Circuit Court for Baltimore City
Case No. 24-C-17-005374

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1050

September Term, 2018

LUCIANO CRISTOFARO CONTRACTORS, INC.

v.

DANIEL DEWBERRY

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

JJ.

Opinion by Berger, J.

Filed: February 10, 2021

*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.

This case is before us on appeal from a judgment of the Circuit Court for Baltimore City. Daniel Dewberry ("Dewberry"), an agent for Guilford Court, LLC ("Guilford Court"), entered into a contract with Luciano Cristofaro Contractors, Inc. ("Cristofaro"), to build a concrete parking pad on property located at 300A E. University Parkway in Baltimore City.[1] Subsequently, the City of Baltimore ordered that Guilford Court remove the concrete parking pad as the area was not properly zoned for such a structure. After this order, Dewberry, in his individual capacity, filed suit in the District Court of Maryland for Baltimore City against Cristofaro alleging breach of contract and fraud arising out of the construction of the concrete parking on the Property. After Cristofaro prayed a jury trial, the case was transferred to the Circuit Court for Baltimore City. During the trial, Cristofaro moved to dismiss the case based on a lack of standing and further alleged that Dewberry failed to meet his burden of proof. The trial court denied the relief requested by Cristofaro. After a one-day bench trial, the trial court, sitting as the finder of fact, found in favor of Dewberry and entered a judgment against Cristofaro in the amount of $16,242.00.

Cristofaro presents three questions for our review,[2] which we have rephrased as follows:

[1] During the proceedings in the lower court, the parties noted that the address of the property in question was referred to as both 300A E. University Parkway and as 3401 Guilford Terrace. For the sake of clarity, we will refer to the relevant property as "the Property."

[2] Cristofaro's questions presented are as follows:

I. Whether an agent of a commercial property may obtain a judgment in his individual capacity as a real party in interest for damages sustained by the owner-company, who was never joined to the action as a necessary plaintiff.

II. Whether the trial court was clearly erroneous in finding that the work permit application filed by Cristofaro was the proximate cause for the City of Baltimore's filing for injunctive relief against Guilford Court.

III. Whether the trial court was clearly erroneous in its calculation of damages by awarding Dewberry all damages incurred for the installation of the parking pad when the pad cannot be used for its intended purpose.

For the reasons stated herein, we will reverse the judgment of the trial court.

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1. Whether the self-proclaimed manager of a commercial property–who has no proprietary interest or personal stake in the property whatsoever–may obtain a judgment, in his individual capacity, for alleged damages sustained by the property owner, who was never joined to the action as a necessary plaintiff.

2. Whether, in the absence of testimony by any witness from the Department of Housing, the Circuit Court erred in finding that Appellant's permit application, and not Guilford Court's failure to obtain a zoning variance, was the proximate cause of the City's filing for injunctive relief against Guilford Court.

3. Assuming, *arguendo*, that Appellee had standing to sue and that Appellant breached the contract, whether the Circuit Court erred in its calculation of damages by awarding Appellee all damages incurred for the installation of the parking pad even though 80% of the parking pad still remains on the property.

FACTS AND PROCEDURAL HISTORY

On September 10, 2015, Dewberry entered into a contract with Cristofaro to construct a concrete parking pad measuring 22.5 feet by 19 feet on the side of the Property. The contract provided that Cristofaro, as the contractor, was "responsible for obtaining all necessary work permits from Baltimore City." The contract provided for a price of $6,410.00 for all necessary work. The Property identified in the contract is owned by Guilford Court. The payment was to be made upon completion of all of the work. The contract was signed by Dewberry and Victor Cristofaro ("Victor"),[3] the owner of Cristofaro and an authorized person to sign on behalf of the company. At a later date after the signing of the contract, Dewberry advised Cristofaro that he wished to enlarge the dimensions of the parking pad. Accordingly, Cristofaro informed Dewberry that the price of the project, based on the new square footage, would be $13,287.00. Dewberry agreed to the proposed increase in price and the final price of the project is not a matter of dispute between the parties.

On October 28, 2015, Victor applied for a work permit with the Baltimore City Department of Housing and Community Development ("the Housing Department"). A work permit is "permission from the city to do the work as specified." Victor testified that he has applied for "hundreds" of work permits since 1988 and described the process as follows: he would fill out a building permit application, go to the counter at the Housing

[3] Victor Cristofaro is the owner of Cristofaro. Due to the similarities in the names of the company and the owner, this Court will refer to Victor Cristofaro by his first name for clarity, and in no means of disrespect.

Department, present it to an employee, answer any of the employees' questions, and make sure everything is in order with the permit. Victor stated that the employees at the Housing Department "walk you through the process," and if any clarification is needed, they will ask.

