IN THE COURT OF APPEALS
AT KNOXVILLE

FILED

October 30, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

SWAN SEYMOUR,	)	UNION CHANCERY
	)	C.A. NO. 03A01-9712-CH-00535
Plaintiff-Appellee	)	
vs.	)	HON. JOHN TURNBULL
	)	CHANCELLOR BY INTERCHANGE
JOE SEYMOUR AND SEYMOUR CHARTER BUS LINES, INC.,	)	AFFIRMED IN PART, REVERSED IN PART, and REMANDED.
Defendants-Appellants	)	

JAMES S. MacDONALD, Dunn, MacDonald & Coleman, P.C., Knoxville, for Appellants.

JOHNNY V. DUNAWAY, Dunaway Law Office, LaFollette, for Appellee.

<u>O P I N I O N</u>

McMurray, J.

THE PARTIES

This is a dispute, basically, among family members over the ownership, control, and liabilities of Seymour Charter Bus Lines, Inc.; parcels of real estate and the various personal obligations of the parties to each other. The plaintiff, Swan Seymour, is the father of the defendant, Joe Seymour, also known as Joseph O. Seymour. Swan Seymour, Joe Seymour, and Seymour Charter Bus Lines, Inc., were the original parties to this action. Subsequent to the filing of the verified original complaint, the plaintiff filed a verified amended complaint adding as defendants, Jean Seymour, ex-wife and long-time, live-in companion of the plaintiff, (who had been held out as plaintiff's wife for many years) and Kathryn C. Seymour, wife of Joe Seymour. All issues as to Jean Seymour and Kathryn C. Seymour were settled and they are not parties to this appeal.

THE PLEADINGS

In his original verified complaint, the plaintiff alleged that he was the owner of 501 shares of stock in Seymour Charter Bus

Lines, Inc., and that the certificate evidencing his ownership had been lost. He sought access to the books and records of the corporation, an accounting, a declaration that he was the owner of 501 shares of stock in the corporation and a money judgment not to exceed $450,000.00. The defendant Joe Seymour filed an answer and counterclaim. In his answer, Joe Seymour alleged that he is the owner of 500 shares of stock in the corporation and that the defendant, Jean Seymour, his mother, is the owner of 201 shares of stock. In his counterclaim, Joe Seymour sought a judgment against the plaintiff for an unspecified amount arising "out of the same transaction or occurrence that forms the subject matter of the original plaintiff's claim." A "Stock Sale Agreement" was attached to the counterclaim, purportedly signed by all the parties, whereby the plaintiff sold all of his stock in the corporation to the corporation and Joe Seymour.

Subsequently, the plaintiff filed a verified amended complaint, which he substituted for his original complaint. In his amended complaint, the plaintiff added Jean Seymour and Kathryn C. Seymour as defendants and alleged that he had agreed to sell his stock to Joe Seymour and the corporation but questions whether the agreement had been consummated. In the amended complaint, the plaintiff sought a monetary judgment against the defendants, a judgment for monies claimed to be due under the terms of a lease agreement, prejudgment interest, a declaration that the defendants

breached their agreements with plaintiff, a determination of stock ownership, and various relief relating to real estate transactions between and among the parties.

The defendants, Seymour Charter Bus Lines, Inc., Joe Seymour, and Kathryn Seymour, filed an answer to the amended complaint generally denying all material allegations and relying on the defenses of unclean hands, estoppel, fraud, illegality, laches, release, waiver, and judicial estoppel. It was further alleged that the plaintiff had converted corporate assets to his own use. In a counterclaim, the defendants sought judgment for all converted assets including two buses and corporate checks alleged to have been cashed and appropriated to plaintiff's personal use while attempting to evade a judgment lien of the Federal Deposit Insurance Corporation. The defendant, Jean Seymour also filed an answer and counterclaim, but, as hereinbefore noted, neither she nor Kathtyn Seymour are parties to this appeal.

The original plaintiff filed answers to the counterclaims in which most of the material allegations were denied. He asserted as affirmative defenses the statute of frauds, laches, statute of limitations, and waiver.

