

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2494-21**

**CAROL BALLINGALL,  
individually, and as trustee of the  
testamentary trust of DAVID K.  
BALLINGALL, JOANN STRACK,  
SURF CITY REALTY, LLC,  
PARKSIDE REALTY PARTNERS,  
LLC, OAKWOOD REALTY  
ASSOCIATES, LLC, and  
696 ANDERSON AVENUE, LLC,**

**Plaintiffs-Appellants,**

**v.**

**DAVID D. BALLINGALL,**

**Defendant-Respondent.**

---

Submitted March 29, 2023 – Decided May 30, 2023

Before Judges Accurso and Vernoia.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Bergen County, Docket No.  
C-000131-21.

Warren F. Clark, attorney for appellants.

David D. Ballingall, respondent pro se.

PER CURIAM

This matter arises out of a dispute among three siblings, plaintiffs Carol Ballingall (Carol) and JoAnn Strack (JoAnn), and their brother, defendant David D. Ballingall (David), over issues related to the control and management of four limited liability companies, plaintiffs Surf City Realty, LLC; Parkside Realty Partners, LLC; Oakwood Realty Associates, LLC; and 696 Anderson Avenue, LLC (collectively "the LLCs"), which were originally formed, operated, and owned by the siblings' parents, David K. Ballingall and Joan Ballingall.<sup>1</sup>

Carol and JoAnn appeal from an order granting David summary judgment declaring he is the managing member of the four LLCs and denying their motion for summary judgment declaring they own a majority interest in the LLCs and Carol is the duly elected managing member of the LLCs. Based on our review of the parties' arguments, the applicable legal principles, and the summary judgment record, we are convinced there are genuine issues of material fact that precluded the proper determination of the parties' claims on summary judgment. We therefore reverse the court's order granting David summary judgment, affirm

---

<sup>1</sup> For purposes of clarity, we refer to the individual parties by their first names because two of them share the same surname. We intend no disrespect in doing so.

the order denying plaintiffs summary judgment, and remand for further proceedings.

## I.

David K. Ballingall and Joan Ballingall owned three income producing properties and a vacation home in Surf City, New Jersey, each of which is titled separately in the four LLCs. David K. Ballingall and Joan Ballingall were the LLCs' only two members, but he passed away in 2015. In his will, David K. Ballingall bequeathed his 50% share in each of the LLCs to plaintiff, Testamentary Trust of David K. Ballingall (the trust), for the benefit of Joan Ballingall, with the trust to be divided equally among Carol, JoAnn, and David upon their mother's death.

Carol is the trustee of the trust. In 2015, the Ocean County Surrogate appointed Carol as executor of her father's estate after Joan Ballingall, due to her declining health, renounced David K. Ballingall's appointment of her as the executor in his will. In his certification opposing plaintiffs' summary judgment motion, David represented that Carol, as executor of their father's estate and trustee of the trust, has never taken any action on behalf of the estate or trust to transfer their father's 50% interest in the LLCs into the trust.

Following their father's death, Carol, JoAnn, and David sought counsel from their parents' attorney. They decided to transfer their mother's assets, including her 50% interest in the four LLCs, to each of the siblings in equal one-third shares. In his certification opposing plaintiffs' summary judgment motion, David represented that David K. Ballingall's 50% interest in the LLCs was transferred to Joan Ballingall. According to David, as a result of that transfer his mother then owned 100% of the shares in the LLCs. David also certified that, acting with authority vested in him by a power of attorney executed on behalf of Joan Ballingall, he transferred Joan Ballingall's 100% ownership interest in the LLCs in equal one-third shares to Carol, JoAnn, and himself, in April 2016.

Also in April 2016, the attorney the siblings had consulted drafted new operating agreements for each of the LLCs. Carol, JoAnn, and David executed the agreements, which stated each of the siblings owned a one-third interest in each of the LLCs.

The 2016 operating agreements did not expressly address or account for the 50% ownership of the LLCs David K. Ballingall's will bequeathed to the trust, and the agreements were not executed on the trust's behalf. Carol and JoAnn contend that because David K. Ballingall's 50% ownership of each of the

LLCs was bequeathed to the trust, the transfer of their mother's interest in the LLCs to the three siblings resulted in each sibling obtaining only a one-sixth personal interest in each of the LLCs, with the remaining three-sixths, or 50%, interest held by the trust.

