Circuit Court for Montgomery County
Case No. 453759V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1223

September Term, 2021

CHARLES BLESSING, JR.

v.

SANDY SPRING BANK, ET AL.

Wells, C. J.,
Reed,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: June 23, 2022

The parties to this appeal are appellant, Charles Blessing, Jr. ("Blessing") and appellees, Sandy Spring Bank ("the Bank") and 227 East Diamond, LLC ("227").

On August 29, 2018, Blessing filed a complaint in the Circuit Court for Montgomery County against appellees. In Count I of that complaint, he asked the court to declare, among other things, that in 2014 the Bank, without a legal right to do so, transferred certain personal and other property to 227. The property that was alleged to have been improperly transferred was formerly owned by Growlers of Gaithersburg, LLC ("Growlers").[1] According to the complaint, the property at issue was, at the time of transfer, owned by one Jonathan Silverman ("Silverman"), but Silverman, in 2018, transferred his interest in the property to Blessing.

The Bank and 227 filed a motion for summary judgment as to Count I. In its motion, 227 contended that it purchased the property at issue along with Growlers' lease and underlying real estate from a receiver pursuant to a receivership proceeding filed by the Bank. Blessing countered that he owned the property at issue because: 1) the property had been previously owned by Growlers, subject to a security interest from Growlers in favor of Silverman; Silverman's security interest was transferred by Silverman to Blessing by virtue of an assignment days prior to the filing of the subject law suit; and/or 2) that as a part of an alleged forbearance agreement, Growlers, in 2014, surrendered its ownership of

[1] Blessing sought a total of six declarations that were: 1) the Bank had no authority to transfer Growlers' personal property; 2) the Bank was aware of Silverman's security interest; 3) only Growlers had authority to transfer its personal property; 4) Blessing was the owner of all of Growlers' personal property, including that "seized" by 227; 5) the Bank's transfer of Growlers' personal property to 227 is void; and 6) any subsequent transfer of Growlers' personal property is void.

the property to Silverman; that ownership interest in the property in question was subsequently transferred by Silverman to him.

A hearing on the motion for summary judgment was held in the circuit court on July 11, 2019. At the end of the hearing, the motions judge said that he was going to grant defendants' motion. On September 3, 2019, the circuit court signed an order that read, in material part, as follows: "ORDERED, that the Defendant's [sic] motion is GRANTED; and it is further, ORDERED, that the entirety of Count I is dismissed as to Defendants[,] Sandy Spring Bank and 227 East Diamond LLC." The circuit court, however, did not declare the rights of the parties.

In Count II of the complaint, Blessing had attempted to allege a cause of action against the Bank and 227 for fraudulent conveyance but Count II had earlier been dismissed by the circuit court. Therefore, the September 3, 2019 order was a final judgment and appellant filed a timely appeal from that judgment.

On February 19, 2021, a panel of this Court issued an unreported opinion that was authored by Chief Judge Matthew Fader. Judges Douglas Nazarian and Sally D. Adkins, Senior Judge, Specially Assigned, joined in that opinion. We shall hereafter refer to that opinion as "Judge Fader's opinion."

The panel affirmed the circuit court's dismissal of Count II on the grounds that the count did not set forth a cause of action upon which relief could be granted. In the present appeal, Blessing does not take issue with the dismissal of Count II.

In regard to Count I, Judge Fader opined that the circuit court erred in granting summary judgment because the court did not set forth, in writing, the rights of the parties.

Judge Fader quoted *Bowen v. City of Annapolis*, 402 Md. 587, 608-09 (2007) (quoting *Allstate Ins. v. State Farm Mut. Auto. Ins.*, 363 Md. 106, 117 n.1 (2001)) as follows:

> [W]hen a declaratory judgment action is brought and the controversy is appropriate for resolution by declaratory judgment, the court must enter a declaratory judgment and that judgment, defining the rights and obligations of the parties or the status of the thing in controversy, *must be in writing*. It is not permissible for the court to issue an oral declaration. . . . *When entering a declaratory judgment, the court must, in a separate document, state in writing its declaration of the rights of the parties, along with any other order that is intended to be part of the judgment. Although the judgment may recite that it is based on the reasons set forth in an accompanying memorandum, the terms of the declaratory judgment itself must be set forth separately*. Incorporating by reference an earlier oral ruling is not sufficient, as no one would be able to discern the actual declaration of rights from the document posing as the judgment. This is not just a matter of complying with a hyper-technical rule. The requirement that the court enter its declaration in writing is for the purpose of giving the parties and the public fair notice of what the court has determined.[2]

(Emphasis in original.)