Before trial, all issues relating to Jean Seymour and Kathryn Seymour were resolved. It is in this posture that the remaining

issues were presented to the trial court at a bench trial. After the presentation of all the evidence, a judgment was entered by the court disposing of all the remaining issues. From this judgment, the defendants, Joe Seymour and Seymour Charter Bus Lines, Inc., have appealed. The appellants present the following issues for our consideration:

1. The learned trial court erred in overruling the defendant's motion for judgment on the pleadings or alternatively for summary judgment.

2. The learned trial court erred in overruling the defendant's motion for involuntary dismissal made at the conclusion of the plaintiff's proof and renewed at the conclusion of all the proof.

3. The learned trial court erred in overruling the defendant's post-trial motion to amend the pleadings to conform to the evidence by deleting any reference to "treasure shares" and eliminating any liability on the part of Seymour Charter Bus Lines, Inc. with respect to that certain note dated May 12, 1989 in the original principal amount of $72,743.23.

4. The learned trial court erred in sustaining the plaintiff's claim for $100,000 allegedly due as a result of his "sale" of a 13.8 acre tract of land to his son, Joseph O. Seymour.

   A. The learned trial court erred in admitting into evidence exhibits 36 and 37 representing unilateral memoranda of settlement discussions.

   B. The learned trial court erred in admitting into evidence the May 12, 1993 letter of defendant's counsel.

STANDARD OF REVIEW

We enter upon our review cognizant of our duty under Rule 13(d), Tennessee Rules of Appellate Procedure: "Unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." In a de novo review, the parties are entitled to a reexamination of the whole matter of law and fact and this court should render the judgment warranted by the law and evidence. Rule 36, Tennessee Rules of Appellate Procedure; Thornburg v. Chase, 606 S.W.2d 672 (Tenn. App. 1980); American Buildings Co. v. White, 640 S.W.2d 569 (Tenn. App. 1982). We note that no such presumption attaches to conclusions of law. See Adams v. Dean Roofing Co., 715 S.W.2d 341, 343 (Tenn. App. 1986).

DISCUSSION

At the outset, we wish to note that the findings of fact and the judgment entered thereon by the trial court are scholarly, complete, and commendable. Unfortunately, however, we are unable to concur with all the legal conclusions reached by the chancellor in his disposition of the case.

As to the first issue presented, concerning summary judgment, it is well-settled that there is no right of appeal from the denial

of a motion for summary judgment. "A trial court's denial of a motion for summary judgment, predicated upon the existence of a genuine issue of material fact, is not reviewable on appeal when a judgment is subsequently rendered after a trial on the merits." Bradford v. City of Clarksville, 885 S.W.2d 78, 80 (Tenn. App. 1994). Accord Oliver v. Hydro-Vac Services, Inc., 873 S.W.2d 694, 696 (Tenn. App. 1993); Mullins v. Precision Rubber Products Corp., 671 S.W.2d 496, 498 (Tenn. App. 1984). On a motion for judgment on the pleadings, the court's action must be weighed under the following authority:

> The sole purpose of a Tenn. R. Civ. P. 12.02(6) motion to dismiss is to test the legal sufficiency of the complaint. Sanders v. Vinson, 558 S.W.2d 838, 840 (Tenn. 1977); Holloway v. Putnam County, 534 S.W.2d 292, 296 (Tenn. 1976). These motions are not favored, see Moore v. Bell, 187 Tenn. 366, 369, 215 S.W.2d 787, 789 (1948), and are now rarely granted in light of the liberal pleading standards in the Tennessee Rules of Civil Procedure. See Barish v. Metropolitan Gov't, 627 S.W.2d 953, 954 (Tenn. Ct. App. 1981); 5A Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure §§ 1356 & 1357 (2d ed. 1990) ("Wright & Miller").
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> Tenn. R. Civ. P. 12.02(6) motions are not designed to correct inartfully worded pleadings. Wright & Miller § 1356, at 296. And so a complaint should not be dismissed, no matter how poorly drafted, if it states a cause of action. Paschall's, Inc. v. Dozier, 219 Tenn. 45, 50-51, 407 S.W.2d 150, 152 (1966); Collier v. Slayden Bros. Ltd. Partnership, 712 S.W.2d 106, 108 (Tenn. Ct. App. 1985). Dismissal under Tenn. R. Civ. P. 12.02(6) is warranted only when no set of facts will entitle the plaintiff to relief, Pemberton v. American Distilled Spirits Co., 664 S.W.2d 690, 691 (Tenn. 1984), or when the complaint is totally lacking in clarity and specificity. Smith v. Lincoln Brass Works, Inc., 712 S.W.2d 470, 471 (Tenn. 1986).

