Circuit Court for Howard County
Case No. 13-C-17-110850

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1433

September Term, 2017

THE STILL POINT WELLNESS CENTERS, LLC, *et al*.

v.

COLUMBIA ASSOCIATION, INC.

Meredith,
Kehoe,
Salmon, James P.
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: April 30, 2019

The substantive issue in this appeal is the nature of the business arrangement between the parties. Appellants, The Still Point Wellness Centers, LLC, and TSP at Haven on the Lake, LLC (collectively "Still Point"), assert that they have a partnership with appellee Columbia Association, Inc. According to Columbia Association, the relationship is between a lessee (Columbia Association) and a sublessee (Still Point). The Circuit Court for Howard County agreed with Columbia Association and dismissed with prejudice Still Point's eight-count civil complaint. Still Point has appealed and raises six issues, which we have consolidated and rephrased as follows:

> 1. Did the circuit court err in converting Columbia Association's motion to dismiss into a motion for summary judgment?
>
> 2. Did the circuit court err in holding that the commercial lease agreement was a valid contract binding on the parties, and that no partnership agreement existed between the parties?
>
> 3. Did the circuit court err in dismissing Still Point's claims for unfair competition and fraudulent misrepresentation?

We answer "no" to all three questions and will affirm the circuit court's judgment.

Background

Columbia Association, Inc. is a social welfare organization, which enjoys tax-exempt status pursuant to Internal Revenue Code, § 501(c)(4). It provides utilities, services, and facilities for residents of Columbia, Maryland. In December 2012, Columbia Association entered into a contact with Clover Acquisitions, LLC by which Columbia Association leased real property at 10275 Little Patuxent Parkway in downtown Columbia. Four months later, Columbia

Association published a proposal seeking a commercial tenant to sublease a portion of the leased premises to operate a mind and body wellness retreat.

Still Point, which operates several health and wellness centers throughout Maryland, responded to Columbia Association's proposal, setting in motion an exchange of communications to negotiate a commercial lease agreement. Those extensive negotiations, which are discussed later in this opinion, resulted in the execution of a commercial lease agreement (hereinafter, the "Lease") signed in December 2013.

The Lease provides that Still Point, as "Lessee," will lease 4,309 square feet of space (the "Lease Premises") from Columbia Association to operate a "mind-body wellness center" beginning on September 1, 2014, for an initial two-year period. The Lease was subject to renewal for three additional three-year terms, at Still Point's option, as long as Still Point had not defaulted on any obligation it had under the Lease.

The Leased Premises was designed around the needs of Still Point. Pursuant to Article 1.2 of the Lease, Columbia Association, at its own expense, agreed to "construct the Leased Premises to suit [Still Point's] requirements . . . in accordance with plans and specifications prepared by [Columbia Association]." These improvements included drywall, lighting, flooring, painting, and cabinetry. Still Point's occupancy of the Leased Premises constituted acceptance of the improvements and an acknowledgement that Columbia Association had complied with its obligations under Article 1.2. The cost of any additional improvements required by Still Point after it commenced its occupancy of the Leased Premises would be paid equally by the parties. Additionally, both parties were responsible

for purchasing furniture, fixtures, and equipment as specified in schedules to the Lease, for the Leased Premises, subject to Columbia Association's approval.

Article 3 of the Lease covered the rent structure for the Leased Premises. Still Point did not pay rent for its first year of tenancy. Rather, Columbia Association made two payments of $25,000 to Still Point during the first year. In the second year of the tenancy, Still Point was obligated to pay $35,000 in annual rent to Columbia Association, to be paid in monthly installments. If the Lease was renewed for a first three-year term, Still Point was obligated to pay $106,000, $176,000, and $247,000 each year, respectively, for the next three years. For any subsequent renewal terms, the yearly rent would increase by 3% annually.

Still Point was also required to pay a "percentage rent" to Columbia Association for the initial term and any renewal terms. The percentage rent was to be calculated based on Still Point's gross monthly revenues, in the amounts of 0%, 2.2%, 4.6%, and 5.9% for the first four years, respectively, and 6.7% for the fifth year and any subsequent years.

