Circuit Court for Baltimore City
Case No. 24-C-16-001677

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 552

September Term, 2017

PEARSON BECKHAM REALTY, INC., et al.,

v.

SEGALL GROUP, LLC

Kehoe,
Shaw Geter,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: June 15, 2018

Following a bench trial in the Circuit Court for Baltimore City, Judge Michael A. DiPietro found appellants, Matthew A. Beckham, individually, and PBRI-Meyersdale, LLC ("PBRI-Meyersdale"), liable for a breach of contract related to a commission owed to a real estate brokerage, Segall Group, LLC ("Segall Group").[1] Following the entry of judgment in favor of Segall Group, Beckham and PBRI-Meyersdale noted this appeal, raising the following issue, which we have restated[2]:

> Whether the circuit court erred in finding that Beckham was personally liable for the broker's commission under the contract.

Finding no error in Judge DiPietro's rulings or ultimate decision, we affirm.

BACKGROUND

At the trial below, two witnesses testified: Joseph Fleischmann, a Segall Group broker involved in the lease negotiations in this case, on behalf of Segall Group; and Matthew Beckham, a real estate developer based in North Carolina who has extensive

[1] The court found Pearson Beckham Realty, Inc., the named party in the caption, not liable. Pearson Beckham Realty, Inc. is, accordingly, not a party to this appeal.

[2] The questions as presented in appellants' brief were as follows:

> I. Did the trial Court err in finding that the contract for broker's commission was ambiguous?
>
> II. Did the parol evidence presented at trial support the Court's finding that Matthew Beckham was personally liable for the broker's commission?
>
> III. Was the trial Court's finding that Matthew Beckham was liable because he was acting on behalf of an undisclosed principal clearly erroneous?

business dealings in western Maryland, on behalf of Beckham. The factual recitation is drawn from their testimonies, in a light most favorable to the appellee, as well as from Judge DiPietro's findings.

Summary of Evidence

Segall Group is a commercial real estate brokerage licensed to operate throughout the mid-Atlantic region, including Maryland. According to Fleischmann, Segall Group represents "retail tenants and landlords in procuring leases on behalf of" its tenant clients and "procuring tenants on behalf of" its landlord clients. As he further explained, "Segall Group is compensated on a commission basis from the landlords of the sites" that it leases or purchases on behalf of its retail clients.

One of Segall Group's clients is Cracker Barrel Old Country Store, Inc. ("Cracker Barrel"), which owns and operates restaurants and retail stores throughout the United States. Cracker Barrel had sought to procure a site for a proposed restaurant in La Vale, Maryland. That site was, in industry parlance, "an assemblage," that is, multiple parcels of land owned by different entities, which complicated efforts to procure it. Segall Group, Cracker Barrel's exclusive real estate brokerage, initially was unsuccessful in acquiring the desired site.

Meanwhile, Beckham had been contacted by the Allegany County Department of Economic Development,[3] which informed him of Cracker Barrel's interest in acquiring a

[3] Apparently, the Allegany County Department of Economic Development had had prior business dealings with Beckham and knew of his expertise in land development in that region.

site for a restaurant in La Vale. Beckham, on behalf of Beckham Pearson Realty, Inc., successfully entered into conditional purchase agreements with the owners of the properties comprising that site and contacted Cracker Barrel, informing it that he "was interested in possibly doing a deal." Because Segall Group was the exclusive brokerage for Cracker Barrel, Cracker Barrel referred Beckham to Segall Group and Fleischmann, the agent responsible for the Cracker Barrel account. Beckham thereafter contacted Fleischmann by telephone and informed him that, in Fleischmann's words, "he had control of the property."

Fleischmann and Beckham began negotiating the terms of a commission agreement and a letter of intent so that Cracker Barrel could obtain a long-term lease of the property. Because it is common industry practice to create, at the time of closing, a single-purpose entity as the purchaser/lessor for such a transaction, Fleischmann insisted that Beckham be personally liable for payment of his commission, with the understanding that the commission would be paid by the single-purpose entity that would subsequently come into existence and lease the property to Cracker Barrel. Accordingly, Fleischmann drafted a Commission Agreement, dated January 16, 2014, and addressed to Beckham at his business address, which did not expressly state who would ultimately pay his commission. That agreement was captioned, "Commission Agreement, Cracker Barrel Old Country Store, 2.29 Acre (+/-) Parcel of Land Located on Camp Ground Road, La Vale, MD" and provided:

