Circuit Court for Anne Arundel County
Case No. C-02-CV-17-003171

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0341

September Term, 2019

HELEN MROSE

v.

SAMUEL BOLES

Fader, C.J.,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: October 30, 2020

This case arises from a contract dispute between a divorced couple regarding their agreement to sell the former marital home ("the Property") pursuant to the judgment of divorce in the Circuit Court for Anne Arundel County. Appellant Helen Mrose ("Mrose") filed suit against Samuel Boles ("Boles") alleging breach of contract arising from the breach of Boles' written email agreement during the negotiation of the sale of the Property. We agree that Boles' written email agreement constituted a modification of the Marital Settlement Agreement ("the Agreement"), and Boles breached that contract when he failed to pay Mrose an additional $75,000 from the Property proceeds. Therefore, we shall reverse and remand the case for entry of judgment on the breach of contract claim in favor of Mrose.

BACKGROUND & PROCEDURAL HISTORY

The parties were divorced on December 28, 2015 and executed a Marital Settlement Agreement that was incorporated into the Judgment of Absolute Divorce. In the Agreement, the parties agreed to sell the Property and divide the proceeds evenly. The Property was initially listed for $2,500,000 from July 2016 until the listing was taken off the market in November 2016 due to market weakness. The Property was again listed on April 21, 2017 for $2,300,000, but the price was reduced to $2,150,000 in early May.

On May 20, 2017 the parties received their first offer on the Property for $1,950,000. Mrose was dissatisfied with this offer and explained to Boles that she refused to sell the Property for anything less than $2,150,000. In regard to this specific offer,

Boles agreed to split the difference between the contract price and the price that Mrose was willing to sell the house. This sale was not completed.

On June 29, 2017 a new buyer offered $1,975,000 for the Property. Mrose wished to negotiate for a higher price because she believed the house was worth at least $2,150,000, but she ultimately reduced the amount she wanted to receive to $2,125,000. Elizabeth Montaner, the parties' real estate agent, advised by email that they should accept the offer of $1,975,000 with the condition that the buyer strikes the appraisal contingency, and stated that Boles would again agree to split the difference between the contract price and what Mrose was willing to sell the house for—this time a $150,000 difference. In response to Montaner's email, Boles stated "[t]hat sounds fine. I am in agreement." He continued, "In an effort to not loose [sic] this buyer, I have agreed to kick in the difference at the moment, and then negotiate separately with Helen to split the difference in the future."

Relying on the email agreement from Boles, Mrose signed the revised contract on June 30, 2017 to sell the Property for $1,975,000. Based on this agreement, Montaner emailed the title company on July 20, 2017 informing them that the proceeds should be divided with $1,062,500 to Mrose and $912,500 to Boles. Approximately one week later, Boles, through counsel, contacted the title company demanding the proceeds be split evenly, contrary to Montaner's request. At closing on August 7, 2017, Mrose explained that though she was going to closing because of her contractual obligations, she was

doing so under protest because Boles refused to pay the $75,000 he previously agreed to. The proceeds were divided evenly between the parties.

Mrose filed suit, alleging breach of contract arising from the breach of Boles' written email agreement and fraudulent inducement. Boles' Motion to Dismiss, counter-claim, and Motion for Summary Judgment were all denied. Mrose's Motion for Summary Judgment was also denied.

At trial, the court analyzed the integration clause in the Separation Agreement that states "[n]o modification or waiver of any of the terms of this agreement shall be valid unless made in writing and signed by the parties." Based on this language, the court held that the email exchange did not expressly modify the Separation Agreement. Further, the trial court determined that "the e-mail does not create a new contract," but instead "sends an idea of what [Boles'] intention was at the time." Finally, the court determined that Boles' statement that he would "kick in the difference at the moment, and then negotiate separately with Helen to split the difference in the future" was not false, but was a statement of his actual intention, and the statement was not made for the purpose of defrauding Mrose.

This timely appeal followed.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN DENYING MROSE'S MOTION FOR SUMMARY JUDGMENT

On appeal, "the standard of review for a denial of a motion for summary judgment is whether the trial judge abused his discretion and in the absence of such a showing, the

decision of the trial judge will not be disturbed." *Dashiell v. Meeks*, 396 Md. 149, 165 (2006). The trial court can "exercise discretion when affirmatively denying a motion for summary judgment or denying summary judgment in favor of a full hearing on the merits." *Id*. at 164.

Here, Mrose sought judgment on the issue of breach of contract. She claims that she was entitled to summary judgment because "the various documents in the case indicated, without any dispute as to material fact, that there was a clear written email modification of the original Marital Settlement Agreement, a promise by Appellee to pay the Appellant an additional portion of his proceeds of the sale of the former marital home."