The Lease also contained provisions for Columbia Association to provide Still Point with eight hours per month of "marketing support," which included promoting the new spa and wellness center in Columbia Association's own activities guide, website, bulletin boards, television show, and messaging advertisements. Columbia Association charged Still Point for additional marketing support over the eight hours per month at a rate of $500 per hour.

Still Point was obligated to provide to Columbia Association employees up to eight hours per month of training in "best practices for providing customer service in mind-body wellness environment." For any additional training, Columbia Association would be charged at a rate of $500 per hour.

Still Point would be deemed in default if, after receiving thirty-days' notice from Columbia Association, it failed to: pay rent when due, comply with the reasonable rules and regulations of Columbia Association, or perform its duties and obligations under the Lease. If Still Point defaulted, Columbia Association maintained the right to recover possession of the Leased Premises as provided under Maryland law.

Finally, the Lease contained an integration clause, which stated:

> This instrument contains all of the agreements and conditions made between the parties and may not be modified orally or in any other manner than by an agreement in writing signed by both parties or their respective successors in interest.

The Lease was amended twice. First, on February 28, 2015, the parties amended the Lease regarding the consulting, training, and marketing services. On January 11, 2016, the Lease was amended a second time to correct the legal name of the "Lessee" from "The Still Point Wellness Center, LLC" to "The Still Point at Haven on the Lake, LLC." Additionally, the January 2016 amendment added a $50 late fee for past due rent payments.

Still Point opened its doors on December 4, 2014. In January 2017, Columbia Association sent a notice of default to Still Point. The default notice indicated that Still

Point had defaulted on its rent obligations and would be subject to eviction if it did not pay the balance. In February, Columbia Association sent another notice to the same effect.

Before Columbia Association could initiate eviction proceedings, Still Point filed an eight-count complaint against Columbia Association in the Circuit Court for Howard County. In addition to declaratory and injunctive relief, the complaint asserted claims for breach of contract, unfair competition, fraud, breach of a duty of loyalty, breach of duty of care, and an accounting. Permeating all eight counts is Still Point's assertion that the Lease is invalid because, in reality, the parties entered into a partnership agreement for the operation of the spa and wellness center. According to Still Point, the Lease was a subterfuge signed only so that Columbia Association could retain its status as a tax-exempt organization, and that the parties operated the spa and wellness center through an oral partnership agreement in which they shared all profits and losses. Thus, according to Still Point, there is no landlord-tenant relationship arising out of the Lease.

In the complaint, Still Point set out a series of e-mail communications between the parties that were exchanged before the Lease was executed. Specifically, these communications include proposals of terms, financial models, and instances in which the parties used the term "partnership" to refer to their relationship. Still Point asserts that these communications, taken together, form the partnership agreement that the parties operated under since the beginning of their business relationship. Although the complaint included extensive and detailed assertions about the substantive provisions of the Lease, Still Point did not attach a copy of the document itself as an exhibit to the complaint.

Columbia Association filed a motion to dismiss the complaint. Columbia Association argued that Still Point's cause of action failed for three reasons: (1) Still Point had no property interest in the Leased Premises independent of the Lease, (2) any alleged partnership agreement would be unenforceable pursuant to the Statute of Frauds, and (3) the integration clause in the Lease prohibited introduction of any evidence demonstrating the existence of a partnership agreement. Columbia Association attached the Lease and its two amendments as an exhibit to its motion.