> Please regard this letter as a registration of my prospect, CBOCS, Inc., d/b/a Cracker Barrel Old Country Store ("Tenant") as a prospective tenant at the above-referenced property. If a lease is executed between Pearson Beckham Realty, Inc. or related assigns ("Landlord") and Tenant, a

> commission equal to four (4%) percent of the aggregate net rent payable over the ten year base lease term shall be owed to Segall Group, LLC ("Broker"). The commission shall be payable to Broker one hundred . . . (100%) percent upon Landlord's closing on the property.
>
> Please acknowledge this agreement by executing this letter and returning a copy to me for my file. If you have any questions, please give me a call.
>
> Very truly yours,
>
> SEGALL GROUP, LLC
>
> /s/
> Joseph J. Fleischmann II

Beckham signed that letter in his own name and sent a signed copy to Fleischmann the same day via e-mail.

Contemporaneously with the Commission Agreement, Fleischmann drafted a Letter of Intent, outlining "the basic terms" of a proposal under which Cracker Barrel would lease the La Vale property from "Landlord," pursuant to a Ground Lease "to be negotiated between the parties." "Landlord" was defined as "Pearson Beckham Realty, Inc. or related assigns."

The "basic terms" of the Letter of Intent included the precise definition of the property; the term of the lease (ten years with four separate five-year options) and the lease amounts for each year; provisions for title insurance; a set of contingent conditions, the failure of any of which would permit Cracker Barrel to terminate the lease; provisions for the demolition of any existing above-ground structures and the removal and/or remediation of any underground storage tanks; and, as pertinent here, that "Landlord will pay a real

estate commission to Joe Fleischmann with Segall Group under separate agreement." Beckham signed the Letter of Intent in his capacity as President of Pearson Beckham Realty, Inc.[4]

The negotiations between Fleischmann and Beckham led to the successful execution, on October 15, 2014, of a Ground Lease between "Landlord" (PBRI-Meyersdale, its successors and assigns) and "Tenant" (Cracker Barrel), and ultimately the construction and operation of a Cracker Barrel restaurant and retail store at the La Vale site. Beckham signed the Ground Lease in his capacity as "Member/Manager" of "Landlord," PBRI-Meyersdale.[5]

Segall Group never received the commission it had been promised. In fact, Beckham "did not contact [Segall Group] once the [G]round [L]ease had been executed," despite "numerous attempts" by Fleischmann to reach him. At that point, Segall Group's attorney decided to pursue legal action to ensure payment of the commission. In preparation for that task, Fleischmann contacted Cracker Barrel, which furnished him the Ground Lease (to which neither Fleischmann nor Segall Group was a party) and an ensuing "Assignment and Assumption of Ground Lease," of which Fleischmann had been unaware.

It was only then that Fleischmann discovered that, on September 3, 2015, approximately eleven months after the Ground Lease had been executed, the Landlord's

[4] Joe Jaynes, Director of Real Estate for Cracker Barrel, signed the Letter of Intent on behalf of Cracker Barrel.

[5] Michael J. Zylstra, a Cracker Barrel Vice President, signed the Ground Lease on behalf of Cracker Barrel.

interest in the Ground Lease had been assigned from PBRI-Meyersdale, LLC, to PP-Meyersdale, LLC. The Assignment and Assumption of Ground Lease provided, among other things, that the Assignor (that is, PBRI-Meyersdale) would remain responsible "for all liabilities and obligations . . . relating to the Lease which accrued prior to" the effective date of the assignment and that the Assignee (that is, PP-Meyersdale) agreed "to perform all of Assignor's liabilities and obligations arising under the Lease" which would arise after the effective date. Matthew A. Beckham, "Member/Manager" of PBRI-Meyersdale, and Joseph Pearson, "Member/Manager" of PP-Meyersdale, signed the Assignment and Assumption of Ground Lease on behalf of their respective entities. Pearson, it should be noted, was Beckham's partner in Pearson Beckham Realty, Inc.

At trial, Beckham admitted that, following the assignment of the Ground Lease to PP-Meyersdale, he had dissolved PBRI-Meyersdale, which now "[h]as no assets." According to Fleischmann, Beckham never disclosed the existence of PBRI-Meyersdale, even though, as it turns out, that entity was already in existence prior to the commencement of their negotiations.[6]

Beckham testified that he had not promised Fleischmann that he would be personally liable for any commission owed to Segall Group. He claimed that the assignee landlord, PP-Meyersdale, not he, personally, was responsible for paying Segall Group's

[6] As noted previously, a single-purpose entity landlord in such a transaction ordinarily is not formed until the time the ground lease closes. The reason that PBRI-Meyersdale was already in existence during preliminary negotiations was that it had, apparently, been created for an entirely different real estate transaction, which ultimately did not take place.

real estate commission. Beckham further asserted that he had "never" personally guaranteed a real estate commission or even been asked to do so.