Generally, no party is entitled to summary judgment as a matter of law. *Dashiell*, 396 Md. at 165. A judge has discretion to grant summary judgment or allow the case to proceed on the merits. Here, the trial court exercised its discretion in allowing a full hearing for factual development. We cannot find that the court's decision to allow a trial on the merits was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Goodman v. Commercial Credit Corp.*, 364 Md. 483, 492 (2001).

II. THE CIRCUIT COURT ERRED IN FINDING THERE WAS NO CONTRACT OR MODIFICATION OF THE AGREEMENT BETWEEN THE PARTIES

Mrose next contends that the circuit court erred in finding that the email from Boles did not create a contract, nor did it modify the Agreement.[1] Under Maryland Rule 8-131(c), "an appellate court reviews cases tried without a jury 'on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.'" *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380, 388 (2019) (quoting Md. Rule 8-131(c)). However, "the clear error standard does not apply to 'determinations of legal questions or conclusions of law.'" *Id*. (quoting *Tribbitt v. State*, 403 Md. 638, 644 (2008)). Instead, "[w]hen the trial court's order involves an interpretation and application of Maryland statutory [or] case law, [the appellate] [c]ourt must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review." *Id*. (Citation and quotation marks omitted).

At trial, the circuit court first analyzed the Agreement that states, "Husband and wife shall equally divide the net proceeds of the sale." The integration clause states, "This agreement contains the entire understanding between the parties. No modification or waiver of any of the terms of this agreement shall be valid unless made in writing and

[1] At trial, Mrose also alleged fraud in the inducement, though this issue was not raised on appeal. We decline to address the claim of fraud because the relief sought by Mrose is available under her claim for breach of contract.

signed by the parties."[2] Next, the court analyzed the email sent from Boles to Montaner and Mrose stating,

> "That sounds fine. I am in agreement. I think we should be prepared to sell for a lower appraisal and have a plan in place if they do not agree with excluding the appraisal process. In an effort to not loose[sic] this buyer, I have agreed to kick in the difference at the moment, and then negotiate separately with Helen to split the difference in the future. Please proceed with preparing and sending the documents. Thx, Sam."

The court held that this email did not constitute a new contract between Mrose and Boles, nor did it modify the terms of the Agreement. We disagree.

We begin our analysis by determining whether the email exchange at issue in this case created an enforceable contract by modifying the terms of the Agreement. Modification of a contract requires mutual assent of the two parties. *See Cambridge Technologies, Inc. v. Argyle Industries, Inc.*, 146 Md. App. 415, 433 (2002). "Manifestation of mutual assent includes two issues: (1) intent to be bound, and (2) definiteness of terms." *Cochran v. Norkunas*, 398 Md. 1, 14 (2007).

The parties dispute whether a valid contract was formed, so we must "analyze the parties' intent to be bound according to the principles of Maryland contract law." *Cochran*, 398 Md. at 16. Maryland courts "subscribe to the objective theory of contract interpretation. *Credible Behavioral Health Inc. v. Johnson*, 466 Md. 380, 393 (2019).

[2] Both parties agree that emails can satisfy the Statute of Frauds and that oral agreements can modify a written agreement, even if there is an integration clause. *See MEMC Electronic Materials, Inc. v. BP Solar Intern., Inc.*, 196 Md. App. 318, 339 (2010) ("E-mail communications can amount to a sufficient writing under the Statute. In that regard, if so intended, a typed name is a sufficient signature as an agent of the party against whom enforcement is sought.").

"Under this approach, the primary goal of contract interpretation is to ascertain the intent of the parties in entering the agreement and to interpret the contract in a manner consistent with [that] intent." *Id*. (Citation and quotation marks omitted).

"A written contract is ambiguous if, when read by a reasonably prudent person, it is susceptible to more than one meaning." *Calomiris v. Woods*, 353 Md. 425, 436 (1999). If the court determines a contract is ambiguous, "the court must consider any extrinsic evidence which sheds light on the intentions of the parties at the time of the execution of the contract." *Sy-Lene of Washington, Inc. v. Starwood Urban Retail II, LLC*, 376 Md. 157, 167-68 (2003) (quoting *County Commissioners v. St. Charles*, 366 Md. 426, 445 (2001)).

We first review the language of Boles' email to Montaner and Mrose to determine if the parties intended to be bound. Boles' email is in response to Montaner's email which states in relevant part, "My recommendation would be to agree to their sales price with the condition that they agree to strike the appraisal contingency which is a significant concession. Sam has agreed to absorb the $150k difference between $2.125 and $1.975 to make this deal work." Boles replies, "That sounds fine. I am in agreement." Further, he states, "In an effort to not loose[sic] this buyer, I have agreed to kick in the difference at the moment, and then negotiate separately with Helen to split the difference in the future." Though Mrose does not explicitly argue that the email agreement is ambiguous, she avers that this Court should consider parol evidence, namely the parties' prior agreements to split the difference and the text messages between the parties in regards to

the agreement. We conclude that this email when read by a reasonably prudent person, is susceptible to more than one meaning, specifically that Boles will "kick in the difference *for now*" and that he will "negotiate separately with Helen to split the difference *in the future*." (emphasis added). We look to extrinsic evidence to resolve this ambiguity.