In July 2017, the circuit court held a hearing on Columbia Association's motion. During argument, the court observed that the Lease was referenced, but not included, in Still Point's complaint. During the hearing, the court asked counsel for Still Point if "there [is] anything you believe that would be inappropriate about me considering the lease in the context of the motion to dismiss?" Counsel for Still Point argued that, although the Lease is referenced in the complaint, it is not incorporated into the complaint and so the court was "limited to the four parameters of the complaint."[1] The court then asked counsel if anything precluded the court from converting the motion to dismiss to a motion for summary judgment pursuant to Md. Rule 2-322(c). Counsel for Still Point contended that his client:

[1] Throughout these proceedings, Still Point refers to the Lease as the "draft allocation agreement." We will continue to refer to it as the "Lease." "The first step to wisdom is calling a thing by its right name." *Roulette v. City of Seattle*, 97 F.3d 300, 302 (9th Cir. 1996).

> [hasn't] been given any notice that that's in fact what the court intends to do. We certainly would have to have an opportunity to present competing affidavits. I mean, if the court were going to consider anything outside the four corners and do the conversion, then we would have a right under Rule 2-501 to respond to the motion seated as a motion for summary judgment instead of it being seated as a motion to dismiss.

Columbia Association countered that the court could consider the Lease without converting the motion because the Lease is referenced throughout the complaint. Ultimately, the court, exercising its discretion, took the Lease into consideration and converted the motion to dismiss into a motion for summary judgment. The court did so explicitly, stating:

> In this particular case though the complaint does reference the lease as does the answer or the motion to dismiss . . . . So I think I can probably consider the lease in resolving the motion to dismiss. But to the extent that it requires that I transmute the motion [to dismiss] to a motion for summary judgment I will.

As to the merits, Columbia Association contended that the alleged oral partnership agreement was prohibited by the Statute of Frauds; that the e-mails Still Point relied upon were inadmissible under the principles surrounding the parol evidence rule and by virtue of the integration clause contained in the Lease; that the alleged partnership agreement did not meet the requirements of the Maryland Revised Uniform Partnership Act; and finally, that Still Point's unfair competition and fraudulent misrepresentation claims were insufficiently pled and failed as a matter of law. According to Columbia Association, Still Point was, in essence, asking the court to void a commercial lease and enforce a ten-year

oral partnership agreement which would allow Still Point to remain on the Leased Premises, rent free, for ten years.

Unsurprisingly, Still Point countered that the Statute of Frauds does not apply to this case. Further, Still Point alleged that there had been detrimental reliance and partial performance of the partnership agreement. Still Point reiterated its argument that a partnership agreement existed, and in support, read portions of the pre-Lease e-mail communications to the court.

In an opinion delivered from the bench, the circuit court concluded that no partnership agreement existed, reasoning that "most of the references to the alleged oral partnership agreement really sound more in negotiation and an interest in developing a partnership." The circuit court ruled that the Lease:

> is fully integrated and would negate parol evidence from before the lease agreement's execution.
>
> The lease itself is clear and unambiguous and clearly designates the roles of the parties as landlord and tenant. And also describes a percentage rent based on gross returns. And, of course, that's expressed in the exception to the profit sharing presumption of a partnership formation.
>
> So all counts hinge on there being a partnership based on this oral agreement. And, of course, the Plaintiffs have signed a lease which does not conform with Plaintiff's alleged understanding of the oral discussions on a partnership.

Elaborating on the parol evidence and the Statute of Frauds issues, the circuit court concluded:

> [T]he communications and the conduct before the lease execution may have begun to resemble a partnership, but it becomes parol evidence upon the

> execution of the lease. In addition, the Statute of Frauds, . . . these oral discussions at least speak in terms of a 10-year or five to 10-year term. Obviously it can't be completed within one year. I think Statute of Frauds is applicable and would require a writing.

Turning to the unfair competition and fraudulent misrepresentation claims, the court concluded that they were "not pled with sufficient specificity as would be required." The court concluded:

> The rest of the counts hinge on the existence of a partnership and would fail without one. This lease, the fully integrated lease I think makes clear . . . [that] this is a landlord-tenant case with original exclusive jurisdiction in the District Court of Maryland.
>
> And for that reason I am signing an order granting the motion to dismiss as transmuted by the court to a motion for summary judgment to consider the lease referenced in the complaint. And that is with prejudice.