> While it is not our role to create claims where none exist, Donaldson v. Donaldson, 557 S.W.2d 60, 62 (Tenn. 1977), we must always look to the substance of a pleading rather than to its form. Usrey v. Lewis, 553 S.W.2d 612, 614 (Tenn. Ct. App. 1977). Thus, when a complaint is tested by a Tenn. R. Civ. P. 12.02(6) motion to dismiss, we must take all the well-pleaded, material factual allegations as true, and we must construe the complaint liberally in the plaintiff's favor. Lewis v. Allen, 698 S.W.2d 58, 59 (Tenn. 1985); Holloway v. Putnam County, 534 S.W.2d at 296; Lilly v. Smith, 790 S.W.2d 539, 540 (Tenn. Ct. App. 1990).

Dobbs v. Guenther, 846 S.W.2d 270, 273-274 (Tenn. App. 1992).

In connection with this issue, we will briefly discuss appellant's argument relating to judicial estoppel.

> ... Tennessee has long recognized the doctrine of judicial estoppel. It is said that as a matter of public policy a party will not be permitted to take inconsistent positions in legal proceedings. However, it is also recognized that each case must be decided on its on [sic] particular facts and circumstances. The doctrine is designed not so much to prevent prejudice resulting to the other party but to prevent prejudice resulting to the administration of justice if a party were allowed to swear one way one time and a different way another time. Cothron v. Scott, 60 Tenn. App. 298, 446 S.W.2d 533 (1969); Bubis v. Blackman, 58 Tenn. App. 619, 435 S.W.2d 492 (1968); Monroe County Motor Co. v. Tennessee Odin Ins. Co., 33 Tenn. App. 223, 231 S.W.2d 386 (1950).
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> A necessary component of this rule is that anything short of a willfully false statement of fact, in the sense of conscious and deliberate perjury, is insufficient to give rise to an estoppel and that the party is entitled to explain that the statement was inadvertent or inconsiderate or represents a mistake of law. Hamilton Natl. Bank v. Woods, 34 Tenn. App. 360, 238 S.W.2d 109 (1951); State ex rel. Ammons v. City of Knoxville, 33 Tenn. App. 622, 232 S.W.2d 564 (1950); Monroe County Motor Co. v. Tennessee Odin Ins. Co., supra; D.M. Rose & Co. v Snyder, 185 Tenn. 499, 206 S.W.2d 897 (1948).

State ex rel. Scott v. Brown, 937 S.W.2d 934, 936 (Tenn. App. 1996).

The trial court was apparently of the opinion that, while the plaintiff's sworn pleadings were at odds with each other, the statements fell short of willfully false statements of fact, in the sense that they amounted to conscious and deliberate perjury. We are not convinced that the preponderance of the evidence supports this view. However, we do not find it necessary to closely scrutinize this finding of the trial court in view of our disposition of the case.