In his unreported opinion, Judge Fader, after setting forth in detail the undisputed facts, said:

> For guidance on remand, we will make some additional observations regarding the bases cited by the circuit court in entering summary judgment. *See Rupli* [*v. S. Mountain Heritage Soc'y, Inc.*], 202 Md. App. [673,] 680 n.7 [(2011)] (stating that when a circuit court has not entered a proper declaratory judgment, we may, in our discretion, "review the merits of the controversy and remand for the entry of an appropriate declaratory judgment" (quoting *Bushey* [*v. N. Assurance Co. of Am.*], 362 Md. [626,] 651 [(2001)]). To do so, we must first explore the basis for Mr. Blessing's claimed interest in the assets at issue and his contention that genuine disputes of material fact should have precluded the circuit court from entering summary judgment.

[2] Although the circuit court judge did not, prior to his September 3, 2019 order, declare the rights of the parties in writing, the circuit court judge did orally explain why he was granting the defendants' motion. Those reasons will be discussed *infra*.

Judge Fader then proceeded to examine, in detail, Blessing's contention as to why he currently owned the property at issue. Judge Fader opined that none of Blessing's contentions, based on the current state of the summary judgment record, had merit. The order read:

> JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID 2/3 BY APPELLANT AND 1/3 BY APPELLEES.

Upon remand, a hearing on the motion for summary judgment as to Count I was held on July 2, 2021. No new evidence was proffered by either side. The motions judge then took the matter under advisement.

Blessing, on August 13, 2021, filed a "Request for a Trial," which the Bank and 227 opposed on the grounds that Judge Fader's opinion only remanded the case to the circuit court for entry of declaratory judgment consistent with the panel's opinion. The circuit court, on September 9, 2021, denied Blessing's request for a trial. On that same date, the court issued an order granting the defendants' motion for summary judgment as to Count I; the circuit court then proceeded to declare the rights of the parties. In declaring the rights of the parties, the circuit court denied all six declarations that Blessing had requested in his complaint.

Blessing, acting as his own counsel, then filed this timely appeal. He phrases the questions presented as follows:

> 1. Did the trial court err in its order regarding the [a]ppellant's declaratory relief?

> 2. Did the trial court err in denying [a]ppellant's request for a trial on Count [I] of [a]ppellant's complaint?

I.

BACKGROUND FACTS[3]

Growlers is the former operator of a bar and restaurant located at 227 East Diamond Avenue in Gaithersburg, Maryland ("the Premises"). In May 2006, Growlers purchased the business from Gaithersburg Brewing Company. In connection with the transaction, Gaithersburg Brewing Company conveyed to Growlers:

> All of the tangible assets owned by or used in the operation of the Business, including furniture, fixtures and equipment, goodwill and trade name, inventory, supplies, books and records, customer and vendor lists, and all other property, tangible or intangible, used in the Business known as "Summit Station Restaurant and Brewery[.]"

Growlers did not receive any "interest in land or any interest in real property[.]" At the time, the Premises were owned by KB Summit Land, LLC ("KB Summit Land").

Between May 2006 and June 2009, the Bank made a series of loans to KB Restaurants, LLC ("KB Restaurants"), the then-majority member of Growlers. Those loans were secured by agreements executed by KB Restaurants and Growlers, as well as an "Indemnity Deed of Trust and Security Agreement" executed by KB Summit Land, which gave the Bank a security interest in the Premises. The aggregate sum of the loans ultimately amounted to nearly $2.4 million.

