

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2003-CA-002648-MR  
AND  
NO. 2003-CA-002768-MR

MARTIN LAND DEVELOPMENT  
COMPANY, INC., AND  
CO-MAR AVIATION, INC.

APPELLANTS/CROSS-APPELLEES

v. APPEALS FROM WARREN CIRCUIT COURT  
HONORABLE JOHN D. MINTON, JR., JUDGE  
ACTION NO. 01-CI-00737

BOWLING GREEN AND WARREN  
COUNTY AIRPORT BOARD

APPELLEE/CROSS-APPELLANT

OPINION  
REVERSING IN PART,  
AFFIRMING IN PART,  
AND REMANDING

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BEFORE: BARBER AND SCHRODER, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>1</sup>

SCHRODER, JUDGE: These are consolidated appeals wherein an airport fixed base operator appeals from a judgment interpreting a lease provision in favor of the local airport board; and the

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<sup>1</sup> Senior Status Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

airport board appeals a judgment denying it attorney fees. We interpret the lease as to include the new ramp and apron serving the new terminal building. Therefore, we reverse that part of the judgment. Without a judgment in its favor, the airport board is not entitled to attorney fees. Therefore, we affirm that part of the judgment.

The appellants/cross-appellees (hereinafter referred to as "Martin") contracted with the appellee/cross-appellant (hereinafter referred to as the "Airport Board") to build a new airport terminal building in exchange for a ground lease on the same and the Airport Board was to construct a new ramp and apron to serve the new terminal building. The facilities were constructed as agreed and a lease executed. Subsequently, a dispute arose as to what constituted the leased premises. The lease itself provided:

After Construction. Upon the date the Certificate of Occupancy is issued, this Lease shall become a ground lease as to the area occupied by the New FBO Building. The Leased Premises shall thereupon include (i) the ground occupied by the New FBO Building, together with the building and all other improvements located on said ground area, (ii) the parking, ramp and apron area appurtenant to the New FBO Building; and (iii) the non-exclusive right to ingress and egress to, from and over the Airport, and parking areas at the Airport which are available generally to Airport users.

The dispute arose when Martin proposed charging a fee for aircraft that use the apron and ramp serving the new terminal building. Those purchasing fuel from Martin did not have to pay the fee. The Airport Board contended that Martin only has the nonexclusive right to the ramp and apron, while Martin asserted that it also leased the apron and ramp adjacent to the new terminal building. The dispute ended up in the Warren Circuit Court for an interpretation of the lease. The trial court found the lease was ambiguous as to the premises and ruled that Martin only controlled the terminal building (with its landscaping) and the canopy area attached to the terminal building. The new apron and ramp adjacent to the new terminal building was determined to be jointly usable by Martin and the general aviation public. As the successful party, the Airport Board requested attorney fees, which were denied. Martin appealed the lease interpretation and the Airport Board appealed the denial of attorney fees.

On appeal to this Court, Martin contends the trial court erred in finding the new apron and ramp were not part of the leased premises. Leases involve a little vendor/vendee law as a conveyance and a little contract law because of the mutual covenants.<sup>2</sup>

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<sup>2</sup> 1 AMERICAN LAW OF PROPERTY, § 3.11 (A. James Casner ed., 1952); Pikeville Oil & Tire Co. v. Deavors, 320 S.W.2d 782 (Ky. 1959).

The construction and interpretation of a written instrument are questions of law for the court. Cinelli v. Ward, 997 S.W.2d 474, 476 (Ky.App. 1998). Questions of law are reviewed *de novo* by an appellate court. Id. One of the first rules of construction for the interpretation of both conveyances (Hoheimer v. Hoheimer, 30 S.W.3d 176, 178 (Ky. 2000)) and contracts (Cantrell Supply, Inc. v. Liberty Mut. Ins. Co., 94 S.W.3d 381, 385 (Ky.App. 2002)), is that absent ambiguity, or silence on a matter, the parties' intentions must be discerned from the four corners of the instrument. Extrinsic evidence cannot be admitted to vary the items of a written instrument in the absence of ambiguity which leaves the parties' intentions susceptible to more than one interpretation. White Log Jellico Coal Co., Inc. v. Zipp, 32 S.W.3d 92, 94 (Ky.App. 2000).

The Airport Board contends the lease, Article 1 Section 3c. After Construction, is ambiguous in describing the "ramp and apron area appurtenant to the New FBO Building . . ." because the term "appurtenant" is ambiguous. We disagree. Reading the entire lease, it is very clear to us that the lease includes the ramp and apron that is "adjacent" or "appurtenant" to the new FBO building and canopy. The appurtenant ramp and apron serve the new terminal and there are no words of limitation at this point. Only when the lease discusses access to the terminal building etc. does the lease discuss "non-

exclusive right to ingress and egress . . ." over that part of the Airport that is available to the general aviation users. Nowhere in the lease is there a mention of the apron and ramp being subject to a nonexclusive use. The ramp and apron, after construction, extend all the way from the terminal building to the taxi way which is open to the general aviation public. (That part of the apron or ramp on the other side of the taxi way would not be appurtenant to the new terminal building and would not be included in the lease.) We do not believe a "reasonable person" would find the contract susceptible to different or inconsistent interpretations. Cantrell Supply, Inc., 94 S.W.3d at 385. The fact that the Airport Board may have intended on leasing a nonexclusive use of the adjacent or appurtenant apron and ramp is insufficient to construe the lease at variance with its plain or unambiguous terms. Id.

Our holding that the lease agreement's leased premises is plain and clear, unambiguous to the reasonable person (Hall v. Baker, 309 Ky. 58, 215 S.W.2d 945, 947 (1948)) precludes the introduction of extrinsic evidence to interpret the lease. Cantrell Supply, Inc., 94 S.W.3d at 385. Therefore, the remaining arguments of Martin have become moot.

The Airport Board in its appeal argues that the trial court erred by not awarding it attorney fees. We disagree. Not only is the Airport Board not the successful party, but we agree

that the lease agreement only authorizes attorney fees where Martin is in default under the lease, and this was not such a case.

For the foregoing reasons, the judgment of the Warren Circuit Court is reversed in part, affirmed in part, and remanded for further proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Timothy L. Mauldin  
Paul T. Lawless  
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ORAL ARGUMENT FOR APPELLANTS:

Timothy L. Mauldin  
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BRIEF AND ORAL ARGUMENT FOR APPELLEE:

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