> There is another type of estoppel. A double barrelled variety. It is applied where both parties are guilty of inequitable conduct. When such is the case, both parties are estopped to show any facts upon which relief can be predicated. It is sometimes called the doctrine of "clean hands" and has been defined as:
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> The principle is general, and is one of the maxims of the Court, that he who comes into a Court of Equity asking its interposition in his behalf, must come with clean hands; and if it appear from the case made by him, or by his adversary, that he has himself been guilty of unconscientious, inequitable, or immoral conduct, in and about the same matters whereof he complains of his adversary, or if his claim to relief grows out of, or depends upon, or is inseparably connected with his own prior fraud, he will be repelled at the threshold of the court. C. F. Simmons Medicine Co. v. Mansfield Drug Co. (1893) 93 Tenn. 84, 23 S.W. 165.
>
> None of the parties to the fraud can have the assistance of the Court to compel either the enforcement or cancellation of the contract or to have property interests transferred thereunder restored. Equity will leave such parties where they have placed themselves, and will refuse all affirmative aid to either of the fraudu-

> lent parties. Gibson's Suits in Chancery, 5th Ed., § 51; Parks v. McKamy (1859) 40 Tenn. 297.

Continental Bankers Life Ins. Co. v. Simmons, 561 S.W.2d 460, 464-465 (Tenn. App. 1977).

The dispositive point, in our view, is the finding by the trial court and our concurrence therewith, that the parties and each of them came into court with unclean hands. Specifically, the court found "... there is no question ... that the transactions that we're talking about were entered into for the purpose of delaying or hindering creditors. I think that everybody that participated in that knew that." The transcript of the evidence is long and voluminous. We will not, therefore, attempt to recite the testimony of the various parties and witnesses. Suffice it to say that there is more than ample evidence in the record to unequivocally demonstrate that the transactions involved were entered into for the sole purpose of attempting to put plaintiff's assets out of the reach of creditors, specifically the F.D.I.C. While the transactions were, indeed, ingenious in their design, nevertheless the purpose was clearly shown by the evidence to have been made with fraudulent intent and for no other apparent legitimate purpose. We find the explanation given by the plaintiff to be implausible. While the trial court was in a much better position to judge the credibility of the appellee as a witness, we nevertheless, cannot ignore the total, petulant incredulity of his testimony. Because there is no real dispute, however, relating to the original transactions between the parties, we do not deem our

comment on the plaintiff's testimony as a significant intrusion into the province of the trial court in judging the credibility of the testimony.

In any event, it is clear that the transactions between the parties were made with a fraudulent purpose; that the parties had "unclean hands"; and, therefore, they are entitled to no relief from the courts relating to the original transactions between them which, irrefutably, gave rise to this action.

While we have noted that we would make no attempt to recite the testimony of the various parties and witnesses, we would be remiss in our obligations to other persons who might find this opinion to be of at least some curious interest, without at least a recitation in narrative form of some of the transactions involved and brief quotations from testimony received by the court.

The plaintiff was the owner of 499 shares of stock in the defendant corporation, Seymour Charter Bus Lines, Inc. Of the remaining shares, 401 where held by Jean Seymour and 100 were held by Joseph O. (Joe) Seymour. By a stock sale agreement dated May 12, 1989, the stock was redistributed by the sale of 200 shares of stock to Joe Seymour by Swan Seymour and 200 shares to Joe Seymour by Jean H. Seymour. The agreement recited that the consideration for this sale was the assumption of two promissory notes (recited

to be in default and for which demand for immediate payment had been made) payable to Commercial Bank of Claiborne County.[1] Swan Seymour transferred the remaining 299 shares of stock to the corporation. The consideration recited for the transfer of stock to the corporation was $104,898.17, reduced by $32,154.94 which Swan Seymour purportedly owed the corporation. The remainder of $72,743.23 was evidenced by a promissory note of Seymour Charter Bus Lines, Inc., executed by Joseph O. Seymour, President.

In addition, the defendant owned either in his own name or jointly with Jean Seymour, thirteen tracts of real estate. At least six of the tracts of real estate were subject to a deed of trust in favor of the First Tennessee Bank. The obligations on the deed of trust were either in default or close to going into default. Further, the plaintiff was obligated on a large judgment in favor of the F.D.I.C., although it is not demonstrated that a judgment lien had ever been recorded on any of the plaintiff’s properties.[2]

The parties set out upon a course of action to remove all the properties from the plaintiff's name and to "flush out" any liens that might have existed that would have been inferior to the deed

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[1]The stock sale agreement also recited that Swan Seymour had a judgment rendered against him, filed as a lien on his real property assets in Union County.

