

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-00839-MR

SUSAN GOODIN, CO-EXECUTOR OF THE ESTATE  
OF CHARLES R. GOODIN, DECEASED; AND JOSEPH  
DONALD GOODIN, CO-EXECUTOR OF THE ESTATE  
OF CHARLES R. GOODIN, DECEASED

APPELLANTS

v. APPEAL FROM MARION CIRCUIT COURT  
HONORABLE SAMUEL TODD SPALDING, JUDGE  
ACTION NO. 15-CI-00274

ROBERT L. GOODIN; AND ROBERT L. GOODIN,  
TRUSTEE OF THE JANE A. GOODIN TRUST

APPELLEES

AND NO. 2017-CA-001229-MR

JOSEPH DONALD GOODIN, CO-EXECUTOR OF  
THE ESTATE OF CHARLES R. GOODIN, DECEASED;  
AND SUSAN GOODIN, CO-EXECUTOR OF THE ESTATE  
OF CHARLES R. GOODIN, DECEASED

APPELLANTS

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APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, NICKELL, AND SMALLWOOD, JUDGES.

SMALLWOOD, JUDGE: In this consolidated appeal, Susan Goodin, Co-Executor of the Estate of Charles R. Goodin, deceased, *et al.*, appeal from findings of fact and order rendered by the Marion Circuit Court. They argue that while the trial court properly enforced a contract providing for the sale of an interest in a limited liability company, it erred in excluding real estate that had been expressly identified in the contract as an asset of the limited liability company. For the reasons stated below, we find no error and AFFIRM the findings of fact and order on appeal.

Lebanon Oak Flooring Company LLC (“the Company”) was a family owned enterprise situated in Marion County, Kentucky. The Company existed in various permutations for about 100 years, and ultimately was owned 50-50 by Appellee Robert L. Goodin (“Robert”) and his brother Charles R. Goodin (“Charles”).

Charles died in 2014, resulting in his ownership interest vesting with his estate (“the Estate”). Appellants, Susan Goodin and Joseph Donald Goodin, are two of Charles’ children and co-Executors of the Estate. Robert’s interest was divided 50-50 between himself and the Jane A. Goodin Trust (“the Trust”), which

he controlled as trustee. After Charles' death, Robert and the Executors entered into discussions for the purpose of consolidating ownership of the Company.

Initially, the Estate was to produce a "buy-sell" number establishing the Company's fair market value, after which one party would consolidate the Company's ownership by purchasing the other's interest. On October 15, 2015, and before the buy-sell approach reached fruition, Robert, through counsel, tendered a written offer ("the Offer") to the Estate which proposed either of two options. Under the first option, the parties would retain the existing ownership structure, with Robert and his son Rick continuing to operate the Company and receiving a management fee. The second option provided that Robert and the Trust would sell their collective 50% ownership in the Company to the Estate for \$3,800,000. In support of the Offer, Robert produced the Company's General ledger trial balance, income statement, balance sheet and profit & loss statements. By way of a letter dated October 19, 2015 ("the Acceptance"), the Estate accepted the second option and tendered payment in the amount of \$3,800,000.

According to the Estate, Robert immediately experienced seller's remorse and sought to repudiate the contract by way of a letter from his counsel dated October 22, 2015. In support of the letter, Robert's counsel denied that there had been a meeting of the minds, and stated that additional terms were required to

create a binding contract. The Estate then filed the instant action in Marion Circuit Court to enforce the contract per its terms.

Robert, through counsel, tendered an answer and filed a counterclaim seeking a judicial sale of the real estate. Robert asserted that the Company and the real estate upon which it was situated were separate and distinct assets. Litigation ensued for almost a year, whereupon the trial court ruled that, by virtue of the parties' offer and acceptance, the parties had formed a binding contract for the sale of Appellees' interest in the Company to Appellants for \$3,800,000. This portion of the court's ruling was not appealed by either party.

Thereafter, the trial court ruled that Robert had not intended to include the real estate, buildings and fixtures in the sale of his interest in the Company. The court set out a detailed analysis of its reasoning. The dispositive finding was that Robert and Charles owned the real estate in their individual capacities, and the real estate was not an asset of the Company. Thus, and in the trial court's reasoning, Robert's Offer to sell his interest in the Company to the Appellants did not include an offer to sell the separately-owned real estate, buildings and fixtures used by the Company. The court granted summary judgment to Appellees on this issue.

The Executors then took control of the Company, but according to Robert refused to pay rent or any other compensation for the real property upon

which it was situated. After three months, Robert moved the trial court to sell the real property. In conjunction with his request that the real property be sold, Robert submitted a \$2,000,000 bid to purchase the 50% interest in the land held by the Estate by virtue of Charles' death. The Executors posted a supersedeas bond to hold the sale in abeyance, and this appeal followed.

Appellants now argue that the Marion Circuit Court committed reversible error in ruling that the Company's assets did not include the real property, buildings and fixtures. As part of this argument, the Appellants contend that: 1) the real estate was included in the Offer, 2) the real estate is Company property, and 3) the Appellees are estopped from denying that the Company owns the real estate. The Appellants maintain that the trial court failed to look to the four corners of the contract to resolve these issues, instead "attempt[ing] to divine from various extrinsic evidence" Robert's intent in the Offer. They argue that the real estate is a Company asset for two additional reasons – that: 1) the real estate was owned by the Company's predecessor partnership, and thus by statute automatically became property of the LLC, and 2) the real estate was historically treated as the Company's property. In sum, the Appellants maintain that the real property, buildings and fixtures are Company assets included in Robert's Offer, and that the trial court erred in failing to so rule.