Carol and JoAnn subsequently voted the interests in the four LLCs under their control to elect Carol as the managing member of each. That is, Carol and JoAnn voted their respective one-sixth interests in the LLCs, and Carol voted what she and JoAnn contend is the trust's three-sixths interest, such that five-sixths of the interests in each of the LLCs were cast in favor of Carol as the managing member of each.<sup>2</sup> David rejected the results of the elections, asserting the 2016 operating agreements expressly provided he was the managing member of each of the LLCs, and that, under the express terms of the agreements, he could not be removed as managing member by a vote cast by the other members.

In fact, the 2016 operating agreements for each of the LLCs designates David "as the Company's Managing Agent until he resigns, dies[,] or is declared

---

<sup>2</sup> The record shows Carol and JoAnn first voted the claimed five-sixth interests in Surf City Realty, LLC under their control in favor of Carol as managing member in August 2020, for which notice was sent to David orally and in writing in November 2020. In April 2021, Carol and JoAnn cast the identical votes in favor of Carol as managing member of the other three LLCs.

to be incompetent, disabled[,] or incapacitated . . . ." <sup>3</sup> David relied on that designation in the 2016 operating agreements, and the claimed validity of the agreements, to reject Carol and JoAnn's shared contention they had duly elected Carol as managing member of each of the LLCs. David asserted the elections violated the terms of the 2016 operating agreements designating him the managing member of each LLC. He further asserted he could be removed only for the reasons stated in the agreements and not by an election of the LLCs' other members.

Carol, in her individual capacity and as trustee of the trust, JoAnn, and the four LLCs filed a complaint against David challenging the validity of the 2016 operating agreements, David's putative status as the managing member of the LLCs, and David's refusal to acknowledge Carol's election as managing member of the LLCs. In pertinent part, plaintiffs sought a judgment: declaring Carol was managing member of the LLCs; requiring David to turn over the LLCs' records; and allowing a majority of the members of the LLCs to vote to sell the

---

<sup>3</sup> The provision is included in paragraph 5.2.1 of each of the LLCs' 2016 operating agreements.

LLCs' income producing assets and distribute the net proceeds for the care of Joan Ballingall.<sup>4</sup> Defendant filed an answer to the complaint.

Plaintiffs moved for summary judgment asserting the parties' dispute turned on the validity of the 2016 operating agreements. Plaintiffs argued the 2016 operating agreements were void because they were not accepted, agreed to, or executed on behalf of the trust Carol and JoAnn claimed owned 50% of each of the LLC's shares. Plaintiffs claimed the governing operating agreements were those predating the 2016 putative agreements, and those governing agreements required only a majority vote of the shareholders to elect a managing member. They also claimed Carol was duly elected as the managing member of each LLC because Carol and JoAnn voted their two-sixth interests, and Carol voted the trust's three-sixths interest, in each of the LLCs to properly elect Carol.

David disputed plaintiffs' claim the trust owns 50% of each LLC. He certified that Carol, as the executor of David K. Ballingall's estate and trustee of the trust, never took any action to effectuate the trust's ownership of David K. Ballingall's 50% interests in the LLCs. David also certified the trust has never

---

<sup>4</sup> The complaint also sought relief pertaining to enforcement of a schedule for the parties' use of the summer residence owned by Surf City Realty, LLC. The court considered and decided an order to show cause related to enforcement of the schedule. We do not address that issue because it is unnecessary to our determination of the arguments presented on appeal.

received any K-1 partnership filings for the LLCs and has not paid any state or federal taxes on what plaintiffs' claim is the trust's purported interest in the LLCs.

David further asserted the counsel employed by the siblings in 2016 advised them David K. Ballingall's 50% interest in the LLCs had been transferred to Joan Ballingall pursuant to David K. Ballingall's will. David also asserted Joan Ballingall's 100% interest the LLCs was subsequently transferred to Carol, JoAnn, and David in equal one-third shares.