[2]Later, in customary fashion, the F.D.I.C. discounted the claim against the Seymours and gave them a full release for a partial payment.

of trust of First Tennessee Bank and to put the assets beyond the reach of or at least hinder creditors from subjecting the assets to the satisfaction of the plaintiff's just debts. To this end, the attorney representing the plaintiff devised an astute and clever plan of action to accomplish these purposes.

A young attorney, then recently admitted to the bar, represented, as a nominal client, TTP, Inc., a California corporation.[3] This attorney entered into a revocable trust agreement with his client TTP, Inc., whereby as trustee, he was authorized to acquire from First Tennessee Bank the note and trust deed evidencing and securing the indebtedness owed to the bank by Swan Seymour and Jean Seymour. Thereafter, the parties met in the offices of Swan Seymour's attorney. At this meeting the attorney-trustee for TTP, Inc., borrowed from the defendant, Joe Seymour, some $300,000.00 and executed a promissory note therefor. He used the funds received from Joe Seymour to purchase the note executed in favor of First Tennessee Bank by Swan and Jean Seymour and simultaneously took an assignment of the note and trust deed. As the next step, the attorney-trustee appointed his law partner substitute trustee under the deed of trust. The attorney-trustee then wrote a letter to Swan and Jean Semour advising that they were in default and made a demand for payment of the note in full.

[3] TTP, Inc., received a small fee for its participation.

Because no payments were forthcoming, proceedings were begun for foreclosure. After the necessary advertising, etc., a foreclosure sale was in fact held. Not suprisingly, Joe Seymour was the successful bidder at the foreclosure sale. Thereafter, the attorney-trustee exchanged a trustee's deed to the properties sold at the foreclosure sale for the promissory notes which he had executed in favor of Joe Seymour. In his testimony, the attorney-trustee was asked the following question and gave the following answer:[4]

> Q. ... Is it correct ... that when you went to the meeting on August 11, 1990, you understood that the purpose of the various transactions was to get the property out of Swan's name and eliminate any liens against the collateral real estate.
>
> A. It was my understanding that Mr. Seymour, Mr. Swan Seymour, if I may, was having difficulty or was already in default with First Tennessee Bank, and the likelihood of First Tennessee Bank foreclosing on the property was real. If that occurred, the prospects of keeping this property in the family would be jeopardized. I had enough sense as a new young lawyer to realize that a foreclosure sale would give every creditor an opportunity to step up to the line and if they didn't, we could flush whatever liens attached to this property, whatever liens followed Mr. Swan Seymour or Jean Seymour. That this foreclosure sale could cut those claims off as to this property.

[4]The attorney who conceived the plan and who represented Swan and Jean Seymour or all the parties (the record is not clear on that point) did not testify in the case and his deposition was not taken.

We later learn from the testimony of Swan Seymour, that he was directing the bidding being done by Joe Seymour at the foreclosure sale. We further learn that the $300,000.00 which the attorney-trustee borrowed from Joe Seymour was, in fact, provided by Swan Seymour. Thus, it results that Swan Seymour's money paid off the note at First Tennessee Bank and purchased the property at the foreclosure sale thereby resulting in placing the property in Joe Seymour's name free and clear of any claims creditors might have had or did have against Swan and Jean Seymour—the original purpose of the devious scheme.

This litigation was precipitated, at least in part, by Joe Seymour's refusal to deed back to Swan Seymour the thirteen-acre tract of land upon which the bus garage was located. During most of the time material to the issues before us, Swan Seymour continued the day-to-day operation of the bus line as if he were still the majority stockholder and chief executive officer.

Further insight can be gained relative to both the stock transactions and the real estate transactions by the testimony of Swan Seymour which in relevant part

> Q. Mr. Seymour, we've heard a lot of testimony this afternoon about proceeds from land sales that were in the name of your son, Joe, and your daughter-in-law, Kathryn, and you're making claims here for that money that derived from those land sales.