Still Point filed a motion to reconsider the dismissal and/or to alter or amend judgment. When that motion was denied, this timely appeal followed.

1.

As a preliminary matter, Still Point argues that the circuit court erred in converting Columbia Association's motion to dismiss into a motion for summary judgment. Still Point's basis for this argument has changed a bit since the hearing before the circuit court. At the hearing, Still Point forcefully contended that its complaint did not reference the Lease, and so, as a result, the Lease should not have been considered by the circuit court. Now, however, Still Point suggests that attaching the Lease to Columbia Association's motion to dismiss:

> did not add any new material facts outside of the pleadings, as the Complaint is riddled with references to the purported lease as both a "lease" and an allocation agreement, and cited provisions of the allocation agreement related to "Rent", "Marketing", and "Training."

Still Point concedes that a court may convert a motion to dismiss into one for summary judgment by considering matters outside of the pleadings, but it maintains that a court may not convert such a motion by considering documents that merely supplement the pleadings. Still Point argues that the circuit court erred because the court "incorrectly considered the integration clause to be dispositive," and the court failed to provide Still Point with an opportunity "to provide evidence demonstrating that the parties lacked mutual assent as to formation of the allocation agreement, as the allocation agreement is not a matter outside the pleadings."

These contentions are not persuasive. The Lease was properly before the court as a result of the allegations in Still Point's complaint, and so it was not necessary for the court to transform the motion before it into one for summary judgment in order to address the substance of the parties' contentions. Even though it was not necessary for the court to convert the motion into one for summary judgment, we are at a loss to perceive how Still Point was prejudiced by the court's precaution.

After a complaint has been filed, a defending party may file a motion to dismiss pursuant to Md. Rule 2-322 or file a motion for summary judgment pursuant to Md. Rule 2-501. Each serves a separate and distinct purpose. The purpose of a motion to dismiss for failure to state a claim upon which relief may be granted "is to have legal questions decided

before trial of the action on the merits." *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 430 (2003). A motion for summary judgment is designed to "dispose of cases when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law." *Okwa v. Harper*, 360 Md. 161, 178 (2000).

We review both under the *de novo* standard. *Hrehorovich v. Harbor Hospital Center Inc.*, 93 Md. App. 772, 785 (1992) ("When reviewing the grant of either a motion to dismiss or a motion for summary judgment, an appellate court must determine whether the trial court was legally correct."). First, we must determine if a genuine dispute of material fact exists. *Koste v. Town of Oxford*, 431 Md. 14, 25 (2013). Then, we determine whether the circuit court erred as a matter of law. *Koste*, 431 Md. at *Id*.

Generally, the court is limited to "the four corners of the complaint and its incorporated supporting exhibits" when ruling on a motion to dismiss. *D'Aoust v. Diamond*, 424 Md. 549, 572 (2012). If the court looks to matters outside of the four corners of the complaint, it must convert the motion into one for summary judgment. Md. Rule 2-322(c) provides a means to do so:

> If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 2-501.

Rule 2-322(c) applies when a party files a motion to dismiss that includes "matters outside of the pleading." Matters outside the pleadings generally take the form of affidavits,

documents executed by the parties, or deposition transcripts. *See Anne Arundel County v. Bell*, 442 Md. 539, 647 (2015) (affidavits); and *Heneberry v. Pharoan*, 232 Md. App. 468, 474 (2017) (a portion of plaintiff's deposition and consent form for surgery).

Both the Court of Appeals and this Court have held, however, that considering a document which merely supplements a complaint does not require the court to convert the motion to dismiss into one for summary judgment. For example, in *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164 (2015), Advance filed an eight-count complaint against DSFederal for allegedly terminating a teaming agreement between the parties, but did not attach a copy of the agreement to the complaint. *Id.* at 168. DSFederal filed a motion to dismiss and attached a copy of the teaming agreement. *Id*. at 170. After conducting a hearing, the circuit court granted DSFederal's motion to dismiss, concluding that the teaming agreement was not an enforceable contract. *Id*. at 173.

On appeal, Advance argued that the circuit court erred by considering the teaming agreement because doing so converted DSFederal's motion to dismiss into a summary judgment motion. *Id*. at 174. We did not agree. Noting that consideration of matters outside of the allegations in the complaint will convert a motion to dismiss into one for summary judgment, we held that where "a document . . . merely supplements the allegations of the complaint, and the document is not controverted, consideration of the document does not convert the motion into one for summary judgment." *Id*. 175. In reaching this conclusion, we relied on *Smith v. Danielczyk*, 400 Md. 98, 105 (2007) and *Margolis v. Sandy Spring*

Bank, 221 Md. App. 703 (2015). The relevant facts in *Margolis* were very similar to the ones in the present case, and we held:

> Although [Plaintiff] did not attach the Deposit Account Agreement to his complaint, he expressly referred to it and repeatedly alleged that its disclosures did not satisfy the [Consumer Protection Act]. In response, the [defendant] attached the Deposit Account Agreement to its motion to dismiss. Because there was no dispute that the Deposit Account Agreement was the agreement between [Plaintiff] and [Defendant], the circuit court could and did regard it as "simply supplementing the allegations in the complaint."

Margolis, 221 Md. 707, 710, n. 4. (2015).

These decisions suggest that it was not necessary for the circuit court to treat Columbia Association's motion as one for summary judgment. Still Point alleged, *inter alia*, that Columbia Association violated an oral partnership agreement, the terms of which were included, at least partly, within the four-corners of the Lease. Still Point concedes that the Lease is referenced to throughout the complaint, and at times Still Point even cites directly to provisions in the Lease. For example, in the complaint, Still Point alleges that it is entitled to $9,666.00 due and owing under the terms of the Lease.[2] Moreover, Still Point has never denied that the parties executed the Lease.

[2] At the hearing, Still Point also contended that the amendments to the Lease are not referenced in the complaint, and therefore that the circuit court considered the amendments constitutes error. We disagree. The amendments are not separate, independent documents, but rather are part of the Lease as a whole. "It is settled that where a writing refers to another document that other document, or so much of it as is referred to, is to be interpreted as part of the writing." *Wells v. Chevy Chase Bank, F.S.B.*, 377 Md. 197, 229 (2003).

Because the Lease forms a significant part of the foundation of Still Point's complaint, its inclusion with the motion to dismiss only supplemented the complaint. For this reason, the circuit court could properly have considered the Lease without converting the motion to one for summary judgment. Assuming for purposes of analysis, that the circuit court erred in converting the motion to dismiss to a motion for summary judgment, we would nonetheless affirm for the reason that we will now explain.[3]

To be sure, once the circuit court decided to treat Columbia Association's motion as one for summary judgment, it was obligated to provide Still Point with a "reasonable opportunity" to present pertinent additional material to the court. Rule 2-322(c). A court's failure to do so is not structural error, however, and Still Point must demonstrate prejudice. In the context of the present case, Still Point must demonstrate that, had the court granted an opportunity to Still Point to supplement its presentation to the court, the result probably would have been different. *See Barksdale v. Wilkowsky*, 419 Md. 649, 662–63 (2011). Prejudice is determined only by the facts of the individual case. *Id*. at 662. According to Still Point, it was prejudiced in two ways: first, because the court did not provide Still Point

[3] During the hearing, the court commented:

> I'm inclined to consider the lease [] to the extent that makes this a motion for summary judgment, which I'm not certain it has to since it is referenced in the complaint.

That the court proceeded out of an abundance of caution does not equate to trial error.

with any reasonable notice to demonstrate that the Lease lacked mutual assent; and, second, because the Lease's integration clause was not specifically mentioned in the complaint.

Neither of these contentions is persuasive. This Court's analysis in *Hrehorovich v. Harbor Hospital Center Inc.*, 93 Md. App. 772 (1992), is instructive at to both.

Dr. Hrehorovich sued his employer, Harbor Hospital, for breach of his employment contract. 93 Md. App. at 778. In his complaint, Dr. Hrehorovich relied on portions of the hospital's by-laws and employee policy manual, asserting that these created an enforceable contract between the parties. *Id*. at 779. Harbor Hospital filed a motion to dismiss, and cited different provisions in the by-laws and the policy manual. *Id*. The circuit court considered the material provided by Harbor Hospital over Dr. Hrehorovich's objection and ruled in Harbor Hospital's favor. *Id*. at 780. On appeal, this Court concluded that the circuit court's consideration of the documents converted the motion to dismiss into one for summary judgment, but that this conversion was harmless to Dr. Hrehorovich. *Id*. at 781; 787. We reiterated a principle already recognized by federal case law:

> the failure to expressly notify the parties of the court's intention was harmless error if, for example, the complaining party knew of the extraneous materials, had an opportunity to respond to them, and had not refuted their accuracy.

Id. at 787. In applying this principle to Dr. Hrehorovich's case, we concluded that because the complaint was founded on the hospital by-laws and policy manual, "[t]he only documents necessary to resolve the issue of whether a contract existed" were those documents. *Hrehorovich,* at 788. Thus, the circuit court properly disposed of the case on summary judgment. *Id*. Then, responding to Hrehorovich's arguments that with knowledge

of the extraneous documents he could have presented his own evidence to refute Harbor Hospital's claims, we held:

> The record is clear that [Dr. Hrehorovich] was sufficiently aware of the trial court's ability to consider the motion as one for summary judgment, and [Dr. Hrehorovich] cannot now claim that the trial court's action was improper.
>
> * * *
>
> [Dr. Hrehorovich] was aware, at least implicitly, that the lower court could exercise its discretion under Rule 2-322(c), and that he had sufficient opportunity to present additional matters.

Id. at 786.

Applying the principles enumerated in *Hrehorovich* to the case before us, we hold that Still Point suffered no prejudice because any suppositional error in converting the motion to dismiss into a motion for summary judgment was harmless for two reasons. First, the circuit court did not need to provide Still Point with any additional notice or opportunity to respond to Columbia Association's motion to dismiss. As we have already indicated, the Lease formed one of the bases of Still Point's complaint. For that reason, Still Point could not have been surprised when Columbia Association attached the Lease and amendments to its motion to dismiss. Providing Still Point with additional time to respond to a motion for summary judgment was unnecessary because Still Point was already intimately familiar with the provisions in the Lease. Indeed, Still Point's theory of its case was, and is, that the oral partnership agreement supplanted the Lease. Still Point could not have been surprised when Columbia Association asserted that the Lease governed their relationship, and it was made aware of this fact when the motion to dismiss was filed.

Still Point's contention that the circuit court erred because the integration clause was not explicitly referenced in the complaint fares no better. The *Hrehorovich* court addressed a similar argument. There, the plaintiff referenced *portions* of the by-laws and policy manual in his complaint, and the defendant, in its motion to dismiss, provided *the entirety* of the by-laws and policy manual. *Hrehorovich*, 93 Md. App. 772. To borrow from *Hrehorovich*: "the only documents necessary to resolve the issue" were the Lease and amendments, of which the integration clause was a part of. Having concluded that Still Point did not suffer any prejudice, we turn to the remaining issues.

2.

The circuit court concluded that the partnership agreement alleged in Still Point's complaint was unenforceable as a matter of law because it could not have been performed within a year. Still Point presents several arguments as to how the court erred.

A. The Statute of Frauds and Partial Performance

Still Point contends that e-mails exchanged by the parties, taken as a whole, "sufficiently reflect the terms and formation of the Partnership Agreement," and that the parties "signed" their names to these terms. Additionally, Still Point argues that the oral partnership agreement should nonetheless be enforced under the partial performance doctrine.