Victor alleged that on October 28, 2015, he went to the Housing Department with the work permit application for the Property. Victor stated that he brought the work permit to the counter and an employee reviewed the application with him. During the review, Victor claimed that the employee asked Victor some questions, which resulted in a revision to the application. The original language written by Victor on the work permit provides: "[c]onstruction of a concrete parking pad at side of above location . . . ." The completed and issued work permit contains a revision which included a strikethrough of the word "construction" and the final product reads: "[r]eplace of existing concrete parking pad at side of above location . . . ." Victor alleges that during his conversation with the employee at the Housing Department, he told the employee that he had to remove existing concrete and upon hearing this information, the employee crossed out the word "construction" and added "replace." Victor signed the work permit application as written with the correction noted by the employee of the Housing Department.

The Housing Department issued the work permit on October 28, 2015. Cristofaro provided the work permit to Dewberry and informed him that it needed to be posted conspicuously on the Property. Thereafter, Cristofaro completed the work on the Property as provided for in the contract. On February 9, 2016, Annelise-St. James issued a check,

signed by R.C. Polubinski, a managing member of Guilford Court, to Cristofaro in the amount of $13,287.00 as full and final payment under the contract.

Thereafter, Dewberry contacted Victor and informed him that there was an issue with the work permit. Victor put Dewberry in touch with the company Permits on Demand to help with any issues related to a dispute involving the work permit.

On May 25, 2016, the Mayor & City Council of Baltimore ("the City") filed a suit against Guilford Court. The complaint in this action listed Dr. Roger Chylinski-Polubinski as the Resident Agent for Guilford Court. Further, the complaint alleged that Guilford Court is the owner of the Property. Dewberry was not mentioned anywhere in the City's complaint. The City sought injunctive relief as a result of Guilford Court's continued use of the parking pad installed by Cristofaro. The City complained that the work permit contained inaccurate information as the concrete pad was not being "replaced." Instead, the concrete pad was to have been "constructed." Ultimately, the matter settled.

Thereafter, Guilford Court filed for a zoning variance to install a concrete parking pad on the Property. This zoning variance was for the same concrete pad installed by Cristofaro on the Property. Guilford Court's application was denied, and Guilford Court appealed the decision. On December 29, 2016, the Baltimore City Zoning Board of Municipal & Zoning Appeals ("the Board"), denied Guilford Court's appeal for a request for a zoning variance because the threshold requirement of unnecessary hardship or practical difficulty was not met, and the property was never zoned for a parking pad. The Board did allow Guilford Court to use the concrete pad on the property for another use

permitted by the relevant zoning district. After the denial, Guilford Court paid to remove and sod a portion of the concrete pad.

In February of 2017, Victor received a letter from Dewberry's attorney advising that Dewberry would be suing Victor and Cristofaro for $30,000.00. Victor called Dewberry and was told to speak to Dewberry's attorney. On November 9, 2017, Dewberry filed suit in the District Court of Maryland for Baltimore City. On October 31, 2017, Cristofaro prayed a jury trial and the case was transferred to the Circuit Court for Baltimore City.

The trial court held a one-day bench trial. At the conclusion of Dewberry's case, Cristofaro moved for dismissal on the grounds that Dewberry lacked standing to bring the lawsuit in his individual capacity because Guilford Court was the owner of the Property and the proper party to this lawsuit. The trial court denied that motion, finding that because Dewberry signed the contract, he had standing to sue. On July 2, 2018, the trial court entered judgment in favor of Dewberry in the amount of $16,242.00 against Cristofaro. The trial court itemized the damages as $13,287.00 under the original contract, $2,500.00 for the concrete replacement, $280.00 for sod work, and $175.00 for soil work. Cristofaro timely appealed.[4]

[4] On December 14, 2020, in its Reply Brief, Cristofaro filed a Motion to Strike Appellee's Appendix. Cristofaro contended that because Dewberry had not filed an Appendix nor given a copy to Cristofaro, nor the Court, any Appendix filed by Dewberry should be stricken. Additionally, Cristofaro argued that the references Dewberry made to the Appendix alluded to information outside the record. To date, no Appendix has been filed by Dewberry. Accordingly, Cristofaro's Motion to Strike Dewberry's Appendix is denied as moot. Further, any references to an Appendix in Dewberry's brief shall be stricken.

On May 20, 2019, Guilford Court filed a complaint against Cristofaro arising out of the same September 2015 construction contract.[5] Many of the facts and claims in Guilford Court's complaint are identical to Dewberry's complaint in the instant case.