A. Yes, it was mine.

Q. That's what I was going to ask you. Why would you expect any money from land that was in the name of Joe and Kathryn?

A. From a gentleman's and an honest standpoint, the land was mine to start with and it's been mine for years.

Q. In other words, when you put it in Joe's name to avoid the lien of the FDIC, you expected him to give it back to you when you wanted it back, didn't you.

A. I didn't say I put it in to avoid a lien.

* * * *

Q. Mr. Seymour, you continue to agree, do you not, sir, everything that was done in 1989 by Mr. Lacy with respect to the stock transactions was eye wash?

A. No. I don't agree to that.

Q. Have you changed your mind about that?

A. I don't suppose I have.

Q. Do you remember when I took your deposition back on September 24th of last year, don't you? [sic].

A. Yes, Sir.

Q. At Page thirty, line two: "Q: Insofar as you were concerned, whatever Mr. Lacy did with respect to transferring ownership of the stock from you to your son was just eye wash. A: It was transferred for that purpose of course. It wasn't supposed to mean anything to him or me or nobody else. It was just on paper is the way I understood it and I didn't have a legal mind. I didn't know what he was doing.

Q. Is that your testimony?

A. If that's what it says, I guess it was.

The conclusion seems inescapable that each and every party to the original stock transactions and real estate transactions was knowledgeable about the true purposes of their activities. Hence, each and every one of them must be denied equitable relief from the consequences of their inequitable, unfair, dishonest, fraudulent, unconscionable, or bad faith acts.

In McCallie v. McCallie, 719 S.W.2d 150 (Tenn. App. 1986), a father conveyed his farm to his son for the purpose of placing it beyond the reach of possible judgment creditors. Subsequently, the father requested that the son reconvey the property to him. The son refused. The father sued to recover the property. Relief was denied. This court, in Thomas v. Hedges, 27 Tenn. App. 585, 183 S.W.2d 14 (1945) stated:

> There being no intervening rights of creditors, the deed was good as between the parties and their privies. ...
>
> And it is settled in this state by an unbroken line of decisions that a party guilty of fraud is not entitled to be relieved from its consequences. Williams v. Lowe, 23 Tenn. 62; Moody v. Fry, 22 Tenn 567; Coleman v. Pinkard, 21 Tenn 298; Sharp v. Caldwell, 26 Tenn. 415, 416; Parks v. McCamy, 40 Tenn 297; Hubbs v. Brockwell, 35 Tenn. 574; ... .
>
> The rationale of the rule is to be found in the two maxims: "He who comes into equity must come with clean

> hands"; and "No one can take advantage of his own wrongs." Gibson's Suits in Chancery, 42 and 51.[5]

Id. at 16 and 17.

Further:

> One's misconduct need not necessarily have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character to [warrant] application of the maxim; any wilful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim. Within the purview of the maxim, the hands of the litigant are rendered unclean by conduct which is "condemned and pronounced wrongful by honest and fair-minded men," inequitable, unfair, dishonest, fraudulent, unconscionable, or in bad faith.

27A Am. Jur. 2d Equity § 129 (1996) (footnotes omitted); accord Southern Coal & Coke Co. v. Beech Grove Mining Co., 53 Tenn. App. 108, 381 S.W.2d 299, 303 (Tenn. App. 1963).

We are of the opinion that this is the consummate case to which the maxims ought to be applied. Accordingly, we so do and hold that the plaintiff is not entitled to the interposition of a court of equity relative to the original transactions among the parties. In view of this holding, we do not find it necessary to address individually the remaining issues as presented for our review.

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[5] See also Gibson's Suits in Chancery, Sixth Edition (Inman) Sections 18 and 27 for a complete statement of the two maxims mentioned above.

The court entered a judgment in favor of the appellant on a promissory note executed by Joseph O. Seymour, as president of Seymour Charter Bus Lines, Inc., on May 12, 1989, in the principal amount of $72,743.23 plus accrued interest in the amount of $58,194.56 for a total judgment of $130,937.89.[6] [Small mathmatical error in the original judgment.] Since, however, this promissory note was among the original transactions found to have been entered into for wrongful purposes, we reverse the action of the trial court granting judgment to the appellee on the promissory note and dismiss appellee's claim thereon.