David argued the 2016 operating agreements, which Carol, JoAnn, and he agreed to and signed without any objection made by Carol on behalf of the trust, governed the appointment of each LLC's managing member. He further claimed the putative elections of a new managing member, Carol, for each LLC, were null and void, and he was the managing member of each based on the 2016 operating agreements' plain language. David cross-moved for summary judgment on plaintiffs' complaint.

After hearing argument on the parties' cross-motions, the court declined to address plaintiffs' claim the 2016 operating agreements were null and void based on plaintiffs' assertions the trust owned 50% of the LLCs and the trust is not party to the agreements. The court found that issue "would be dealt with in



Ocean County" in a probate action there. The court recognized there were issues of fact as to whether and when the trust obtained and transferred a 50% ownership interest in the LLCs. But the court declined to address those issues, finding the actions of the trust, including whether it "should have [50%,]" "should have been part and parcel of the estate matter[.]" in Ocean County. Based on that finding, the court determined it would not address the factual issues concerning the trust's interests, if any, in the LLCs and the transfer of those interests.

The court did not decide whether the summary judgment record supported plaintiffs' claim the 2016 operating agreements were null and void because the trust did not execute or agree to them. The court found Carol, JoAnn, and David were parties to the 2016 operating agreements because the actions of the trust were "not before" the court. The court then found as a matter of undisputed fact that the trust does not own 50% of the LLCs under the 2016 operating agreements.

The court determined that under the plain language of the 2016 operating agreements, David is the managing member until "he resigns, dies, or is declared incompetent, disabled, or incapacitated . . . ." The court explained the operating agreements provide that when David ceases to be the managing member, JoAnn

shall become the managing member under the same terms that were applicable to David.

The court found the agreements further provide that when JoAnn ceases to serve as managing member, her replacement shall be elected. The court further noted the operating agreements provide only for removal of managing members who have been elected, and, since David was not elected, the removal-by-election provision of the agreements does not apply to him.

The court found Carol, JoAnn, and David signed the operating agreements, which the court determined constituted binding contracts. The court reasoned that since the operating agreements did not provide for an election to remove David as the managing member, Carol and JoAnn's elections of Carol as managing member of the LLCs were of no legal force or effect.

The court entered an order denying plaintiffs' motion for summary judgment and granting David's cross-motion for summary judgment dismissing the complaint. This appeal followed.

## II.

We review a trial court's grant of summary judgment de novo, applying the same standard as the trial court. Conley v. Guerrero, 228 N.J. 339, 346 (2017). We determine "whether the competent evidential materials presented,

when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014) (quoting Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995)). We owe no deference to the trial court's legal analysis. The Palisades at Fort Lee Condo. Ass'n, Inc. v. 100 Old Palisade, LLC, 230 N.J. 427, 442 (2017) (citing Manalapan Realty, LP v. Twp. Comm. of Twp. of Manalapan, 140 N.J. 366, 378 (1995)).

"A court must grant summary judgment 'if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Goldhagen v. Pasmowitz, 247 N.J. 580, 593 (2021) (quoting R. 4:46-2(c)). An issue of material fact exists where "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill, 142 N.J. at 540.

Plaintiffs argue the court erred by denying their summary judgment motion and granting David's cross-motion because the record presented to the

court established the 2016 operating agreements are invalid. Plaintiffs note David admitted in his answer to the complaint that "David K. Ballingall bequeathed his 50% interest in [the] LLCs" to the trust "with [Carol] as trustee." Plaintiffs also cite to the statement in David's answer that he "remains as the managing agent of the four LLCs until such time that a 50% interest in each of the [LLCs] can be placed in" the trust, as an admission the trust owns a 50% interest in each of the LLCs.

Plaintiffs claim that because the statements in David's answer constitute admissions under Rule 4:5-5, it is undisputed the trust has owned a 50% interest in the LLCs since David K. Ballingall's 2015 death.<sup>5</sup> Plaintiffs argue the undisputed facts therefore establish the 2016 operating agreements are void because the trust, which they claim owned a 50% interest in the LLCs, did not agree to, or execute, those agreements.