DISCUSSION

Standard of Review

Under Maryland Rule 8-131(c), "[w]hen an action has been tried without a jury, the appellate court will review the case on both the law and the evidence." We review the circuit court's factual findings for clear error and "give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). This Court will overturn a lower court's findings of fact only if those findings are "clearly erroneous." *Torboli v. Torboli*, 127 Md. App. 666, 672 (1999) (internal citations omitted). We will consider the evidence in the light most favorable to the prevailing party and whether the trial judge's conclusions of fact were supported by "a preponderance of the evidence." *Colandrea v. Wilde Lake Cmty. Ass'n*, 361 Md. 371, 393–94 (2000) (quoting *Urban Site Venture II Ltd. P'ship v. Levering Assocs. Ltd. P'ship*, 340 Md. 223, 229–30 (1995)). By contrast, we review the trial court's conclusions of law *de novo*. *Himelstein v. Arrow Cab*, 113 Md. App. 530, 536 (1997).

I. Dewberry failed to join the owner of the Property, Guilford Court, to his lawsuit pursuant to Maryland Rule 2-211's requirement for compulsory joinder of necessary parties.

[5] *See Guilford Court, LLC v. Luciano Cristofaro Contractors, Inc.*, Circuit Court for Baltimore City, Case No. 24-C-19-002961.

Maryland Rule 2-211 provides:

> (a) Persons to Be Joined. Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence
>
> > (1) complete relief cannot be accorded among those already parties, or
> >
> > (2) disposition of the action may impair or impeded the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.

This Court has held that the purpose of Maryland Rule 2-211 is to provide for "the compulsory joinder of necessary parties so that the case can proceed efficiently with respect to all persons having a cognizable interest in the matters" and allow the court to grant complete relief. *Caretti, Inc. v. Colonnade Ltd. P'ship*, 104 Md. App. 131, 142 (1995). Necessary parties must be made party to a proceeding. *Serv. Transp., Inc. v. Hurricane Express, Inc.*, 185 Md. App. 25, 35–36 (2009) (quoting *Bender v. Secretary, Md. Dep't of Pers.*, 290 Md. 345, 350 (1981)).

One of the primary purposes of Maryland Rule 2-211 is to "'prevent multiplicity of litigation by assuring a determination of the entire controversy in a single proceeding.'" *City of Bowie v. Mie Props., Inc.*, 398 Md. 657, 703 (2007) (quoting *Bodnar v. Brinsfield*, 60 Md. App. 524, 532 (1984)). "The 'impair or impede' and 'multiple liability' components of Maryland Rule 2-211(a)(2) focus on the concerns of the absent party and

the liabilities of the defendants," not the concerns of the plaintiff. *Hurricane Express*, *supra*, 185 Md. App. at 40.

"Maryland courts have recognized an exception to compulsory joinder requirements for persons who are directly interested in the suit and have knowledge of its pendency, and refuse or neglect to appear and avail themselves of their rights." *Hurricane Exp.*, *supra*, 185 Md. App. at 41 (citing *Mie Props.*, *supra*, 398 Md. at 704). "In such cases, the rights of the absent parties are concluded by the proceeding as effectively as if they were named in the record." *Id.*

Here, Guilford Court is a necessary party that was required to be joined in proceedings before the circuit court.[6] Generally, joint tortfeasors are not necessary parties because complete relief can be afforded without all joint tortfeasors being part of the action. *See Cooper v. Bikle*, 334 Md. 608, 619–20 (1994). Critically, Dewberry and Guilford Court are not joint tortfeasors. *See Hurricane Express*, *supra*, 185 Md. App. at 29–31, 39. Rather, Guilford Court is an absent party with a viable claim against Cristofaro based on the same reasons and identical damages as Dewberry.

[6] Dewberry contends that Cristofaro cannot prevail under Maryland Rule 2-211 because it did not raise his concerns regarding the required joinder of Guilford Court until the day of trial. We disagree. Maryland Rule 2-324(a) provides: "a defense of failure to join a party under Rule 2-211 . . . may be made . . . at the trial on the merits." Therefore, when Cristofaro moved to dismiss the case because Guilford Court, not Dewberry, was the real party in interest, Cristofaro made the necessary argument under both Maryland Rules 2-211 and 2-324(a). Alternatively, "[f]ailure to join a necessary party constitutes a defect in the proceedings that cannot be waived by the parties, and may be raised at any time, including for the first time on appeal." *Mahan v. Mahan*, 320 Md. 262, 273 (1990).

Notably, Guilford Court has now filed a separate action against Cristofaro based on the same alleged facts as Dewberry. *See Guilford Court, LLC v. Luciano Cristofaro Contractors, Inc.*, Circuit Court for Baltimore City, No. 24-C-19-002964. Indeed, Guilford Court is requesting damages for the same reasons and in the same amounts as Dewberry in the instant case, in addition to punitive damages. *See id.* A judgment has been entered against Cristofaro in that case awarding such damages. *See id.* This is precisely the issue that Maryland Rule 2-211 is intended to address. *See Hurricane Express*, *supra*, 185 Md. App. at 40. Because of the decision of the trial court in the instant case, Cristofaro is subjected to "multiple or inconsistent obligations" arising out of the same cause of action. *See* Md. Rule 2-211(a)(2).

