Circuit Court for Montgomery County
Case No. 428477-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 463

September Term, 2018

JIAN LIU, et al.

v.

YUE WANG, et al.

Fader, C.J.,
Shaw Geter,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: June 24, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Yue Wang, Yufeng Zhao, Yanfei Li, Xiaoyu Su, Jingjing Ye, and Hollow Creek Investment Group, LLC (Hollow Creek), appellees, filed a complaint in the Circuit Court for Montgomery County against Jian Liu and Amadues Development, LLC (Amadues), appellants, seeking to enforce a letter of intent (Letter of Intent) signed by the parties and a subsequent settlement agreement (Settlement Agreement), signed by all but appellants. The individuals are members of one or both of the limited liability companies. Appellants filed a counterclaim. Later, appellants sought to amend their counterclaim to add a claim for intentional misrepresentation. The court struck the claim for misrepresentation. The circuit court granted summary judgment in favor of appellees and ordered specific performance of the Letter of Intent and the Settlement Agreement. We shall affirm the judgment.

Questions Presented

Appellants present five questions which we have condensed as follows:

1. Did the circuit court err in ordering specific performance of the Letter of Intent and the Settlement Agreement?

2. Did the circuit court err in striking appellants' claim for misrepresentation?

3. Did the circuit court err in denying appellants' motion for reconsideration of the above rulings?

Factual and Procedural Background

Amadues was created to purchase and develop real property known as Hidden Hills Subdivision (Hidden Hills). Amadues had three general members, Messrs. Liu, Zhao, and Wang. It had ten limited members, including Messrs. Zhao and Wang.

On August 1, 2015, Messrs. Zhao and Wang "expelled" Mr. Liu from Amadues. Mr. Liu and Amadues sued Messrs. Zhao and Wang in circuit court, alleging that Mr. Liu had been wrongfully expelled and also was prohibited from exercising his alleged right to purchase a lot in Hidden Hills. *Liu*, *et al. v. Zhao*, *et al.*, No. 412593-V, Circuit Court for Montgomery County (expulsion litigation). He sought a ruling that his expulsion was improper and that he had the right to purchase a lot pursuant to the terms of Amadues' operating agreement.

The expulsion litigation was tried in August 2016. On September 15, 2016, the court entered judgment in favor of Mr. Liu and ordered that he remain a general member in Amadues and that he had the right to participate in the management of its affairs. Messrs. Zhao and Wang noted an appeal to this Court. This case is pending in this Court as *Zhao*, *et al. v. Liu*, *et al.*, No. 1754, September Term, 2016. As a result of the decision in this case, we will file an opinion in that case, expressing our conclusion that it is moot.

Hollow Creek was created to purchase real property located at 1851 Ninth Street, N.W., Washington, D.C. Hollow Creek had four "Class A" members, Messrs. Liu, Zhao, Wang, and Li. On August 1, 2015, Messrs. Zhao, Wang, and Li "expelled" Mr. Liu from Hollow Creek.

In November 2016, the parties, represented by counsel, discussed settlement of all disputes related to Amadues and Hollow Creek. The discussions were fruitful and the Letter of Intent was prepared to document the oral agreement. According to Mr. Liu, on November 18, 2016, he received a copy of the Letter of Intent marked "Draft." On the same date, he received a clean copy that bore the signatures of other participants in the

settlement discussions. Mr. Liu signed the signature page marked "Draft." He did not sign the signature page on the clean version.

In essence, the terms of the settlement were that Mr. Liu would purchase other membership interests in Amadues for $730,000, with 5% paid in escrow pending closing of the purchase. The parties agreed on mutual releases, the dismissal of the expulsion litigation, and the handling of fees and expenses incurred in that litigation. They also agreed on other provisions relating to the ongoing operations of Amadues.

The Letter of Intent expressly contemplated a later Settlement Agreement. The Letter of Intent "sets forth all material terms" and states that the parties executed it "with the intent to be bound hereby and the intent to be bound by a separate Settlement Agreement memorializing these terms."