Beckham admitted that PBRI-Meyersdale, the original Landlord in the Ground Lease, was already in existence at the time he and Fleischmann had executed the Commission Agreement. He also conceded that neither Pearson nor he had disclosed to Fleischmann or anyone else at Segall Group either the existence of PBRI-Meyersdale, or the ensuing assignment of the Ground Lease to an entity controlled by Pearson.

The Court's Decision

At the conclusion of the trial, Judge DiPietro issued findings of fact and conclusions of law, holding that both PBRI-Meyersdale and Beckham, personally, are liable to Segall Group "for the commissions it earned with respect to the transaction, or the ground lease, that led to the construction of a Cracker Barrel Restaurant in La Vale, Maryland." Given Beckham's admission that he had stripped the assets from PBRI-Meyersdale, its liability is largely an academic question.

Of more interest are Judge DiPietro's rulings concerning Beckham's personal liability. Judge DiPietro expressly stated that he did "not find persuasive Mr. Beckham's testimony that he felt that [PP-Meyersdale], LLC," was "obligated to pay" the commission. That finding was bolstered by the plain language of the Assignment and Assumption of Ground Lease, which, the judge pointed out, provides that PBRI-Meyersdale "remains responsible for all liabilities and obligations of Assignor relating to the Lease which accrued prior to the Effective Date" of the assignment, which was approximately eleven

months after the Ground Lease had been executed. (Recall that execution of the Ground Lease was the event that triggered the obligation to pay the commission to Segall Group.)

As for Beckham's personal liability, Judge DiPietro based his decision on two alternative grounds—because the Commission Agreement so provides; and because Beckham was acting as the agent of an undisclosed principal. The judge, in turn, construed the Commission Agreement under two mutually exclusive hypotheses—either that it is unambiguous or not.

Under the assumption that the Commission Agreement is unambiguous, the judge concluded that, as Beckham had signed it "in his individual capacity," he had agreed to be personally liable for payment of Segall Group's commission.[7] In the alternative, the judge assumed that the Commission Agreement is ambiguous because it does not specify who is obligated to pay Segall Group's commission, and he looked to extrinsic evidence to resolve that ambiguity. In doing so, he noted that Beckham, a man of "business sophistication," had signed the Letter of Intent (between Pearson Beckham Realty, Inc., and Cracker Barrel) in his capacity as President of Pearson Beckham Realty, Inc., and concluded that Beckham had "knowingly signed" the Commission Agreement "in his individual capacity." Judge DiPietro found it telling that "nothing" had prevented Beckham from refusing to sign the Commission Agreement, "or insisting that there be language limiting liability on the commission to Pearson Beckham Realty, Inc." Moreover, observed the judge, Beckham

[7] Judge DiPietro observed that the "mere fact that [the Commission Agreement was] addressed to Mr. Beckham at his business address at PBR Realty, does not . . . obligate Pearson Beckham Realty, Inc. in and of itself."

"certainly could have written under his signature" that he was signing as "President, Pearson Beckham Realty, Inc." However, Beckham "did not do so."

Finally, in the alternative, Judge DiPietro found Beckham personally liable under the Commission Agreement as the agent of an undisclosed principal. The judge found "most important" Beckham's testimony that PBRI-Meyersdale had been created "before any of this transaction occurred" but that it had not been "disclosed to Segall Group that Mr. Beckham had an interest in the ultimate assignor of the lease." And, given that PBRI-Meyersdale "no longer exists," Judge DiPietro concluded that Beckham, the agent of that undisclosed principal, is therefore personally liable for payment of Segall Group's commission.

Judge DiPietro then set forth his reasons for two other rulings that are not challenged on appeal: his finding that Pearson Beckham Realty, Inc. is not liable on the contract, and his determination of the amount of damages, $58,320.54.[8] After entry of judgment in favor of Segall Group, Beckham and PBRI-Meyersdale noted this appeal.[9]

STANDARD OF REVIEW

In reviewing a judgment entered following a bench trial, we accept the trial court's findings unless clearly erroneous, giving "due regard to the opportunity of the trial court to

[8] That amount reflected the unpaid commission of $53,100, which Judge DiPietro calculated on the basis of the lease, as well as pre-judgment interest of $5,220.54, calculated at the statutory six-per-cent rate from September 4, 2015 to April 25, 2017.

