ALL CONCUR.

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