On November 21, 2016, counsel for Messrs. Zhao and Wang sent the Settlement Agreement to counsel for the other parties. By December 1, 2016, the Settlement Agreement had been signed by all signatories with the exception of Mr. Liu. On that date, it was forwarded to him for signature. Mr. Liu did not sign it, and on December 20, 2016, this lawsuit was filed.

It is unnecessary to review all of the various pleadings that were filed. Suffice it to say that, on February 16, 2018, appellants filed a third amended counterclaim in which they alleged misrepresentation of material facts by appellees. On the same day, the parties filed cross motions for summary judgment with respect to enforceability of the Letter of Intent and the Settlement Agreement. On February 26, 2018, appellees filed a motion to strike the third amended counterclaim. On March 8, 2018, the court held a hearing. On March

19, 2018, the court granted appellees' motion for summary judgment, denied appellants' motion for summary judgment, and granted appellees' motion to strike the third amended counterclaim.

On March 20, 2018, appellants filed a motion for reconsideration. On March 28, 2018, the court denied the motion. Appellants filed a motion to stay. The court denied it, and this appeal followed.

Standard of Review

This Court's review of the grant of summary judgment is *de novo*. *Piscatelli v. Van Smith*, 424 Md. 294, 305 (2012). Our review of the denial of a motion for reconsideration is abuse of discretion. *Wilson-X v. Department of Human Resources*, 403 Md. 667, 674 (2008). Our review of the ruling granting the motion to strike the third amended counterclaim is abuse of discretion. *Hendrix v. Burns*, 205 Md. App. 1, 45 (2012).

Discussion

1.

The circuit court concluded that the Letter of Intent and Settlement Agreement are valid and enforceable. On appeal, appellants contend that the Letter of Intent does not contain essential terms and, thus, is unenforceable.

Appellants argue that the missing essential terms are as follows: (1) The Letter of Intent provided for mutual releases by all parties, but it did not contain all of the specific terms of those releases. (2) the Letter of Intent lacked detail with respect to the disbursement of funds out of the Amadues bank account. (3) The Letter of Intent contained no provision that Mr. Liu was expelled from Hollow Creek in accordance with the

operating agreement, but the provision was in the Settlement Agreement. (4) Mr. Liu could purchase other interests in Amadeus for $730,000, payable in part in an equivalent amount of Renminbi, but it did not contain the exchange rate. (5) The Letter of Intent provided that Mr. Liu had to deposit 5% of the purchase price with an escrow agent, but the details of an escrow agreement were not included. (6) the Letter of Intent did not include the exact amount to pay off a certain loan. (7) Provisions in the Settlement Agreement relating to a release of lien and the assignment of membership interest in Amadues from other members to Mr. Liu were not in the Letter of Intent.

The circuit court filed a thorough written opinion, with which we agree. We shall reproduce a significant portion of that opinion.

> The holdings in *Falls Garden Condominium Ass'n, Inc. v. Falls Garden Homeowners A*[*ss*]*'n, Inc.*, 441 Md. 290 (2015) and *Cochran v. Norkunas*, 398 Md. 1 (2007), both dealing with the enforceability of a letter of intent, are instructive here. In both cases the Court first stated the requirement of mutual assent for the formation of a valid contract. *Falls Garden*, 441 Md. at 302, *Cochran*, 398 Md. at 14.
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> In both *Falls Garden* and *Cochran* the Court identified four categories of cases when letters of intent are at issue:
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> > (1) At one extreme, the parties may say specifically that they intend not to bound until the formal writing is executed, or one of the parties has announced to the other such an intention. (2) Next, there are cases in which they clearly point out one or more specific matters on which they must yet agree before negotiations are concluded. (3) There are many cases in which the parties express definite agreement on all necessary terms, and say nothing as to other relevant matters that are not essential, but that other people often include in similar contracts. (4) At the opposite extreme are cases like those of the third class, with the addition that

> the parties expressly state that they intend their present expressions to be a binding agreement or contract; such an express statement should be conclusive on the question of their 'intention'.