[9] Upon the conclusion of trial, Judge DiPietro issued an order setting forth the judgment. Apparently, through a clerical error, judgment was entered erroneously against Pearson Beckham Realty, Inc. though Judge DiPietro had found it not liable on the claim. Subsequently, a motion to revise the judgment was filed and granted to correct the record.

judge the credibility of the witnesses." Md. Rule 8-131(c). We review the trial court's "determinations of legal questions" and its "conclusions of law based upon findings of fact," however, without deference. *Elderkin v. Carroll*, 403 Md. 343, 353 (2008) (citations and quotation omitted).

DISCUSSION

We note at the outset that, although judgment was entered against both Beckham and PBRI-Meyersdale, and both parties noted this appeal, the entire argument in appellants' brief[10] challenges Judge DiPietro's ruling that Beckham is personally liable for the judgment. Beckham contends that the circuit court erred in finding him personally liable under the Commission Agreement, asserting several claims of error. Initially, he maintains that Judge DiPietro erred in finding that the Commission Agreement is not ambiguous but then considering parol evidence to construe its terms. Beckham then maintains that Judge DiPietro erred in concluding that the parol evidence supported its finding that Beckham is personally liable for the broker's commission, as well as that Judge DiPietro erred in finding Beckham personally liable as an agent of an undisclosed principal. None of these contentions has any merit.

[10] Indeed, the brief is captioned Brief of Appellant, in the singular, and it concludes with the following request for relief: "For the reasons stated herein, the judgment of May 2, 2017, as revised on June 21, 2017, against the Appellant, Matthew A. Beckham, should be reversed." Of course, since Beckham acknowledged that he had dissolved PBRI-Meyersdale, LLC, and stripped it of any remaining assets, it seems unlikely that the judgment could be enforced against that entity.

Construction of Contract Missing Essential Term

Maryland adheres to the objective law of contracts. *General Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985) (citation omitted). "A court construing an agreement under this test must first determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated." *Id.* If "the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed." *Id.* "Consequently, the clear and unambiguous language of an agreement will not give away to what the parties thought that the agreement meant or intended it to mean." *Id.* (citation omitted).

Neither party has contested that the Commission Agreement is a binding and enforceable contract. Because it is a written agreement, executed after negotiations between Fleischmann and Beckham, it is presumed that it represents the entire agreement between the parties, and the general rule is that extrinsic evidence is inadmissible to vary or contradict its terms. Richard A. Lord, 11 *Williston on Contracts* § 33:15, at 963-64 (4th ed. 2012); *id.* § 3317, at 972. The law in Maryland accords with that general rule:

> Cases are legion in Maryland to the effect that where a contract is plain in its meaning, there is no room for construction and it must be presumed that the parties meant what they expressed. Hence, in the absence of fraud, duress or mistake (none of which are claimed to exist in the present case), parol evidence is not admissible to vary or contradict the terms of a written instrument.

Equitable Trust Co. v. Imbesi, 287 Md. 249, 271 (1980).

"As with many legal rules, however, there are situations that render the rule inoperable." *Calomiris v. Woods*, 353 Md. 425, 433 (1999). "All courts generally agree that parol evidence is admissible when the written words [of a contract] are sufficiently ambiguous," that is, "if, when read by a reasonably prudent person," they are "susceptible of more than one meaning." *Id.* at 433, 436 (citations omitted); *see* 11 *Williston on Contracts* § 33:17, at 971 (observing that a "contract must appear on its face to be incomplete in order to permit parol evidence of additional terms").

The difficulty in applying any of these rules to the present case turns on one salient fact—the Commission Agreement, as Judge DiPietro recognized, does not expressly state who is responsible for paying Segall Group's commission. Judge DiPietro resolved the conundrum by proceeding under two mutually exclusive possibilities—that the Commission Agreement is either unambiguous or not—and determining that, under either possibility, Beckham had agreed to be personally liable. We find no error in that methodology or in the conclusion reached.

Proceeding under the assumption that the Commission Agreement is unambiguous, Judge DiPietro concluded that, because Beckham had signed it "in his individual capacity," he had personally agreed to be bound by its provision that Segall Group would be paid its commission. That conclusion follows from what the Court of Appeals has termed "one of the most commonsensical principles in all of contract law, *i.e.*, that a party that voluntarily signs a contract agrees to be bound by the terms of that contract." *Walther v. Sovereign Bank*, 386 Md. 412, 430 (2005) (footnote omitted); *accord Binder v. Benson*, 225 Md. 456, 461 (1961) (observing that "the usual rule is that if there is no fraud, duress or mutual

mistake, one who has the capacity to understand a written document who reads and signs it, or without reading it or having it read to him, signs it, is bound by his signature as to all of its terms") (citations omitted).

