Circuit Court for Queen Anne's County
Case No. C-17-CV-17-000267

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 553

September Term, 2018

DIEDRA SCHAEFER, ET AL.

v.

JAMES A. FRANZONI

Arthur,
Friedman,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: October 22, 2020

Diedra Schaefer, Michael Schaefer, and James A. Franzoni, the owners of two related LLCs, were at loggerheads over how to address a lawsuit alleging that their businesses were unlawfully polluting the soil, groundwater, and surface water. After the parties were unable to agree on an appropriate course of action, Mr. Franzoni filed a complaint in the Circuit Court for Queen Anne's County for the judicial dissolution of one of the LLCs.

Before trial, Mr. Franzoni filed what he called a motion for "specific performance," to compel the Schaefers to cooperate with his efforts to shut down one of the LLCs. In response to the motion, the court ordered the appointment of a third-party receiver who would displace both Mr. Franzoni and the Schaefers and dissolve that LLC. The Schaefers appealed.

Because neither of the parties requested that the circuit court appoint a third-party receiver, we must vacate the court's order.

FACTUAL AND PROCEDURAL HISTORY

The Schaefers and Mr. Franzoni jointly own two businesses, New Pintail Point, LLC ("New Pintail"), and The Point at Pintail, LLC ("The Point"). Ownership of each business is split evenly between the Schaefers and Mr. Franzoni.[1] The parties adopted an operating agreement for New Pintail, but not for The Point.

[1] The Schaefers jointly own a 50% interest and Mr. Franzoni owns a 50% interest in New Pintail; Mr. Schaefer and Mr. Franzoni each own a 50% interest in The Point.

New Pintail owns a 281-acre property located along the Wye River in Queenstown and leases the cropland, greenhouses, and residential and commercial buildings on the property to various tenants. The Point is (or perhaps was) one of New Pintail's tenants.

The Point operates a shooting sports venue and event facility on the property. As a tenant, The Point once generated the greatest source of income for New Pintail and covered the majority of New Pintail's monthly expenses and debts, including its mortgage payments. In recent years, however, The Point encountered financial difficulties and, as of July 2017, had allegedly failed to pay rent for at least 14 months. As a result, The Point was allegedly more than $140,000 in arrears on its rent payments. The lease between New Pintail and The Point expired in September of 2017.

In the summer of 2015, Mr. Franzoni had permitted the Midshore Riverkeeper Conservancy, Inc. ("Riverkeeper"),[2] to test the soil and water on the property for lead. The Riverkeeper claimed to have found dangerously high levels of lead caused by lead shot leaching into the surrounding environment from The Point's shooting range. The Executive Director of the Riverkeeper suggested to Mr. Franzoni that all shooting activities should stop and that The Point remediate the lead on the property. Because of

[2] The Riverkeeper, now known as ShoreRivers, Inc., describes itself as a non-profit, public benefit corporation that "has dedicated itself to the restoration and protection of the Wye River and other waterways of the Eastern Shore."

the lead pollution in the water surrounding the property, the Riverkeeper alleged that The Point was in violation of section 301 of the Clean Water Act, 33 U.S.C. § 1311(a).[3]

The Schaefers and Mr. Franzoni disagreed on how to address the Riverkeeper's concerns. Mr. Franzoni wanted to comply with the Riverkeeper's directives and avoid litigation. The Schaefers, conversely, believed that the business was operating within the law and that there was no need to clean up the lead on the property.

In July of 2017, The Point was still operating the shooting range and had not remediated the lead on the property. Consequently, the Riverkeeper notified the Schaefers and Mr. Franzoni of its intention to file suit against them and their businesses to enforce the Clean Water Act and the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq*., a federal statute that concerns the disposal of hazardous waste.

After the Riverkeeper gave notice of its intention to file suit, the Schaefers and Mr. Franzoni continued to disagree on how to address the allegations. The Schaefers proposed hiring environmental attorneys to assess the Riverkeeper's claims, while Mr. Franzoni insisted on suspending the shooting range operation and cleaning up the lead on the property.

Because of the threat of the Riverkeeper litigation, the substantial amount of back rent that The Point owed, and other financial obligations that would allegedly require additional capital contributions, Mr. Franzoni claimed that The Point's continued daily

[3] The Clean Water Act prohibits "the discharge of any pollutant by any person" from a point source into waters, except in compliance with the Act's permit regulations. 33 U.S.C. § 1311(a).

operation was no longer a viable option. Consequently, on July 17, 2017, Mr. Franzoni, through counsel, sent a letter to the Schaefers demanding that, within ten days, they agree to "immediately cease the day-to-day operation of the commercial shooting facility" and "cooperate with Mr. Franzoni" to address the Riverkeeper's concerns. Mr. Franzoni asserted that he would take legal action if the Schaefers did not agree.