[441 Md.] at 301 (citing 1 Joseph M. Perillo, CORBIN ON CONTRACTS § 29 at p. 157-58 (Rev. ed. 1993)).

* * *

The LOI [Letter of Intent] is binding on the parties because it unambiguously states the parties' intent to be bound, consistent with Corbin's fourth category, and the terms of the LOI are definite as to the material elements of the transaction. Defendant Liu's argument that his subjective intent in signing the signature sheet with the "DRAFT" watermark was to indicate his reservations and that he did not see his signature as binding him to the LOI is unpersuasive given the context of the negotiations. E-mails were exchanged between both Plaintiffs' and Defendants' attorneys referring to the LOI as "executed" and "fully ratified." …. Though Defendants' correctly argue that an attorney cannot independently settle his client's claims, it is not the attorney's acts here that are dispositive, but Mr. Liu's. It was Mr. Liu who signed the LOI and Mr. Liu who took no action to express any reservations about the LOI. It is therefor[e] his actions, and not the actions of his attorneys, that the [c]ourt finds bound him to the LOI.

The Defendants' argument that the terms of the LOI were too indefinite to demonstrate an intent to be bound is equally unpersuasive. Defendants insist that the requirement for a future Settlement Agreement renders the LOI unenforceable. Defendants also argue that the inclusion of other steps, such as future releases, render the LOI unenforceable. This assertion is contrary to the holding in *Falls Garden*. The letter of intent in *Falls Garden* included language that required the parties to prepare and submit a Lease for execution after the letter of intent was signed. *Falls Garden*, 441 Md. at 308. Falls Garden argued that this requirement of a latter executed lease meant that the letter of intent was unenforceable because, like in *Cochran*, "the parties intended to finalize their agreement through a future agreement." *Id*. However, the Court stated "the explicit contemplation of future agreements, in the present Letter of Intent, does not render its terms indefinite." That the lease itself had not been executed and was not in final form was of no relevance to the enforceability of the letter of intent because the letter included all the necessary material terms for the proposed lease.

> The LOI and the final draft of the Agreement that was circulated between the parties in this case covered all the same material terms to the contemplated transaction. Though the Agreement is substantially longer than the LOI, all the material terms laid out in the LOI are those that are expounded upon in the Agreement.
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> While the Court in *Falls Garden* found that the Letter of Intent fell into the third category of cases because the express language did not "state whether the parties intend to be bound," but rather the letter of intent contained all the necessary material terms to the parties agreement, the LOI in this case goes even further by explicitly stating in paragraph 10 the parties intent to be bound by both the LOI and the Settlement Agreement. For this reason, the LOI falls into the fourth category of cases, and "such an express statement should be conclusive." *Falls Garden*, 441 Md. at 301 (citing Corbin on Contracts § 1.16, p. 46). Even if the statement of intent to be bound was somehow ambiguous, the LOI falls into the third category and would still be binding on the parties as it contains all the necessary material terms of the parties contemplated Agreement.
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> Moreover, the [c]ourt finds that the final Agreement must also be executed and enforced. First, as discussed above, the Letter of Intent and the Agreement contain the same material terms, with the Agreement simply expounding on the provisions agreed to in the LOI. The Agreement in this case is unlike the Lease that was not enforced in *Falls Garden* because here the Agreement had been circulated between the parties, negotiated, and prepared for final execution. In *Falls Garden* the Lease had only been sent out for "review, comment, and execution." *Id*. at 308. In this case, the Agreement had been signed by Plaintiffs, and the parties had begun taking steps in furtherance of the Agreement, such as notifying the Court of [Special] Appeals that a settlement was pending in the [litigation arising out of Mr. Liu's expulsion from Amadues]. . . . The parties had also represented that the final form of the Agreement had been agreed upon. . . . Though specific performance is an extraordinary remedy, it is within "the sound and reasonable discretion" of the trial [c]ourt based on the circumstances of each case. *See Barranco v. Kostens*, 189 Md. 94, 97 (1947). Here, specific performance of the Agreement is necessary to ensure Defendants perform under the LOI that they have bound themselves to.