In the alternative, Judge DiPietro proceeded under the assumption that the omission of a material term from the Commission Agreement renders it ambiguous and looked to extrinsic evidence to construe the missing term. That evidence included the testimony of the witnesses, as well as other documents, admitted into evidence, all of which had been signed by Beckham in a business or corporate capacity, in contrast with the Commission Agreement, which he had signed personally. As for the witness testimony, Judge DiPietro expressly stated that he disbelieved Beckham's testimony that PP-Meyersdale, the assignee of the Ground Lease, was intended to be the entity responsible for payment of Segall Group's commission, a finding that, contrary to Beckham's assertion, is not clearly erroneous. Md. Rule 8-131(c). Moreover, Fleischmann testified that he had deliberately drafted the Commission Agreement as broadly as possible and that his intention was to "hold the developer responsible" for his commission because, at the time of drafting, he was unaware of the identity of the single-purpose entity that Pearson Beckham Realty, Inc., would create to enter into the Ground Lease with Cracker Barrel.[11] Judge DiPietro could properly credit that testimony, Md. Rule 8-131(c), in deducing what a reasonable person

[11] Fleischmann testified that it is standard practice for a real estate developer, such as Pearson Beckham Realty, Inc., to create, shortly before closing, a stand-alone single-purpose entity to purchase and lease a particular piece of commercial property, and that, typically, a broker (such as himself) would not know the identity of that single-purpose entity at the time when a commission agreement is executed.

would have intended the Commission Agreement to mean. *General Motors Acceptance Corp.*, 303 Md. at 261 ("A court construing an agreement under this test must first determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated.").

As for the documentary evidence, all of which evinced Beckham's familiarity with the distinction between signing an instrument as a corporate officer and signing it in a personal capacity, we agree with Judge DiPietro that, given Beckham's "business sophistication," it was "clear" that he had "knowingly signed the letter of intent on behalf of the company that he had some interest, and certainly was the president of that company, but as well signed Exhibit 1 [the Commission Agreement] in his individual capacity."

Thus, Judge DiPietro did not err in determining that, regardless of whether the Commission Agreement is ambiguous, Beckham is personally liable for payment of Segall Group's commission.

Beckham's Liability as Agent of an Undisclosed Principal

Although the analysis to this point is sufficient for us to affirm the judgment, we shall, in the interest of completeness, address briefly Beckham's remaining assignment of error, that Judge DiPietro erred in finding him personally liable for payment of Segall Group's commission as the agent of an undisclosed principal.

The legal effect given to Beckham's signature on the Commission Agreement implicates principles of agency law:

> If an agent, acting for his principal, enters into an agreement with a third party, he is personally responsible under that contract if the identity of his principal is not fully disclosed and is in fact unknown to the third party. This concept encompasses two basic factual situations: where the third party knows there is an agency relationship but is unaware of the principal's identity; and where the third party is not even cognizant that an agency relationship exists. Generally, if an agent fully discloses the identity of his principal to the third party, then, absent an agreement to the contrary, he is insulated from liability. However, this is subject to exception when the purported principal that is disclosed is nonexistent or fictitious; or when the principal is legally incompetent.

A.S. Abell Co. v. Skeen, 265 Md. 53, 56 (1972) (citations omitted), *overruled on other grounds*, *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 56-57 (1992). *See also Restatement* (*Third*) *of Agency*, § 6.03 ("Agent for Undisclosed Principal"), cmt. b (noting that an "agent who makes a contract on behalf of an undisclosed principal also becomes a party to the contract" because the "agent has dealt with the third party as if the agent were the sole party whose legal relations would be affected as a consequence of making the contract").

There is overwhelming evidence (including his own admission) that Beckham did not disclose to Fleischmann that he was acting on behalf of PBRI-Meyersdale in executing the Commission Agreement. That alone is sufficient to render him personally liable under that agreement. *Abell*, 265 Md. at 56. In addition, Beckham's subsequent actions, in assigning the Ground Lease to an LLC controlled by his business partner and dissolving PBRI-Meyersdale, provide additional grounds for holding him personally liable under the Commission Agreement. *Id.* (noting that an agent is personally liable even when acting on

behalf of a disclosed principal if that principal "is nonexistent or fictitious; or when the principal is legally incompetent").

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.