[3] Most of the language set forth in part I of this opinion is taken, without direct attribution, from the earlier opinion written by Judge Fader. We have, however, made a few minor additions and deletions.

A. The 2011 Transactions

On January 13, 2011, the owners of 100% of the membership interests in Growlers assigned those interests to Jr. Rams, LLC ("Jr. Rams"). As part of the transaction, title to certain "personal property and fixtures" was transferred to Jr. Rams "free and clear of any liens[.]" The property subject to the transfer was listed on a Bill of Sale attached to the Assignment Agreement. The list included a variety of furniture, dishes, glassware, utensils, office equipment, clothing, tools, cleaning supplies, and the business's "complete inventory of food and alcohol[.]" We will refer to this property, which did not include any brewing equipment, cooking equipment, or other appliances, as the "Jr. Rams Personal Property."

Also on January 13, 2011, KB Summit Land, the owner of the premises, and Growlers, executed a new lease of the Premises. The agreement was signed by, among others, the Bank, Jr. Rams (as the contract purchaser of the Growlers membership interests), and Blessing, as Jr. Rams' managing director. Among its terms, the lease provided: "[Growlers] expressly acknowledges they are using certain fixtures of the [Premises], including, but not limited to, the brewing equipment, cooking equipment and entertainment equipment, and that [Growlers] is solely responsible for the repair and replacement of such equipment as needed." A non-exhaustive list of the fixtures Growlers "[was] using," attached as Exhibit D to the lease, included various appliances (refrigerators, grills, ovens, freezers, sinks, fermenters, tanks, brewing equipment, etc.), televisions, heaters, and a video surveillance system. We will refer to this property, which appears to be the focus of Blessing's claim in this litigation, as the "Brewing, Cooking, and

Entertainment Equipment." Based on a comparison of the lists, there does not appear to be any overlap between the Brewing, Cooking, and Entertainment Equipment and the Jr. Rams Personal Property.[4]

B. The Secured Transaction

Before August 2013, three parties owned membership interests in Jr. Rams. Andrea Martinez-Conte (Blessing's wife) and Silverman each owned a 46.875% membership interest, while Gerald Chaney owned the remaining 6.25%. In August 2013, Jr. Rams agreed to redeem Silverman's membership interest and to pay Silverman $258,585.00 for that interest. The terms of the redemption agreement provided that Jr. Rams would make a $50,000 down payment to Silverman and make subsequent monthly payments of $6,404.93. Blessing and Ms. Martinez-Conte personally guaranteed payment of the Note evidencing the $208,585.00 debt. We point out, parenthetically, that at this point, Jr. Rams was the parent company and Growlers was Jr. Rams' wholly owned subsidiary. We note further that, on the date of the secured transaction, Growlers owed Silverman nothing, and thus was in no sense a debtor as far as Silverman was concerned.

In a simultaneous transaction, Jr. Rams and Silverman executed an agreement, pursuant to which Jr. Rams "agreed to secure the Note payments by granting to [Silverman] a security interest in the assets and properties of both Jr. Rams, LLC and its wholly owned subsidiary, Growlers[]." Although the Security Agreement identified both Jr. Rams and Growlers as debtors and obligors, the agreement did not contain a signature line for

[4] The only possible overlap seems to be in the designation of "tools" in both lists.

Growlers; it was signed only by Silverman and Ms. Martinez-Conte, in her capacity as managing member of Jr. Rams. Silverman then filed a UCC Financing Statement with the Maryland State Department of Assessments and Taxation. In that Financing Statement, recorded on August 27, 2013, Silverman named both Jr. Rams and Growlers as his collateralized debtors, even though Growlers owed nothing to Silverman. The Financing Statement described the property ostensibly securing their debt as follows:

> All of each Debtor's personal property and fixtures, tangible and intangible, real, personal, and mixed, whether now in existence or whether acquired or created at any time hereafter, wherever located, including but not limited to all present and hereafter existing or acquired accounts, contract rights, general intangibles (including goodwill), deposit accounts, investment property, letters of credit, letter of credit rights, equipment, furniture, goods, inventory, fixtures, leasehold improvements, commercial tort claims, money, instruments, documents, chattel paper, securities, deposits, credits, claims and demands, and all cash and noncash proceeds, products, additions, replacements, and substitutions of, to or for any of the foregoing.