The Schaefers did not agree to Mr. Franzoni's demands. On October 3, 2017, therefore, Mr. Franzoni filed a simple, three-page complaint in the Circuit Court for Queen Anne's County for the judicial dissolution of The Point.

On November 20, 2017, Mr. Franzoni wrote to the Schaefers, requesting that they consent to several "major decisions" under New Pintail's operating agreement. The "major decisions" included the cessation of all of The Point's business activities, the dissolution of New Pintail, and the listing of New Pintail's property for sale at $2.6 million.

Under Section 5.7 of the New Pintail operating agreement, if a member of the company "requests in writing that another Member . . . consent to a major decision, consent shall be deemed given if the Offering Member receives no response within thirty (30) days after the request." The Schaefers did not respond to the request. Instead, on January 3, 2018, the Schaefers filed a lengthy counterclaim against Mr. Franzoni, alleging, among other things, that he breached his fiduciary duties to the businesses. On February 28, 2018, the Schaefers moved for a temporary restraining order and a preliminary injunction, under which Mr. Schaefer would become the sole member

authorized to make decisions regarding the businesses, and Mr. Franzoni would be enjoined from discussing the businesses' affairs with anyone besides the Schaefers.

Meanwhile, on December 20, 2017, the Riverkeeper filed a lawsuit in federal district court, naming Mr. Franzoni, Mr. Schaefer, and their businesses as defendants. As of the date of oral argument in this appeal (September 4, 2020), the Riverkeeper litigation was still pending. *Midshore Riverkeeper Conservancy, Inc. v. James Franzoni, et al.*, Civil Action No.: 1:17:CV-03769-SAG (D. Md.).

On February 9, 2018, Mr. Franzoni moved for what he called "specific performance" of the New Pintail operating agreement.[4] His motion asked the court to enter an order compelling the Schaefers to cooperate with his efforts to close The Point's shooting range, to resolve the Riverkeeper lawsuit, and to sell New Pintail's real estate. On February 21, 2018, the Schaefers moved to strike the motion for specific performance.

[4] Specific performance is an "extraordinary" equitable remedy that is ordered to "enforce a valid contract against one party." *Falls Garden Condo. Ass'n, Inc. v. Falls Homeowners Ass'n, Inc.*, 441 Md. 290, 308 n.8 (2015). The remedy is similar to an injunction, and "in certain circumstances, . . . the requirements for both avenues of relief are the same." *Chestnut Real Estate P'ship v. Huber*, 148 Md. App. 190, 206 (2002). A court may order specific performance "where the contract is in its nature and circumstances unobjectionable, that is, fair, reasonable and certain in all its terms." *Maryland-Nat'l Capital Park & Planning Comm'n v. Washington Nat'l Arena*, 282 Md. 588, 615 (1978). Trial courts have discretion to grant or deny specific performance based on "the strength of the circumstances and equities of each party." *Chestnut Real Estate P'ship v. Huber*, 148 Md. App. at 206.

On February 28, 2018, the circuit court held a hearing on these and other motions.[5] On April 19, 2018, the circuit court issued its order and an accompanying memorandum opinion.

In its opinion, the court concluded that because the Schaefers failed to respond to Mr. Franzoni's letter of November 20, 2017, they had consented to its terms. Thus, the court granted the "motion for specific performance pursuant to the [New Pintail] operating agreement." But rather than order the relief requested in the motion for specific performance (an order compelling the Schaefers to cooperate with Mr. Franzoni's efforts to close the shooting range, to resolve the Riverkeeper lawsuit, and to sell the real estate), the court announced that it would "appoint a receiver to wind up" The Point's affairs. The court denied all other motions.

The court gave the parties until the date of an upcoming settlement conference to agree on a receiver. If the parties had not agreed to a receiver by that date, the Court said that it would appoint one itself.

[5] In addition to his motion for specific performance of the New Pintail operating agreement, Mr. Franzoni had moved to dismiss the Schaefers' counterclaim or, alternatively, for summary judgment. Mr. Franzoni had also moved for leave to file an amended complaint that requested the dissolution of New Pintail. (His original complaint requested the dissolution of The Point, but not New Pintail.) Besides the motions filed by the Schaefers and Mr. Franzoni, the court also considered motions to intervene filed by The Point and New Pintail.