As to the remainder of the judgment, the trial court found that the plaintiff had made a subsequent offer (after all the original transactions had been completed) to the defendant, Joe Seymour, to settle their differences. The offer was not accepted, but it was met with a counter offer. Under the terms of the counter offer, Joe Seymour offered to buy the bus property for $100,000.00 payable at $1,000.00 per month and that the plaintiff would take bus number 1782 and all the old buses except 204. The trial court found the counter offer to have been accepted by the appellee and that there had been a partial performance of the agreement. Specifically, the court found:

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[6] This note was ostensibly executed as consideration for the transfer of 299 shares of stock from Swan Seymour to Seymour Charter Bus Lines, Inc.

> ... I find that on November 8, 1992, Mr. Swan Seymour made an offer to wind up his association from the bus company. That offer was accepted, in part, in a counter-offer that was made by Joe seymour ... . I find that the counter-offer that was made by Joe Seymour ... was accepted by Swan Seymour. And I find that that contract was carried out by partial performance, the transfer of bus 1782, transfer of deeds back into Swan and Jean Seymour's names as they were prior to the trustee's sale, transfer of two tracts back into Swan Seymore's name prior to the Trustee's sale. The thing that Joe didn't agree to here was, in fact, that he wasn't going to deed that thirteen acres back to Swan. But he did agree to pay one hundred thousand dollars at a thousand dollars a month.

Thereafter, the trial court entered a judgment in favor of the appellee and against the appellant, Joe Seymour, in the amount of $100,000.00. We are of the opinion that the competent evidence preponderates in favor of the findings of the trial court. We further find that the doctrine of "unclean hands" does not apply to contracts entered into between the parties subsequent to the original wrongful transactions. Inequitable conduct that will bar a prayer for equitable relief "must bear an immediate relation to the subject matter of the suit." Overton v. Lewis, 152 Tenn. 500 , 510, 279 S.W. 801, 804 (1926); see also Greer v. Shelby Mutual Ins. Co., 659 S.W.2d 627 (Tenn. App. 1983). We believe that the doctrine of "unclean hands" does not apply to subsequent contracts even though involving the original subject matter giving rise to "unclean hands" since it would bear no real relation to the subject matter of the new contract. To hold otherwise would result in the parties being forever barred from contracting with each other

concerning matters which had been previously subjected to the doctrine of "unclean hands." We do not believe this to be the intent of the law.

As hereinbefore noted, we reverse the action of the trial court granting judgment to the appellee on the promissory note and dismiss appellee's claim thereon. The judgment of the trial court is affirmed in all other respects. Costs of this appeal, in our discretion, are taxed equally between the appellants and the appellee. This case is remanded to the trial court for entry of an judgment consistent with this opinion.

____
Don T. McMurray, Judge

CONCUR:

____
Houston M. Goddard, Presiding Judge

____
Charles D. Susano, Jr., Judge

IN THE COURT OF APPEALS
AT KNOXVILLE

SWAN SEYMOUR,	)	UNION CHANCERY
	)	C.A. NO. 03A01-9712-CH-00535
Plaintiff-Appellee	)	
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	)	
vs.	)	HON. JOHN TURNBULL
	)	CHANCELLOR BY INTERCHANGE
	)	
	)	
	)	
JOE SEYMOUR AND SEYMOUR CHARTER	)	AFFIRMED IN PART,
BUS LINES, INC.,	)	REVERSED IN PART, and
	)	REMANDED
Defendants-Appellants	)	

JUDGMENT

This appeal came on to be heard upon the record from the Chancery Court of Union County, briefs and argument of counsel. Upon consideration thereof, this Court is of the opinion that there was error in the trial court.

We reverse the action of the trial court granting judgment to the appellee on the promissory note and dismiss appellee's claim thereon. The judgment of the trial court is affirmed in all other respects. Costs of this appeal, in our discretion, are taxed equally between the appellants and the appellee. This case is remanded to the trial court for entry of an judgment consistent with this opinion.

PER CURIAM