RENDERED: OCTOBER 5, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

# Court of Appeals

NO. 2010-CA-001030-MR

RCEM, INC., D/B/A RUSSELL COUNTY HOSPITAL; AND
EPHRAIM MCDOWELL HEALTH, INC. APPELLANTS

v.

APPEAL FROM RUSSELL CIRCUIT COURT
HONORABLE VERNON MINIARD JR., JUDGE
ACTION NO. 05-CI-00359

RUSSELL COUNTY, KENTUCKY HOSPITAL DISTRICT HEALTH FACILITIES CORPORATION APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND DIXON, JUDGES.

DIXON, JUDGE: RCEM, Inc. and Ephraim McDowell Health, Inc. ("Ephraim" or collectively "Appellants"), appeal a summary judgment rendered by the Russell

Circuit Court in favor of Appellee, Russell County, Kentucky Hospital District Health Facilities Corporation. We affirm.

In September 1999, Ephraim executed a contract with Appellee for Ephraim to lease the Russell County Hospital and purchase several assets relating to the hospital. RCEM was formed by Ephraim as a wholly-owned subsidiary corporation for the purpose of operating the hospital. In August 2001, RCEM leased a commercial building from Dr. Manouchehr Katanbaf for use as the Russell Springs Clinic.

In January 2005, Ephraim and Appellee executed a "Termination Agreement, Settlement & Release" to resolve disputes involving the hospital lease. Pursuant to the settlement agreement, Ephraim terminated its lease on the hospital and sold the hospital assets to Appellee.

In November 2005, Katanbaf filed a complaint against Appellants for breach of contract on the RCEM – Katanbaf lease for the Russell Springs Clinic. Appellants asserted a third-party complaint against Appellee, contending the settlement agreement assigned the Katanbaf lease to Appellee.

Appellants and Appellee submitted numerous factual stipulations to the trial court and sought summary judgment on the third-party claims regarding liability on the Katanbaf lease as a matter of law. In November 2008, the court granted summary judgment in favor of Appellants; however, the court granted Appellee's subsequent motion to set aside the judgment. On reconsideration of the matter, the court ultimately rendered summary judgment in favor of Appellee. The

court concluded that RCEM remained liable as lessee on the Katanbaf lease because RCEM was not a party to the settlement agreement between Ephraim and Appellee.

Summary judgment is proper where no material issues of fact exist, and the moving party is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). On appeal, we undertake a *de novo* review of the legal questions presented, and we owe no deference to the decision of the trial court. *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001).

Appellants contend the court erred as a matter of law by concluding the settlement agreement did not effectuate an assignment of the Katanbaf lease. Appellants point out the agreement disclosed the parent-subsidiary relationship, and they cite the following clause:

> Seller shall assign and Buyer shall assume all Contracts relating to the Hospital, whether written or oral, and however named (i.e. lease, agreement, commitment, etc.) of Seller relating to the Hospital and its operations except for those, if any, listed as an Excluded Asset.

Appellants further assert that Appellee paid rent on the Katanbaf lease between February and September 2005. According to Appellants, this post-termination conduct proves that an assignment of the lease occurred.

We first note that, "[t]he construction and interpretation of a contract, including questions regarding ambiguity, are questions of law to be decided by the court." *First Commonwealth Bank of Prestonsburg v. West*, 55 S.W.3d 829, 835

(Ky. App. 2000). "[I]n the absence of ambiguity a written instrument will be enforced strictly according to its terms, and a court will interpret the contract's terms by assigning language its ordinary meaning and without resort to extrinsic evidence." *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 106 (Ky. 2003). "A contract is ambiguous if a reasonable person would find it susceptible to different or inconsistent interpretations." *Cantrell Supply, Inc. v. Liberty Mut. Ins. Co.*, 94 S.W.3d 381, 385 (Ky. App. 2002).

It is undisputed that Ephraim and RCEM are two independent corporate entities. *See Square D Co. v. Kentucky Bd. of Tax Appeals*, 415 S.W.2d 594, 601 (Ky. 1967). The plain language of the settlement agreement identified Ephraim as the "Seller" and Appellee as the "Buyer." The purpose of the agreement was to terminate the hospital lease between Ephraim and Appellee and to set forth terms for Appellee's purchase of hospital assets. The CEO of Ephraim and a board member of Appellant signed the settlement agreement. The specific provision cited by Appellants plainly stated the "Seller" assigned the contracts of the "Seller" relating to the hospital. We reiterate that Ephraim was the only party to the settlement agreement identified as the "Seller." Just as Ephraim was the only "Seller" identified in the settlement agreement, it is likewise clear that RCEM was the sole entity named as the lessee of the Katanbaf lease. While the settlement agreement disclosed that RCEM operated the hospital, there was no provision that purported to assign the obligations entered into by RCEM. In our view, RCEM's mere status as a subsidiary of Ephraim is insufficient to extinguish RCEM's

independent contractual liabilities. *See Mid-Southern Toyota, Limited v. Bug's Imports, Inc.*, 453 S.W.2d 544, 550 (Ky. 1970).

Furthermore, we are not persuaded that the terms of the settlement agreement are capable of more than one reasonable interpretation; consequently, Appellants' reliance on extrinsic evidence is misplaced. It is well settled "that we are not permitted to create an ambiguity where none exists even if doing so would result in a more palatable outcome." *First Commonwealth Bank of Prestonsburg*, 55 S.W.3d at 836. Although Appellants dispute the parties' intent regarding the assignment of the Katanbaf lease, "[t]he fact that one party may have intended different results . . . is insufficient to construe a contract at variance with its plain and unambiguous terms." *Cantrell Supply, Inc.*, 94 S.W.3d at 385. Based upon our review, we find no ambiguity in the agreement; accordingly, "the parties' intentions must be discerned from the four corners of the instrument without resort to extrinsic evidence." *Id*. Because the settlement agreement is not ambiguous, the post-settlement conduct cited by Appellants is immaterial.

In sum, the settlement agreement clearly resolved the dispute between Ephraim and Appellee, and they were the signatories to that agreement. RCEM, as the signatory to the Katanbaf lease, remained liable for damages as the lessee. The trial court properly concluded Appellee was entitled to judgment as a matter of law.

For the reasons stated herein, we affirm the judgment of the Russell Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

John T. Pruitt, Jr.
Somerset, Kentucky

BRIEF FOR APPELLEE:

Jeffrey H. Hoover
Jamestown, Kentucky