In examining the central issue of whether the real property, buildings and fixtures were owned by the Company, as Appellants contend, or individually by Robert and Charles, as Robert and the Trust argue, the Marion Circuit Court engaged in a comprehensive examination of the predecessor entities and ownership dating back to about 1933. Ultimately, it found that when Robert and Charles formed the LLC from its predecessor entity, they made a concerted effort to separate their ownership of the real property from the newly-formed LLC in order to protect the real estate as a separate asset. According to the court, and based on its examination of the record, Robert and Charles were title holders to the real property, buildings and fixtures, and these assets were not owned by the Company.

The Court found as follows:<sup>1</sup>

Robert, Charles and the Company were represented at the time of the formation of the limited liability company by Robert's son, attorney Robert L. Goodin, Jr. (hereinafter "Bob"). As Robert explained in his deposition, and Bob did likewise in his Affidavit, the discussion of formation of a limited liability company to assume the operations of Lebanon Oak Flooring Company was initiated after one of the Company's drivers was involved in a vehicular accident. Concerns about Charles' and Robert's potential personal liability for partnership debts from the operation of the Company was the driving force behind the discussions. Charles and Robert made the deliberate decision to exclude ownership of the main campus upon which the Company operated from the newly formed limited liability company, for two very sound business reasons.

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<sup>1</sup> Summary Judgment rendered August 29, 2016 at p. 3.

First, in the event that the operations of the Company failed or its assets became subject to creditor's [sic] claims, the main campus utilized by the Company would be protected from those claims because the 17.82 acres was owned by Robert and Charles, not by the Company. Presumably then, if the limited liability company failed for any reason, Charles and Robert could re-start their operation because they would still own the main campus. Second, Robert and Charles discussed the potential that if either or both of them sold their interest in the limited liability company, their separate ownership of the main campus used by the Company could be the source of leasehold income from any prospective purchaser of the operating Company.

We review the trial court's contract interpretation under a *de novo* standard. *Cantrell Supply Inc. v. Liberty Mutual Insurance Company*, 94 S.W.3d 381, 385 (Ky. App. 2002). Further, its findings of fact shall not be set aside unless they are clearly erroneous. Kentucky Rules of Civil Procedure (CR) 52.01. And finally, in order to prevail on a motion for summary judgment, a movant must demonstrate that the record reveals no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. CR 56.03.

The documentary evidence, testimony and affidavits amply demonstrate that the realty, buildings, and fixtures are owned by Robert and the Estate but not the Company. The record further reveals that the segregation of the real property from the Company resulted from a concerted effort to: 1) protect the realty from a Company failure or liability; and 2) to retain a source of income to Robert and Charles if the Company were sold to a third party. Accordingly, we do

not find that there was any genuine issue of material fact which precluded the court's entry of summary judgment for the Appellees.

We are not persuaded by the Appellants' underlying arguments. By its own terms, Robert's offer to sell his interest in the Company along with that of his wife's Trust cannot reasonably be interpreted as also offering to sell his separate interest in the realty. It is uncontroverted that legal title to the realty vested with Robert and Charles individually when they formed the separate LLC. Segregating these two assets was the very purpose of this act. Robert's offer specifically identified his and his deceased wife's Trust's interests in Lebanon Oak Flooring Co., LLC as the subject of the offer. The Marion Circuit Court determined that in the ordinary usage of that language, a reasonable person could only believe that Robert was offering to sell company assets and not any other asset which was otherwise owned.

The Appellants also argue that Robert's inclusion of the real estate financial documents with the Offer is evidence that Robert intended to sell the realty in addition to the Company. We are not persuaded by this argument for several reasons. The Appellants had previously requested the information sent with the offer. The documents included were prepared in the Company's usual course of business and not specifically as explanation of the offer. The Trust of Robert's deceased wife had no interest in the realty, and thus no interest to sell.



Additionally, the deeds to the realty were held individually by Robert and Charles, which Appellants knew or should have known. These deeds are uncontroverted proof of ownership in fee simple.

The Appellants go on to argue that the property was automatically transferred to the Company pursuant to KRS 275.375 when the LLC was formed. This statute provides that “any estate in real property may be acquired in the name of the limited liability company, and title to any interest so acquired shall vest in the limited liability company rather than in the members individually.” The flaw in Appellants’ argument on this issue is that the LLC did not acquire an estate in the property at issue, which was owned by Robert and Charles in their individual capacities. Said the Marion Circuit Court,

The law in Kentucky for well over a century has been clear that the holder of record title to property is “presumptively the owner of the land.” *Harris v. Coombs*, 7 Ky. Op. 15 (1873). Furthermore, Kentucky law has long recognized “a strong presumption” that the real property held in the individual names of members of a partnership or other business entity is **NOT** to be considered a company asset. *See Sandefur v. Ganter*, 259 S.W.2d 15 (Ky. 1953). Simple possession of real estate does not raise a presumption of ownership against recorded title. *Ott v. Ott’s Admin.*, 2 Ky. Op. 114 (1867).

Robert and Charles were holders of the recorded title, and neither the formation of the LLC nor its usage of the land, buildings and fixtures alters that reality.

Additionally, we find as unpersuasive the arguments that the “historical treatment”

of the property was sufficient to vest ownership in the Company, and that Appellees are estopped from denying that the Company owns the real estate. Record title, and title alone, determines ownership.

Lastly, the Appellants argue that the Marion Circuit Court erroneously addressed the statute of frauds and the doctrine of judicial estoppel. *Arguendo*, even if these principles had no bearing on the proceedings as Appellants contend, their discussion by the Marion Circuit Court does not affect the outcome of the proceedings. We find no error.

For the foregoing reasons, we AFFIRM the findings of fact and order of the Marion Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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ORAL ARGUMENT FOR  
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