The relevant part of the Statute of Frauds is codified in Maryland Code, Courts and Judicial Proceedings Article ("CJP") § 5-901, which states in pertinent part:

> Unless a contract or agreement upon which an action is brought, or some memorandum or note of it, is in writing and signed by the party to be charged or another person lawfully authorized by that party, an action may not be brought:
>
> * * *
>
> (3) On any agreement that is not to be performed within 1 year from the making of the agreement.

"In approaching any matter potentially involving the Statute of Frauds, we first determine whether the case is one that falls within its provisions . . . . If it does, we address the sufficiency of the writing involved; otherwise, the Statute is not applicable. If the writing contains the requisite formalities, our inquiry ceases." *Friedman & Fuller, P.C. v. Funkhouser*, 107 Md. App. 91, 100 (1995).

We have previously held that a series of e-mail communications may constitute a sufficient writing under the Statute of Frauds. *MEMC Electronic Materials, Inc. v. BP Solar Intern., Inc*., 196 Md. App. 318, 339 (2010). The e-mails must, however, state with reasonable certainty "the terms and conditions of all the promises constituting the contract made between the parties." *Royal Investment Group, LLC v. Wang*, 183 Md. App. 406, 434 (2008).

The parties in *MEMC Electronic Materials, Inc. v. BP Solar Intern., Inc*., had a longstanding business relationship in which BP Solar purchased silicon powder from MEMC for use in its production of solar panels. 196 Md. App. at 328-29. At the outset in 1997, the parties entered into a written, one-and-a-half-page sales agreement for a two-year period, pursuant to which BP Solar sent MEMC purchase orders confirming quantity, price,

shipping, and other details, and MEMC sent invoices. *Id*. at 328. This sales agreement was extended for another two years until 2000, when the parties switched to a less formal arrangement. *Id*. at 329. Under the new, informal arrangement, the silicon powder was acquired through e-mail exchanges, accompanied by invoices and delivery of the supplies; the parties acted under this arrangement from 2000 until 2004. *Id*. Anticipating a long-term need for the silicon powder, BP Solar sought a three-year contract, to end in 2007, to purchase the powder from MEMC. *Id*. The parties communicated through a series of e-mails and telephone conversations that resulted in MEMC making shipments of silicon powder to BP Solar for the full 2005 calendar year. *Id*. at 329-31. When those shipments ceased in 2006, BP Solar brought an action in breach of contract to enforce the purchase agreement. *Id*. at 331. After a trial, a jury found that the parties had entered into a contract for the years 2005-2007 and that MEMC had breached the contract by failing to supply BP Solar with silicon powder for the years 2006 and 2007. *Id*. at 332.

On appeal, this Court affirmed and concluded that the e-mails exchanged between the parties were sufficient to meet the writing requirement of Uniform Commercial Code's Statute of Frauds for contracts for the sale of goods. *See* Commercial Law Article ("Com. Law") § 2-201(1). 196 Md. App. at 337. Section 2-201 requires a writing (1) that demonstrates a contract for a sale of goods for the price of $500 or more; (2) is signed by the parties; and (3) contains a quantity term. *Id*. We recognized that Com. Law § 1-201(46) defines "writing" to include "printing, typewriting, or any other intentional reduction to tangible forms." *Id*. at 339. Then, we concluded that the parties' signature lines at the

conclusion of the e-mails were sufficient to authenticate the writings, and that the e-mails contained an exact quantity of silicon powder to be purchased. *Id*. at 340-41.

