

Kentucky Court Of Appeals
Cases of Note
[March-April, 2017](#)

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TORTS

Seeger Enterprises, Inc. v. Town & Country Bank and Trust Co.

[2015-CA-001111](#) 04/07/2017 2017 WL 1290631

Opinion by Judge Maze; Judge Dixon and Chief Judge Kramer concurred. After appellee initiated foreclosure proceedings against property owned by appellant, appellant filed counterclaims alleging that appellee, through its representatives, had intentionally interfered with the sale of the property to another individual. In addition to tortious interference with contractual relations, appellant alleged that appellee’s conduct constituted breach of the implied covenant of good faith and fair dealing and of appellee’s fiduciary duty to its “borrowers” because it prevented repayment of appellant’s debts. At the close of proof at trial, appellant submitted proposed jury instructions, which included an instruction on the claim of tortious interference with a prospective business advantage. However, the trial court refused to tender the instruction, pointing out that the claim was not included in appellant’s counterclaims or subsequent pleadings. The trial court also denied appellant’s request for leave to amend his pleadings to conform to the evidence. Appellee moved for a directed verdict on all of appellant’s counterclaims, and the motion was granted. The Court of Appeals affirmed, holding: (1) that the tortious interference with contractual relations claims failed because appellant failed to present proof of a written contract with a prospective buyer; (2) that the breach of fiduciary duty claim failed because appellant presented no evidence that appellee actually interfered with the sale of his property or profited at his expense or the expense of other borrowers by doing so; and (3) that the trial court did not abuse its discretion in refusing to permit appellant to amend his complaint “at the eleventh hour.”

WORKERS' COMPENSATION

Voith Industrial Services, Inc. v. Gray

[2016-CA-001083](#) 03/24/2017 2017 WL 1101484

Opinion by Judge Dixon; Judges Combs and Nickell concurred. The Court of Appeals affirmed a decision of the Workers’ Compensation Board that affirmed in part, vacated in part, and remanded an Administrative Law Judge’s award of permanent partial disability benefits to Astin Gray. Gray was employed as a janitor for appellant, and he was assigned to clean the paint shop facility at an automobile manufacturing plant. Gray was injured after inhaling the fumes of a chemical solvent used to clean the paint robots. The ALJ awarded Gray permanent partial disability benefits based on a finding that Gray sustained occupational asthma, RADS, and sleep apnea as a result of the work injury. The ALJ also found that Gray was entitled to an enhanced benefit pursuant to the three multiplier in KRS 342.730(1)(c)1. The Board affirmed the ALJ’s findings regarding the application of the three multiplier and the ALJ’s finding of workrelated sleep apnea. In affirming, the Court held that the Board properly concluded that the lay and medical evidence supported an award of enhanced benefits pursuant to KRS 342.730(1)(c)1 and

Fawbush v. Gwinn, 103 S.W.3d 5 (Ky. 2003). The Court also held that the Board properly determined that substantial evidence supported the ALJ's finding that Gray sustained work-related sleep apnea.

Roach v. Owensboro Health Regional Hospital

[2015-CA-001696](#) 04/07/2017 2017 WL 1290626

Opinion by Judge Acree; Judges Jones and D. Lambert concurred. The Court of Appeals affirmed an order of the Workers' Compensation Board vacating an Administrative Law Judge's (ALJ) determination that certain unpaid medical expenses and out-of-pocket medical expenses paid by appellant were compensable. The Board concluded that appellant's failure to comply with regulations governing procedure before the ALJ - in particular 803 KAR 25:010 § 13 - prohibited the admission of proof of these expenses at the time such proof was offered. The Court found no error in the Board's interpretation of the subject regulations.