C. Jr. Rams Defaults

Jr. Rams defaulted on its payment obligations to Silverman in 2014. According to Blessing, Silverman then verbally asserted ownership over all of the property that was subject to the Security Agreement. Blessing was later to claim that he, on behalf of Growlers, verbally assented to Silverman's claim of ownership of Growler's property in consideration of Silverman's agreement to forbear any enforcement activity. The parties did not document the forbearance agreement in writing. Silverman never took possession of any property and Silverman did not credit the value of any of Growlers' assets against

the outstanding balance owed under the redemption agreement. Moreover, Growlers continued to use the property mentioned in the Security Agreement until 2017.[5]

D. The Receivership, Sale of the Premises, Default, and Eviction

In 2014, the Bank filed a complaint in which it alleged that KB Restaurants had defaulted on obligations that were secured by the Premises; the Bank sought the appointment of a receiver to sell the Premises. In a consent order approved by the parties to that proceeding—which did not include either Jr. Rams or Growlers—the court appointed a receiver, whom it authorized to sell the Premises.

In December 2014, the court approved the receiver's sale of the Premises to 227. In that transaction, the receiver transferred to 227 "all of the rights, title, interest, benefits and privileges of [KB Summit Land], as landlord, under the Lease [with Growlers], including without limitation all rents, issues, and profits arising therefrom[.]" 227 thus became Growlers' landlord.

Growlers subsequently defaulted on its obligation to pay rent to 227, which then sought and obtained a judgment of possession and, in June of 2017, evicted Growlers from the Premises. Blessing asserts that when 227 evicted Growlers, 227 took control over

[5] Silverman, in his deposition, said he did not remember entering into a forbearance agreement with Blessing. Blessing's memory is to the contrary and we must assume it is accurate. But, even if Growlers and Silverman entered into a forbearance agreement, ownership of personal property could not have been transferred to Silverman by that agreement because Silverman never came into possession of the personal property and, with exceptions not hereby applicable, if possession of personal property does not change, there can be no valid transfer of ownership.

personal property and fixtures of the Growlers' business that actually belonged either to Silverman or to Growlers.

E. The Assignment

During discovery in this litigation, both Blessing and Silverman said, in depositions, that in August 2018, shortly before the complaint in this case was filed, Silverman, conveyed his interest in all of Growlers' assets to Blessing in exchange for nominal consideration.[6] That agreement was never reduced to writing.

On August 28, 2018, which was the same date that he filed his complaint in this matter, Blessing filed a UCC Financing Statement Amendment naming himself as the assignee of Silverman's security interest in the assets of Jr. Rams and Growlers.

II.

WHAT JUDGE FADER SAID, ON BEHALF OF THE PANEL, REGARDING THE MERITS OF BLESSING'S CONTENTIONS

Judge Fader said:

> The circuit court identified two undisputed material facts as the reasons for its grant of summary judgment. We will address each in turn.
>
> First, the court stated that Mr. Silverman did not own any Growlers property. Mr. Blessing contends that there is a genuine dispute of material fact on that point because: (1) Mr. Blessing averred in his answers to interrogatories that, on behalf of Growlers, he agreed to convey Growlers' personal property to Mr. Silverman in exchange for Mr. Silverman's forbearance from enforcing his security interest; and (2) Mr. Blessing averred in his deposition that he, on behalf of Growlers, agreed with Mr. Silverman's assertion of ownership over Growlers' assets.

[6] In his deposition, Silverman said he couldn't remember the consideration, but it may have been $10.00 or perhaps Blessing, "over beers," may have agreed to pick up their bar tab.

We agree with the circuit court that no evidence in the record creates a genuine dispute regarding whether Mr. Silverman owned any of the assets at issue. Mr. Blessing failed to identify any evidence that Jr. Rams, KB Summit Land, or Growlers conveyed assets to Mr. Silverman at any time. As a matter of law, neither Jr. Rams' default on its obligation to Mr. Silverman nor Mr. Blessing's purported oral agreement to convey assets to Mr. Silverman was sufficient to convey the assets without further action. *See Levene v. Antone*, 301 Md. 610, 616 (1984) (stating that delivery is generally required to pass title to personal property). Mr. Blessing has not pointed to any evidence of such further action. The circuit court thus correctly concluded that Mr. Blessing could not have obtained ownership of any of the disputed assets through Mr. Silverman.

Second, the court stated that Growlers did not sign the 2013 Security Agreement. Based on that statement, the court apparently concluded that Growlers had not conveyed a security interest in any assets to Mr. Silverman and, therefore, that Mr. Silverman could not have conveyed any such interest to Mr. Blessing. It is undisputed that Growlers did not sign the 2013 Security Agreement, which purported to give Mr. Silverman a security interest in the assets of both Growlers and Jr. Rams. In assessing the legal effect of that undisputed fact, we turn to § 9-203 of the Commercial Law Article, which governs the formal requirements for the creation of a security interest and provides, in relevant part:

> (b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:
>
> (1) Value has been given;
>
> (2) *The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party*; and
>
> (3) One of the following conditions is met:
>
> (A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
>
> (B) The collateral is not a certificated security and is in the possession of the secured party under § 9-313 pursuant to the debtor's security agreement;

> (C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under § 8-301 of this article pursuant to the debtor's security agreement; or
>
> (D) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under [certain statutes] pursuant to the debtor's security agreement.
>
> It is not subject to genuine dispute on this record that (1) Growlers was not a debtor of Mr. Silverman, and (2) none of the conditions in § 9-203(b)(3) were met.

(Emphasis added.)

In his opinion, Judge Fader went on to say that to the extent that Blessing "argues that Jr. Rams had the inherent authority to convey a security interest in its subsidiary's (Growlers') property, he is incorrect." Judge Fader cited several cases, including *United States v. Davidson*, 139 F.2d 908, 910 (5th Cir. 1943) and *Dixon v. Process Corp.*, 38 Md. App. 644, 653 (1978), as standing for the proposition that a parent company's agreement to convey property owned by its subsidiaries is not, generally, enforceable. He noted, however, that there is an exception to that rule which allows a parent corporation to be treated as the same entity as its subsidiary "'when necessary to prevent fraud or to enforce a paramount equity[.]'" (quoting *Hildreth v. Tidewater Equip. Co.*, 378 Md. 724, 738 (2003)).

Judge Fader concluded:

> Although we have not found any evidence in the record supporting the application of any of these exceptions, it is appropriate for the circuit court to address this issue in the first instance, including determining whether

> Growlers and Jr. Rams are necessary parties to the resolution of this controversy. In the same vein, we note that, in addition to the grounds on which the circuit court ruled and their contention that Growlers was a necessary party, the Bank and 227 also argued that they were entitled to summary judgment because: (1) it was undisputed that the only personal property the receiver conveyed to 227 were fixtures attached to real property, which could not have been transferred separate and apart from the Premises; and (2) the receiver, not the Bank, transferred property to 227. Because the circuit court did not rule on those other grounds, and our review of the grant of summary judgment is limited to the grounds on which the circuit court ruled, *see Steamfitters Local Union* [*No. 602 v. Erie Insurance Exchange*], 469 Md. [704,] 746 [(2020)], we express no view on the merit of those other arguments.

III.