Plaintiffs' argument is founded on too narrow a view of the summary judgment record and too great a reliance on the admission and statement in David's answer. In opposition to plaintiffs' motion, and in support of his cross-motion, David submitted a certification: challenging the trust's claimed

---

<sup>5</sup> Rule 4:5-5 provides in part that "[a]llegations in a pleading which sets forth a claim for relief, other than those as to the amount of damages, are admitted if not denied in the answer thereto."

ownership interest in the LLCs; explaining David K. Ballingall's 50% interest in the LLCs was transferred to Joan Ballingall; noting the LLCs' tax filings do not show any trust ownership of the LLCs; asserting there is no evidence David K. Ballingall's estate transferred any ownership in the LLCs to the trust; and representing the parties, including Carol and JoAnn, recognized the trust did not have any perfected ownership interest in the LLCs because they executed the 2016 operating agreements showing each of the siblings owned a one-third interest in the LLCs without asserting any claim the trust owned shares in the LLCs.

In our view, David's representations in his certification raise genuine issues of material fact as to the status of the trust's ownership interest in the LLCs which preclude summary judgment to either side. Carol's and JoAnn's claims turn on their contention the trust owned 50% of the LLCs, but that evidence is undermined by David's evidence — his certification, the LLCs' tax filings, and Carol and JoAnn's execution of the operating agreements showing the siblings owned 100% of the LLCs. Indeed, the motion court found there are fact issues concerning the trust's ownership interest in the LLCs, but it refused to address them.

We offer no view on the resolution of the fact issues concerning the trust's putative ownership interest in the LLCs or any others that may be pertinent to a disposition of the parties' claims. We determine only that, based on the summary judgment record, the motion court erred by granting David summary judgment because the competent evidence reveals genuine issues of fact and law vital to the disposition of an issue essential to plaintiffs' cause of action and requests for relief, as well as David's defense — the validity of the 2016 operating agreements.

The court erred by entering summary judgment in David's favor. We therefore reverse the court's order granting David summary judgment and affirm the order denying plaintiffs' summary judgment.<sup>6</sup> We remand for further

---

<sup>6</sup> The motion court denied plaintiffs' summary judgment motion because it determined the undisputed facts established the 2016 operating agreements are valid and David is entitled to summary judgment based on the agreements' plain language. We affirm the denial of plaintiffs' summary judgment motion for reasons different than the motion court. See Hayes v. Delamotte, 231 N.J. 373, 387 (2018) (quoting Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001)) ("[I]t is well-settled that appeals are taken from orders and judgments and not from opinions, oral decisions, informal written decisions, or reasons given for the ultimate conclusion."). We affirm the denial of plaintiffs' motion because there are genuine issues of material fact precluding a proper award of summary judgment on plaintiffs' claims. Brill, 142 N.J. at 529.

proceedings on plaintiffs' claims and David's defenses based on the evidence and arguments presented.

We do not agree with the motion court's determination that it could not consider evidence pertinent to, and decide issues related to, the trust and its actions and still enter summary judgment with those issues unresolved. If, as the court found, the issues related to the trust were not properly before it, the proper course was for the court to deny the motion and require the parties to obtain a resolution of their issues in the proper forum. It was error for the court to determine the summary judgment motions where it acknowledged the record presented genuine issues of material fact concerning the trust but then conclude it would not address them.<sup>7</sup>

We also note that because we determine there are genuine issues of material fact precluding the proper award of summary judgment to either party, it is unnecessary to address plaintiffs' claims concerning the proper interpretation of the 2016 operating agreements and the parties' intentions as to

---

<sup>7</sup> On remand, the parties may make whatever arguments they deem appropriate concerning the court's authority or jurisdiction to address any issues presented. We find only that, based on the summary judgment record presented, and the motion court's findings and conclusions, it was error for the court to decline to consider the impact of fact issues on a motion for summary judgment simply because those issues related to the administration of a trust.

those agreements. We offer no opinion on the court's interpretation of the operating agreements. Any interpretation of the agreements, and the parties' arguments concerning them, should be reconsidered on remand based on a full factual record and a determination of whether the agreements are otherwise valid as a matter of fact and law.

Affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION