

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-001298-MR

RODNEY KOGER

APPELLANT

v.

APPEAL FROM MONROE CIRCUIT COURT  
HONORABLE DAVID L. WILLIAMS, JUDGE  
ACTION NO. 15-CI-00069

MICHAEL TIM CROWE AND  
ELLA BETH CROWE

APPELLEES

OPINION  
AFFIRMING

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BEFORE: JONES, D. LAMBERT, AND TAYLOR, JUDGES.

LAMBERT, D., JUDGE: This is an appeal from a foreclosure action. The Monroe Circuit Court dismissed the complaint of Rodney Koger, the appellant, which alleged tortious interference with a business relationship and breach of contract in connection with the judicial sale of certain real property. After review, we affirm.

## I. BACKGROUND

Michael Tim and Ella Beth Crowe sold their chicken farm to Rodney Koger in 2007. As part of the deal, Koger executed a mortgage in favor of the Crowes. Koger also retained the Crowes as consultants for the farming operation. The parties entered into a written consulting agreement.

After falling behind on his mortgage payments, Koger filed for bankruptcy pursuant to Chapter 12 of the Bankruptcy Code. The Bankruptcy Court subsequently confirmed a plan that ostensibly eased Koger's ability to pay the Crowes. Once Koger defaulted under the terms of the bankruptcy plan, however, the Crowes initiated foreclosure proceedings in the circuit court.

Following a mediation, the circuit court entered an agreed judgment and order of sale. Koger evidently did not comply with the terms of this order, and the circuit court referred the matter to the Master Commissioner. The Master Commissioner held an auction and sold the chicken farm on May 22, 2015. James D. Metzger bought the chicken farm for \$1.6 million. No party objected to the Master Commissioner's report entered the day of the sale. The circuit court confirmed the sale on June 2, 2015.

Two weeks later, Koger sued the Crowes. Koger claimed the Crowes tortiously interfered with a business relationship and breached the consultant agreement by divulging allegedly confidential information to Metzger. Koger further alleged that the leaked information allowed Metzger to purchase the chicken farm for an optimal price at the auction. According to Koger, Metzger's

purchase price was \$1 million below market value yet high enough to prevent Koger from exercising a redemption right.

The Crowes promptly moved to dismiss the suit, asserting that Koger was barred from raising issues arising from the foreclosure sale under the doctrine of res judicata. The Crowes pointed out that the June 2, 2015 order confirming the Master Commissioner's sale was a final order, and that any issue with the sale should have been raised within 10 days of entry. After a hearing, the circuit court accepted the Crowes' argument and dismissed the suit. This appeal followed.

## **II. STANDARD OF REVIEW**

A motion to dismiss for failure to state a claim upon which relief may be granted admits as true the material facts of the complaint, [s]o a court should not grant such a motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved[.] Accordingly, the pleadings should be liberally construed in the light most favorable to the plaintiff, all allegations being taken as true. This exacting standard of review eliminates any need by the trial court to make findings of fact; rather, the question is purely a matter of law. Stated another way, the court must ask if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief? Since a motion to dismiss for failure to state a claim upon which relief may be granted is a pure question of law, a reviewing court owes no deference to a trial court's determination; instead, an appellate court reviews the issue de novo.

*Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010) (internal quotations and citations omitted).

## **III. DISCUSSION**

On appeal, Koger contends that it was error for the circuit court to dismiss his suit without conducting an evidentiary hearing. Without stating which allegations, if accepted as true, would warrant such a hearing, Koger further

contends that the circuit court improperly failed to consider the facts alleged in his complaint. For the following reasons, we disagree with Koger's position.

Res judicata, consisting of claim preclusion and issue preclusion, prevents a party from relitigating a previously adjudicated claim or issue. *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 464–65 (Ky. 1998). If the two suits concern the same controversy, *i.e.*, arose from the same transactional nucleus of facts, then the previous suit adjudicated every matter which was or could have been brought in support of the cause of action. *Id.* at 465.

Under CR 53.05(2), any party seeking to bring an action on a master commissioner's report has 10 days to object to the report in writing upon receiving notice of the report. Furthermore, a circuit court order confirming a judicial sale is a judgment under CR 54.01, *see Moore v. Waltman's Adm 'x*, 288 Ky. 258, 156 S.W.2d 100, 105-06 (1941), which typically becomes final ten days after its entry. *Harris v. Camp Taylor Fire Protection Dist.*, 303 S.W.3d 479, 482 (Ky. App. 2009). “[A] court loses jurisdiction once its judgment is final.” *Mullins v. Hess*, 131 S.W.3d 769, 774 (Ky. App. 2004).

Here, Koger attempted to circumvent the circuit court's final order via collateral challenge. The facts alleged in Koger's complaint arose during the judicial sale. Koger thus had an opportunity to challenge the propriety of the judicial sale before the June 2, 2015 order became final, but did not. He did not file a written objection to the Master Commissioner's report, nor did he timely petition the circuit court to set aside the confirmation order—not even on a basis

similar to the one proffered in his subsequent complaint. In fact, Koger ultimately violated CR 73.02(1)(a) by failing to timely appeal the confirmation order based on information in the record. Accordingly, we affirm the Monroe Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:  
Ken Garrett  
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BRIEF FOR APPELLEE:  
Scott A. Bachert  
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