For the reasons stated, the decision in *Falls Garden* is controlling in this case with respect to enforceability of the Letter of Intent.

As the circuit court noted, in *Falls Garden*, the subsequent agreement, a lease, was not enforced in that case. That case is distinguishable, however, for the reasons noted by the circuit court. In addition to the actions referenced by the circuit court, we note that counsel for appellants withdrew their motion for costs and expenses in the expulsion litigation, No. 412593-V and asked the clerk of the circuit court to docket the matter as "closed."

Even if *Falls Garden* were not distinguishable with respect to the Settlement Agreement, the Letter of Intent would still be enforceable. That enforcement carries with it enforcement of all that is necessary to implement its terms. In this case, the subsequent agreement was prepared, approved, and acted upon. The Letter of Intent contained clear language with respect to each essential term. The Settlement Agreement expounded on the terms, much of it boilerplate. To the extent it was not boilerplate, the language simply implemented what had been agreed to and did not alter the essential terms.

2.

Suit was filed in this case on December 20, 2016. On February 16, 2018, appellants filed their third amended counterclaim. In pertinent part, they alleged that, during the settlement negotiations, appellees misrepresented facts relating to Hollow Creek assets.

The court struck the third amended counterclaim on the ground that it was filed on the same day that summary judgment motions were due, five weeks before the trial date, and after discovery had been closed. The court also observed that appellees would be prejudiced without re-opening discovery and changing the trial date whereas appellants,

since June 2017, were on notice of information that was part of the misrepresentation allegation.

Appellants argue that, in May 2017, Mr. Wang, in answers to interrogatories, stated that Hollow Creek had no assets. In June 2017, appellees produced documents in response to discovery requests. One of the documents, entitled "loss breakdown," revealed that Hollow Creek had received $175,000 in income. Appellants argue that until they were able to take the deposition of Mr. Wang in order to get an explanation of the reported income, they did not have enough information to allege misrepresentation. Appellants assert that they were not able to conduct that deposition until February 8, 2018 because of Mr. Wang's unavailability and Mr. Wang's refusal to answer questions at an earlier deposition.

In their third amended counterclaim, appellants alleged that, at a meeting on November 14, 2016, Mr. Wang represented to Mr. Liu that Hollow Creek had no assets. Appellants received a document in June 2017, indicating that Hollow Creek had received $175,000 in income. That is the basis for the alleged misrepresentation.

Amendments are "freely allowed when justice so permits," Md. Rule 2-341(c), but "an amendment should not be allowed if it would result in prejudice to the opposing party or undue delay." *RRC Northeast, LLC v. BAA Maryland, Inc*., 413 Md. 638, 673-74 (2010) (citing *Robertson v. Davis*, 271 Md. 708,710 (1974)). Moreover, the policy applicable to amendments must be read in conjunction with Rule 2-504(c) which controls the case subject to modification to prevent injustice. *Berry v. Dep't of Human Res*., 88 Md. App. 461, 468 (1991).

Appellants waited six months after June 2017 before attempting to take Mr. Wang's deposition. We are not persuaded that the circuit court abused its discretion in concluding that, because of the delay in pursuing a misrepresentation claim, a change in the case management schedule was not justified.

3.

The circuit court's ruling on the first issue was one of law. We affirm, and thus, the court did not err in denying appellants' motion for reconsideration. We also conclude that the court did not abuse its discretion with respect to the second issue. Necessarily, it did not err in denying appellants' motion for reconsideration.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.