Additionally, the exception noted in *Hurricane Express*, *supra*, is not applicable to the instant case. For the exception to apply, Guilford Court must have had knowledge of the pendency of the suit and failed to appear. *See Hurricane Express*, 185 Md. App. at 41. Here, there is no evidence that Guilford Court had any knowledge of the suit during its pendency. In *Bodnar*, this Court applied the exception in a proper example of its application. *Bodnar*, *supra*, 60 Md. App. at 534–36. There, the owners of a corporation testified at trial and participated in the litigation. *Id.* at 535. Therefore, we held that the corporation, which acts through its owners and officers, had knowledge of the pendency of the suit. *Id.* at 535–36. Here, we have no such activity to demonstrate Guilford Court's knowledge of the underlying suit. Unlike the officers involved with the corporation in

Bodnar, the testimony and evidence at trial revealed that Dewberry was not affiliated in such a formal way with Guilford Court. *See id.*

Cristofaro also contends that Dewberry did not have standing to assert these claims against Cristofaro because he was not liable, nor did he incur, any of the damages resulting from the alleged breach of contract. Dewberry argues, and the trial court agreed, that because Dewberry signed the contract, he has standing as a party to the contract. *See* Md. Rule 2-201.[7] We agree with Cristofaro based on the principles of agency law.

"If an agent fully discloses the fact that he is an agent and fully discloses the identity of his principal, the agent is not liable on the contract." *Hill v. Cnty. Concrete Co.*, 108 Md. App. 527, 532 (1996). Therefore, if Dewberry made clear to Cristofaro that he was an agent for his principal, Guilford Court, Dewberry was not bound by the contract nor was he personally liable. *See Curtis G. Testerman Co. v. Buck*, 340 Md. 569, 576–77 (1995). Rather, only Guilford Court and Cristofaro would be bound by the contract. *See id.*; *Hill*, *supra*, 108 Md. App. at 532. Both parties presented and elicited testimony that Dewberry

[7] Maryland Rule 2-201 provides in relevant part: "[e]very action shall be prosecuted in the name of the real party in interest, except that a[] person with whom or in whose name a contract has been made for the benefit of another . . . ." But when read in conjunction with Maryland Rule 2-211, the real party in interest is required to be joined as a party to protect the defendant, Cristofaro, from multiplicity of litigation, despite the exceptions listed in Maryland Rule 2-201. *See S. Down Liquors, Inc. v. Hayes*, 80 Md. App. 464, 475 (1989) ("[It is evident] that the question of compulsory joinder was intended to be resolved under the standards set forth in Rule 2-211, and that, in the event of any perceived conflict or inconsistency between [Rule 2-201 and Rule 2-211], Rule 2-211 would prevail."). Despite the exception in Maryland 2-201, the rules of compulsory joinder and the principles of agency law do not support the conclusion that Dewberry is an authorized party to file this action.

was an agent of Guilford Court. Additionally, the testimony presented that Cristofaro was aware that Guilford Court was the owner of the Property where the work was to be performed, not Dewberry. This knowledge is further evidenced by the denomination of "Dan Dewberry" as an "agent" for "Guilford Court LLC" on the work permit application prepared by Victor only a month after execution of the contract. Therefore, we hold that Dewberry fully disclosed that he was an agent for his principal, Guilford Court, and accordingly had no personal liability under the contract. *See Hill, supra*, 108 Md. App. at 532. Critically, the lack of liability leads us to hold that Dewberry had no standing to raise the lawsuit in the lower proceedings against Cristofaro. *See id.*

We, therefore, hold that Dewberry failed to join a necessary party, Guilford Court, subjecting Cristofaro to multiple liabilities and requiring reversal of the trial court's Order.[8]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. COSTS TO BE PAID BY APPELLEE.

[8] While this Court has the authority to decide this case without affirming or reversing the holding of the trial court and may instead remand the case to allow Dewberry to add Guilford Court to the suit as the real party in interest, the circumstances of this case are not appropriate for such a holding. *See Adams v. Manown*, 328 Md. 463, 480–81, 483 (1992). In *Adams*, the Court of Appeals neither affirmed nor reversed the decision of the trial court and instead remanded the case to the trial court to allow the substitution of the real party in interest. *Id.* Notably, the Court itself noted that the circumstances in *Adams* were "unusual." *Id.* at 480. The case at bar differs because there is already a case pending against Cristofaro by the real party in interest, Guilford Court. *See Guilford Court, LLC v. Luciano Cristofaro Contractors, Inc.*, Circuit Court for Baltimore City, Case No. 24-C-19-002964. Therefore, unlike in *Adams*, the circumstances of the instant case do not support remanding the case to allow for the substitution of Guilford Court as it would not be in the interests of justice.