STATE OF MICHIGAN

COURT OF APPEALS

DONALD WELLS,

Plaintiff-Appellee,

v

GRAY GOOSE MOTOR TOURS, INC.,

Defendant,

and

LEONARD TYNER and LUE EASE TYNER,

Defendants-Appellants,

and

JEFFREY A. ISHBIA, Receiver,

Appellee.

UNPUBLISHED
July 15, 2010

No. 291502
Wayne Circuit Court
LC No. 03-336785-CK

Before: TALBOT, P.J., and FITZGERALD and DAVIS, JJ.

PER CURIAM.

Defendants Leonard and Lue Ease Tyner (collectively referred to as "the Tyners") appeal by leave granted from a postjudgment order determining that title to real property belongs to defendant Gray Goose Motor Tours, Inc. ("Gray Goose"), rather than Lue Ease Tyner individually, thereby subjecting it to plaintiff's efforts to collect on a default judgment against Gray Goose. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In July 1995, Gray Goose was automatically dissolved for failure to file annual reports and pay fees. This appeal concerns the legal effect of two transactions between Gray Goose and Stanley Cupp on July 3, 1997. In the first transaction, Lue Ease Tyner, as president of Gray Goose, executed a warranty deed conveying real property owned by the corporation to Stanley Cupp for $278,503.47. In the second transaction, Cupp resold the property back to Gray Goose pursuant to a land contract for $343,503.15. Lue Ease, as President of Gray Goose, signed the

land contract. Later, in a warranty deed dated July 10, 2006, Cupp's estate conveyed the property to Gray Goose. The trial court determined that the property belonged to Gray Goose.

The issue on appeal concerns the legal effect of the July 3, 1997, repurchase of the property by Gray Goose pursuant to the land contract. Questions of law are reviewed de novo. *Cardinal Mooney High Sch v Michigan High Sch Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

MCL 450.1833 provides:

> Except as a court may otherwise direct, a dissolved corporation shall continue its corporate existence but shall not carry on business except for the purpose of winding up its affairs by:
>
> (a) Collecting its assets.
>
> (b) Selling or otherwise transferring, with or without security, assets which are not to be distributed in kind to its shareholders.
>
> (c) Paying its debts and other liabilities.
>
> (d) Doing all other acts incident to liquidation of its business and affairs.

MCL 450.1834 provides:

> Subject to section 833 and except as otherwise provided by court order, a dissolved corporation, its officers, directors and shareholders shall continue to function in the same manner as if dissolution had not occurred . . . .

Read together, these statutes indicate that a dissolved Michigan corporation may continue to exist beyond its date of dissolution for a reasonable time until its has concluded "winding up its affairs." *Flint Cold Storage v Dep't of Treasury*, 285 Mich App 483, 496, 498; 776 NW2d 387 (2009).

The premise of the Tyners' argument on appeal is that the July 3, 1997, sale of the property from Gray Goose to Cupp for $278,503.47 was valid as an action of the dissolved corporation to wind up its affairs, but that the concurrent execution of the land contract to repurchase the property for $343,503.15 was not an action to wind up the corporation's affairs and, therefore, was invalid. Thus, the Tyners argue, the contract was effective only as the action of Lue Ease individually and, therefore, the property purchased belongs to her, not Gray Goose. Their argument requires that the purpose of the first transaction be determined separately from the purpose of the second transaction.

We reject the Tyners' attempt to separately analyze and divide the purposes of the two transactions with Cupp on July 3, 1997. The fact that the transactions resulted in the dissolved corporation's preserving an interest in the property, as a land contract vendee does not necessarily mean that either or both of the transactions were invalid. A comparison may be drawn to *Kay Furniture Co v Rovin*, 312 Mich 290; 20 NW2d 194 (1945), which involved a predecessor statute. The statute at issue in that case provided:

> "Sec. 75. All corporations whose charters shall have expired by limitation or dissolution * * * shall nevertheless continue to be bodies corporate for the further term of three years from such expiration, dissolution or forfeiture for the purpose of prosecuting and defending suits for or against them and of enabling them gradually to settle and close their affairs and to dispose of and convey their property and to divide their assets; but not for the purpose of continuing the business for which such corporations were organized." Act No. 327, § 75, Pub. Acts 1931, as amended by Act No. 96, Pub. Acts 1933 (Comp. Laws Supp. 1940, § 10135-75, Stat. Ann. § 21.75). [*Kay Furniture Co*, 312 Mich at 293.]

In *Kay Furniture Co*, the plaintiff corporation was dissolved by resolution of its board of directors in 1942. It continued to hold as an asset a lease of a building where the corporation once operated a furniture business. The defendant ultimately purchased the furniture business and subleased the premises from the plaintiff corporation. When the plaintiff's lease expired in 1944, the plaintiff, at that time a dissolved corporation, exercised an option to renew the lease for two years. The plaintiff then notified the defendant that his sublease would not be extended. The defendant claimed that the plaintiff's renewal was ineffective because the renewal was not for the purpose of enabling the plaintiff corporation "gradually to settle and close their affairs and to dispose of and convey their property and to divide their assets . . . ." The Court disagreed and explained that the lease was an asset of the dissolved corporation and its renewal was "not invalid as an attempt to consummate a contract in violation of law." *Id*. at 295. "By exercising its right of renewal plaintiff corporation merely perpetuated and thereby conserved a potential asset." *Id*. at 294. The Court further explained:

> Our decision herein is bottomed on our holding that plaintiff corporation had the right to and did renew the underlying lease, and therefore was entitled to possession of the property in suit upon the expiration of defendant's sublease on October 15, 1944. The law which in the main governs decision has been accurately stated as follows:
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> "During the period of extended life given a corporation by statute for the purpose of winding up its affairs, it is entitled to hold property, or to acquire property, and to transfer or convey the same, even in trust, to wind up the business." 16 (1942 Rev.) Fletcher Cyc. Corp. (Perm. Ed., 1942), § 8171, p. 938. [*Kay Furniture Co*, 312 Mich at 296.]

In this case, the Tyners only basis for arguing that Gray Goose did not own the property is their generalized view that an agreement to purchase property by land contract cannot be an act of winding up the corporation's affairs. However, *Kay Furniture Co* indicates that a dissolved corporation's acts that preserve an interest in land are not necessarily ineffective and may be to preserve an asset.

Although the Tyners claim that the land contract was invalid because it did not involve an action to wind up the corporation's affairs, they did not present any evidence explaining the purpose of either transaction. The corporation may have sold and repurchased the property on land contract as a means of obtaining an infusion of cash while preserving an interest in the property. Conversely, the corporation's property may have been sold and repurchased in the defunct corporation's name as a deliberate attempt to divert the corporation's asset to Lue Ease

using the legal argument now asserted by the Tyners. The Tyners did not present any evidence indicating that the 1997 transactions were not for the benefit of the corporation, but rather were wrongful acts of an officer to enrich herself. Without supporting evidence, we cannot accept their invitation to dissect and validate the two transactions only to the extent that it produces an outcome that favors their interests.

Furthermore, the Tyners' contention that an individual conducting business in the name of a dissolved corporation may become liable on an individual basis for the debts incurred does not address the crux of the dispute. The issue is not a matter of determining liability for a debt incurred, but rather determining title to an asset received in the name of the corporation. The Tyners do not cite any authority indicating that an asset received by a dissolved corporation belongs to an officer who wrongfully continued to conduct business under the corporate name, and we are unaware of any authority that supports rewarding an officer's misconduct in this manner.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Alton T. Davis