Before the date of the settlement conference, the Schaefers noted their timely appeal of the court's order.[6]

DISCUSSION

The Schaefers request that we reverse the court's order granting specific performance on two grounds. First, they argue that the order violated their due process rights because they had no notice that the court would consider the dissolution of The Point at the hearing. The Schaefers stress that there was no pending motion seeking dissolution of The Point, and thus, they claim, the court appointed a receiver on its own initiative. Second, the Schaefers argue that the circuit court erred in ordering the appointment of a receiver and dissolution of The Point by relying on the "major decisions" provision of the operating agreement for a different entity, Pintail Point. The Schaefers contend that the terms of the New Pintail operating agreement are not relevant to the dissolution of The Point, which is a separate business with no operating agreement.[7]

Although it is unnecessary to characterize the court's decision as a denial of due process, we agree that the court should not have appointed a receiver for The Point in the

[6] The circuit court's order is an appealable interlocutory order under Md. Code (1974, 2013 Repl. Vol.), § 12-303(3)(i) of the Courts & Judicial Proceedings Article. Neither party contends otherwise.

[7] The Schaefers presented the following questions for our review:

1. Did the trial court err in granting the full relief requested in the Complaint absent a motion for summary judgment that complied with Rule 2-501, notice of said motion via service on the Schaefers, an opportunity to respond and notice of a hearing on the motion?

absence of a request for one. We must vacate the circuit court's order because it granted relief that Mr. Franzoni did not request in his motion for specific performance.

It is axiomatic that trial courts ordinarily should not award relief that was not requested by either party. *See Wineglass Ranches, Inc. v. Campbell*, 473 P.2d 496, 501 (Ariz. Ct. App. 1970) (holding that court erred in granting relief beyond the relief sought in pleadings); *Pensacola Beach Elementary Sch. v. Moyer*, 286 So. 3d 945, 946 (Fla. Dist. Ct. App. 2019) (holding that courts are not authorized to grant relief not requested in the pleadings); *Perez v. Fay*, 160 So. 3d 459, 464 (Fla. Dist. Ct. App. 2015) (holding that court abused its discretion in awarding sole parental responsibility or sole decision-making authority to parent who did not request such relief); *Town of Hempstead v. Lizza Indus., Inc.*, 741 N.Y.S.2d 431, 432 (App. Div. 2002) (holding that court erred in granting unrequested relief); *Interest of I.L.*, 580 S.W.3d 227, 244-45 (Tex. App. 2019) (stating that a trial court errs by changing a final order to grant relief that no party had requested); *Nye v. Brousseau*, 992 A.2d 1002, 1011 (R.I. 2010) (holding that trial court erred in awarding damages on its own motion); *Fed. Nat'l Mortg. Ass'n v. Rose Realty, Inc.*, 442 P.2d 593, 594 (N.M. 1968) (holding that "[a] judgment may not grant relief which is neither requested by the pleadings nor within the theory on which the case was tried[]"); *see also Carden v. Penney*, 362 So. 2d 266, 268-69 (Ala. Civ. App. 1978) (holding that

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2. Did the trial court err in ordering dissolution and appointment of a receiver to wind up the affairs of The Point At Pintail, LLC, which has no operating agreement, based upon Plaintiff's Motion for Specific Performance of the contractual terms found in an operating agreement of a different entity owned by the Parties?

court could not grant relief not requested in the pleadings where a party's failure to ask for particular relief substantially prejudiced the opposing party); *Phillips v. Palakewitz*, 553 A.2d 1160, 1162 (Conn. App. Ct. 1989) (holding that the court correctly revised judgment to delete relief that was not requested).

Mr. Franzoni's motion for specific performance requested several forms of relief, including ordering the Schaefers to comply with Mr. Franzoni's efforts to close The Point's shooting range, to resolve the Riverkeeper litigation, and to sell the property. The motion, however, did not include a request to appoint a third party to serve as a receiver for The Point.[8] Though the court's appointment of a third-party receiver could be viewed as a laudable effort to resolve the parties' gridlock, a court does not have discretion to save the parties from themselves. Instead, in an adversary system, a court is ordinarily limited to selecting among the array of choices that the parties have presented to it.

Here, the circuit court should not have appointed a receiver to dissolve The Point in the guise of granting a motion that requested no such relief. Instead, the court should have set the case for trial, where the dissolution of The Point was one of Mr. Franzoni's requests. Accordingly, the court abused its discretion in granting the motion for specific performance, and the order is vacated.

JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY VACATED; COSTS TO BE PAID BY APPELLEE.

[8] In oral argument, counsel for Mr. Schaefer candidly conceded that the court granted unrequested relief.