THE DECLARATION UPON REMAND BY THE CIRCUIT COURT OF THE RIGHTS OF THE PARTIES

On remand, the circuit court followed, to the letter, the law and reasoning set forth in Judge Fader's opinion. The circuit court declared the rights of the parties as follows:

> 1. This [c]ourt hereby DECLARES that Jonathan Silverman did not own any of the personal property and assets of Growlers of Gaithersburg, LLC at issue in this proceeding and therefore Plaintiff, Charles Blessing, Jr.[,] did not obtain ownership of such personal property and assets through or as the assignee of Mr. Silverman. Therefore, this [c]ourt hereby DECLARES that Charles Blessing, Jr. is not the owner of 100% of the personal property owned by Growlers and Charles Blessing, Jr. is not the owner of any personal property owned by Growlers seized by 227 East Diamond.
>
> 2. This [c]ourt finds that (a) Growlers of Gaithersburg, LLC did not sign the August 2013 Security Agreement purporting to grant a security interest in its assets to Jonathan Silverman, (b) that none of the conditions of § 9-203(b) of the Commercial Law Article[,] which govern the formal requirements for the creation of a security interest, were met, and (c) the signature of Jr. Rams, LLC was not legally sufficient to grant a security interest in Growlers of Gaithersburg, LLC's assets to Mr. Silverman. This [c]ourt therefore DECLARES that Mr. Silverman did not have a security interest in the assets and personal property of Growlers of Gaithersburg, LLC that are the subject of these proceedings, and that Plaintiff, Charles Blessing,

> Jr., therefore did not obtain a security interest in the subject assets as an assignee of Mr. Silverman.
>
> 3. This [c]ourt further DECLARES that as Plaintiff, Charles Blessing, Jr., is neither an owner nor a secured creditor of the assets and personal property of Growlers of Gaithersburg, LLC, he lacks standing to seek the remaining declarations that he requested in Count I of the Complaint. The [c]ourt therefore DECLARES that Mr. Blessing has not raised a justiciable claim as to the following requested declarations: (a) Sandy Spring Bank had no authority to transfer personal property owned by Growlers[;] (b) Sandy Spring Bank was aware of the UCC filing made by Jonathan Silverman in August 2013 (now owned by Charles Blessing, Jr.); (c) Growlers had the sole authority to transfer any personal property Bank sold to 227 East Diamond; (d) any transfer of Growlers' personal property by Sandy Spring Bank to 227 East Diamond are void; and (e) any transfer of Growlers' personal property transferred to 227 East Diamond by virtue of its unlawful seizure of that property is void.
>
> 4. In light of the foregoing, the [c]ourt finds that it need not address any of the remaining declarations requested by [d]efendants regarding (a) whether the [B]rewing, [C]ooking and [E]ntertainment [E]quipment and any other assets were fixtures, and (b) whether the property was transferred to 227 . . . by the receiver or by [the Bank], as Mr. Blessing lacked standing to his requested declaratory relief regarding such claims.

IV.

FIRST QUESTION PRESENTED

Blessing contends that the circuit court erred when it denied him the declaratory relief he sought. Nevertheless, he recognizes, at least implicitly, that if we apply the law of the case doctrine, he cannot prevail in this appeal.

Blessing asserts that what Judge Fader said in his opinion in regard to the merits of the case, was mere *dicta* and not binding on this Court. By contrast, appellees contend that we should apply the law of the case doctrine and affirm the circuit court judgment because

what Judge Fader said as to the merits of Blessing's claims, was binding in the circuit court and was clearly not *dicta*.

A. The Issue of *Dicta*

In *Stokes v. American Airlines, Inc.*, 142 Md. App. 440, 446 (2002), we said: "[o]nce an appellate court has answered a question of law in a given case, the issue is settled for all future proceedings" under the law of the case doctrine. The Court added that the doctrine is applied when "we revisit a prior decision of this Court that involve[s] the same parties and the same claim." *Id.* (citing *Hawes v. Liberty Homes, Inc*., 100 Md. App. 222, 230-31 (1994)). "We normally are bound by our earlier decision and will not contradict it." *Id*. There are, however, circumstances where the law of the case doctrine will not be applied. In *Stokes*, we recognized that "[w]e will depart from a prior decision if: 'the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision on the law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice.'" *Id*. at 446-47 (quoting *Turner v. Hous. Auth.*, 364 Md. 24, 34 (2001)). As will be demonstrated, none of the exceptions to the usual rule are here applicable.