Mrose interpreted Boles' email to say that he agreed to pay her the difference of $75,000 for this offer on the house with this buyer at this time. However, should this buyer fall through, Mrose claims Boles reserved the right to negotiate on a new contract. Boles, on the other hand, avers that his email was an offer to negotiate at a later date.

At trial, Mrose pointed to evidence of a prior agreement between the parties where they received an offer on the Property in May and Boles agreed to pay the difference between the offer on the Property and the price Mrose was willing to sell the Property. This agreement was memorialized in text messages between Mrose, Boles, and Montaner. Mrose also notes the numerous times she articulated that she would not sell the Property for less than a certain price and suggested that if Boles would like to make up the difference, she would agree to sell the Property for less. Specifically, Mrose sent an email to Boles and Montaner at 10:35 a.m. on June 30, 2017 reiterating this position, mere hours before the email from Boles in question.

Montaner testified at trial that it was her understanding when she sent the email to the parties that Boles had agreed to pay the difference of $75,000 to Mrose. Montaner further testified that after Boles responded by email stating he would agree "for the moment," she "pick[ed] up the phone and called him right away because [she] was quite

concerned about his response." Twenty days after this phone conversation with Boles, Montaner emailed the title company to explain how the proceeds would be split. Montaner wrote, "The husband, Sam, offered to make up the difference in order to get to an agreeable sales price with the buyers…Therefore, the proceeds should be divided in this way: $912,500.00 for Sam and $1,062,500.000 for Helen." Montaner testified that at the time she wrote this email to the title company, it was still her understanding that this was the agreement between the parties.

Boles testified at trial that he "would be interested in negotiating with Helen if we have to do something different in the future." Despite his apparent testimony that the offer to negotiate was directed at a different, hypothetical sale in the future should the current sale fall through, Boles contends that his statement "I agree" was only agreeing to accept the buyer's price and then, in an effort to "save this transaction," he would negotiate with Mrose separately.

The extrinsic evidence presented at trial is undisputed. Based on the identical prior agreements between the parties for Boles to pay the difference in an effort to induce Mrose to agree to the contract price, it is clear that Boles again agreed to pay the difference. Boles asserted this agreement numerous times to both Mrose and Montaner, and again reiterated at trial that he would negotiate again should there be a different contract in the future. It is clear that Boles intended to be bound by this agreement in an effort to sell the Property to this prospective buyer and thus created a contract that modified the Agreement between the parties.

In the alternative, Montaner, in the scope of her agency, contracted Boles to pay Mrose the difference of $75,000. The three elements that are key to an agency relationship are "(1) the agent is subject to the principal's right of control; (2) the agent has a duty to act primarily for the benefit of the principal; and (3) the agent holds a power to alter the legal relations of the principal." *Proctor v. Holden*, 75 Md. App. 1, 20 (1988). "An agent has the authority to enter into a contract on behalf of the principal." *Walton v. Mariner Health of Maryland, Inc.*, 391 Md. 643, 655 (2006).

As Boles' agent, Montaner emailed Boles and Mrose with an offer from a buyer, noting the buyer would pay $1,975,000, but because this was less than Mrose was willing to accept, Montaner suggested a counteroffer that the buyer strike the appraisal contingency. In the same email Montaner also affirmed that Boles agreed to pay the difference between the $2,125,000 and $1,975,000. Boles subsequently confirmed Montaner's statement that he would absorb the difference. However, at trial, Montaner testified that she was concerned by the language of Boles' email, and immediately called him to confirm his intentions. Apparently satisfied with Boles' intentions, twenty days later Montaner emailed the title company within the scope of her agency to instruct the title company how to divide the proceeds upon the closing on the Property. Montaner testified that she instructed the title company to provide the proceeds in this manner because that is what she believed the agreement was between the parties at that time. In her capacity as an agent for Boles, Montaner continued to reiterate Boles intention to absorb the difference between the prices.

We hold that Mrose and Boles created a binding contract that modified the Agreement where Boles was to pay an additional $75,000 of the Property proceeds, and Boles breached the contract when he refused to pay the additional amount.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED IN PART AND REVERSED IN PART. CASE REMANDED FOR ENTRY OF A JUDGMENT IN FAVOR OF APPELLANT. COSTS TO BE EVENLY DIVIDED.