Blessing argues that what Judge Fader said was *dicta*, because (in Blessing's words), "a prior statement of a court that is not part of the court's ruling in the case . . . is not [the] law of the case that is necessarily binding on a lower court." Blessing's summary of the law is correct. But Blessing, in his brief, fails to direct us to any statement in Judge Fader's opinion (dealing with the issue of whether Blessing had an interest in the property at issue) that was "not part of the [C]ourt's ruling[.]" Judge Fader's explanation as to why

the merits of the case were being discussed was: "[f]or guidance on remand" and cited *Rupli*, 202 Md. App. at 680-81 n.7 for the proposition that when a circuit court has not entered a proper declaratory judgment, an appellate court may, in its discretion, "review the merits of the controversy and remand for the entry of an appropriate declaratory judgment[.]" (quotation marks and citation omitted). Also, in the mandate of Judge Fader's opinion, the case was remanded "for further proceedings consistent with this opinion." (Emphasis added.) Under such circumstances, the circuit court, on remand, had no choice but to follow the guidance provided by Judge Fader's opinion.

Statements in a prior opinion cannot be considered *dicta* if "there was an application of the judicial mind to the precise question adjudged[.]" *Schmidt v. Prince George's Hosp.*, 366 Md. 535, 552 (2001). Words such as those used by Judge Fader, "[w]e agree with the circuit court that no evidence in the record creates a genuine dispute regarding whether Mr. Silverman owned any of the assets at issue" constituted the application of the judicial mind to the precise question adjudged. As the Court of Appeals said in *Schmidt*, 366 Md. at 551, "When a question of law is raised properly by the issues in the case and the Court supplies a deliberate expression of its opinion upon the question, such opinion is not to be regarded as *obiter dictum*[.]" *See also Kaye v. Wilson-Gaskins*, 227 Md. App. 600, 677 (2016) (enforceability of settlement agreement affirmed for the reasons articulated in the Court of Special Appeals' previous opinion, which constituted the law of the case); *Halliday v. Sturm, Ruger & Co.*, 138 Md. App. 136, 162-63 (2001) (appellate court's prior holding that the risk utility test was inapplicable was neither incidental nor collateral to the decision and therefore not *dicta*). As pointed out earlier, Judge Fader flatly said that the circuit court

correctly concluded that Blessing could not have obtained ownership of any of the disputed assets through Silverman. In Blessing's opposition to the appellees' summary judgment motion, and in his argument in this appeal, Blessing's sole basis for his claim of ownership of the property in question is that he obtained ownership of Growlers' Property by a transfer to him from Silverman. Thus, Judge Fader's opinion constituted an explicit rejection of the assertion that Blessing relied upon in his request for declaratory judgment.

One of the main arguments in Blessing's brief is: "[I]f [Growlers] did own the [property at issue], it could transfer that to any other entity or person—and that is what [Growlers] did" when it transferred its property to Silverman. But in the opinion written by Judge Fader, the holding was that Growlers did not transfer its interest in the property to Silverman. We therefore hold that the law of the case doctrine foreclosed Blessing from successfully making this argument.

Blessing, in his brief, addresses an exception to the rule that ordinarily a parent company's agreement to convey property owned by its subsidiary is unenforceable. The exception relied upon by Blessing is that a parent company can "be treated as the same entity" as the subsidiary to prevent fraud or to enforce a paramount equity. (citing *Hildreth*, 378 Md. at 728). Blessing argues:

> Certainly, this exception pertains here. It would be an inequity if the conveyance of the [property at issue] (to Silverman) by Growlers were (sic) disclaimed or rejected by Jr. Rams. The fact that both entities were noted on the security agreement goes to Jr. Rams' not disclaiming that transfer. That Growlers did not sign the security agreement nor the promissory note is, therefore, immaterial.
>
> Thus, the observation by this Court that "we have not found any evidence in the record supporting the application of any of these exceptions

> . . .," is also mistaken and *dicta*. And the conveyance of the same [property at issue] by Mr. Silverman to Mr. Blessing thus is valid—and the fact that it was by a verbal agreement is also immaterial.

(Emphasis added.)

This argument, to say the least, is confusing. The issue is whether it would be inequitable for Growlers (the wholly owned subsidiary) to reject or disclaim the transfer of its assets to Silverman not, as Blessing argues, whether it would be inequitable for the parent company (Jr. Rams), to do so. Jr. Rams, of course, never disclaimed or rejected the transfer. Jr. Rams was the entity that attempted to transfer property it did not own to a third party, i.e., Blessing. Contrary to Blessing's assertion, Judge Fader did not err when he said that Blessing has pointed to nothing in the record to show that the ordinary parent/subsidiary rule should not apply.

B. An Exception to Law of the Case Doctrine

In conjunction with his argument discussed, *supra*, that the law of the case doctrine is inapplicable, Blessing contends that Judge Fader, in construing Commercial Law Article, § 9-203, was manifestly wrong when he said that it "is not subject to genuine dispute on this record that: (1) Growlers was not a debtor of [] Silverman, and (2) none of the conditions in § 9-203(b)(3) were met." According to Blessing, there was a genuine dispute as to whether Growlers owed a debt to Silverman because in the Security Agreement, Silverman listed both Jr. Rams and Growlers as debtors and he also listed both Jr. Rams and Growlers as debtors "in collateral documents." This is true. But it is undisputed that Growlers never owed Silverman any money. Silverman was owed money by Jr. Rams.

Silverman could not make Growlers a "debtor" simply by listing it as a debtor on documents that were not signed by Growlers.[7]

In his brief, Blessing asserts that Judge Fader's analysis of Section 9-203(b) of the Commercial Law Article was incorrect because, in his words, whether "the conditions" of [§9-203(g)] were met, is a disputed fact to be decided "upon remand." That argument is waived because Blessing sets forth no legal or factual authority in support of his argument. *Beck v. Mangels*, 100 Md. App. 144, 149 (1994).

Blessing also argues:

> In the Promissory Note (August 2013) between Jr. Rams and Mr. Silverman, Ms. Martinez-Conte and Mr. Blessing signed as the individual guarantees [sic]. Thus, Mr. Blessing, Ms. Martinez-Conte and Jr. Rams were part of that promissory note. It is to be assumed that [Growlers], the wholly owned subsidiary of Jr. Rams was also bound by that promissory note[] and is also a debtor to Mr. Silverman. Why would all those parties exclude [Growlers] as the debtor when the managing member of Jr. Rams, Ms. Martinez-Conte, the corporate owner of [Growlers] and Mr. Blessing, the restaurant manager acting for [Growlers], sign[] the promissory note individually. That would not make any sense.

(Emphasis added.)

The above argument ignores the fact that the Note was signed only by Andrea Martinez-Conte as "managing member" of Jr. Rams. Contrary to Blessing's assertion, he did not sign the Note in any capacity although Blessing did sign a separate "guaranty agreement" in which he promised to pay the money owed by Jr. Rams to Silverman if Jr.

[7] Blessing argues: Although [Growlers] did not sign the security agreement, Ms. Martinez-Conte, managing member of Jr. Rams did sign it, and [Growlers] was the wholly owned subsidiary of Jr. Rams—thus [Growlers] did not have to be a signatory. That argument overlooks the fact that ordinarily a parent company's (here Jr. Rams') agreement to convey property owned by a subsidiary (Growlers) is not enforceable.

Rams failed to pay. Therefore, Blessing's assumption that Growlers was bound by the promissory note is unfounded. Moreover, no argument set forth by Blessing in his brief supports his contention that Judge Fader was wrong in his construction or application of § 9-203(b) of the Commercial Law Article to the facts of the case.

V.

SECOND QUESTION PRESENTED

Blessing contends that the circuit court erred in not setting this case in for trial. This was required according to Blessing because there were material issues of facts presented, which should have been resolved by a jury. The short and complete answer to that contention is that Blessing has failed to point to any disputed material issue of fact in the summary judgment record. More specifically, after remand, Blessing produced no facts that had not been considered in the first appeal. Thus, the circuit court on remand did not err in denying appellant's request for a trial.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.