Still Point relies on our holding in *MEMC Electronic* to support its contention that the e-mails sufficiently satisfy the writing requirement of the Statute of Frauds. We disagree. When compared to the very specific e-mails in *MEMC Electronic*, the e-mails exchanged between Still Point and Columbia Association are equivocal. When read in their entirety, these e-mails, all exchanged prior to the execution of the Lease, demonstrate that no agreement had yet been reached by the parties, but that the parties were working toward an agreement. For example, in a July 2013 e-mail, relied on by Still Point, Columbia Association stated: "[W]e are attaching a *proposed* financial model for a partnership. . . ." (emphasis added). In an August 2013 e-mail, Still Point wrote: "Based on our most recent meeting and the study you shared, we have a few *proposed* edits to *your proposal*[;]" and later in that same e-mail: "We are thankful for the *possibility* of working with you in the Columbia Wellness Retreat . . . [;]" and "We hope to meet with you later . . . *to firm up* our agreement and get started on this exciting endeavor!" (emphasis added). Finally, an October 2013 e-mail from Columbia Association to Still Point, titled "draft agreement," reads: "You'll also note that we are *suggesting* that the term of the lease be an initial 2 year period followed by three year periods. We think that will give us ample opportunities to adjust the lease if the [numbers] aren't working out the way we are *currently projecting*." (emphasis added) The language used by *both* parties in these e-mails is far from definitive. Rather, these writings show that the parties had not agreed to several significant terms and

that no agreement, either for a partnership or for a lease, had been finalized by the e-mails. The complete and thorough writing we do have, however, is the Lease, which was signed by Still Point and Columbia Association after these same extensive negotiations. That the Lease was amended twice further demonstrates that this was, in fact, the writing to which Still Point was bound and intended to be bound.[4]

Still Point's partial performance argument is unpersuasive for the same reasons. An equitable remedy, the partial performance doctrine allows for enforcement of an oral agreement if one party has permitted the other party "to perform in reliance on both the agreement and the defendant's inducements would effect a fraud upon the plaintiff." *Friedman & Fuller*, 107 Md. App. at 108. But the allegations in Still Point's complaint are insufficient to show that any partnership agreement, oral or written, ever existed between that parties. The doctrine of partial performance is not applicable in this case.

[4] The circuit court further concluded that even if the alleged partnership agreement did exist, it would be precluded by the Statute of Frauds' one-year requirement because "the partnership agreement does speak . . . in terms of a 10-year or five to 10-year term [and] [o]bviously, it can't be completed within one year."

We agree with the circuit court. Still Point itself admits that the alleged partnership agreement was for a ten-year period. Because the agreement cannot be completed within one year, it fails under the Statute of Frauds. *See Friedman & Fuller*, 107 Md. App. at 102 (holding that the one-year requirement of the Statute of Frauds operates when "it is impossible by the terms of the contract for it to be performed fully within one year.") (internal citations omitted).

B. Mutual Assent

Still Point's next argument is that the parties did not mutually assent to the Lease, notwithstanding the Lease's integration clause, and that the circuit court should have allowed Still Point to introduce parol evidence to prove that effect. Essentially, Still Point alleges that it was inveigled into entering the Lease, and that the e-mails exchanged between the parties prior to the Lease's execution contain the real agreement of the parties. According to Still Point, the parol evidence rule does not apply to bar the e-mails from evidence because the e-mails are not being used to change any terms in the Lease. Rather, the e-mails demonstrate that the Lease, which Still Point calls the "allocation agreement," is not the actual agreement of the parties, and that the partnership agreement is the true agreement between the parties. Still Point points to facts like Columbia Association's $50,000 loan during the first year of Still Point's tenancy, the percentage of revenue Still Point paid to Columbia Association as rent, the marketing and employee training arrangements between the parties, and that the word "partnership" was used sparingly throughout the e-mails to demonstrate that the parties were, in fact, business partners. We do not agree.

We begin with Still Point's assertion that the Lease lacked the mutual assent of the parties. "'Mutual assent is an integral component of every contract.'" *Address v. Millstone*, 208 Md. App. 62, 82 (2012) (quoting *Kiley v. First Nat'l Bank*, 102 Md. App. 317 (1994)). Whether mutual assent existed requires a review of two issues: (1) intent to be bound, and (2) definiteness of terms. *Advance Telecom*, 224 Md. App. at 177. "If parties do not intend

to be bound until a final agreement is executed, there is no contract," and "the primary source for determining the intention of the parties is the language of the contract itself." *Id.* (internal quotations marks omitted). Maryland's approach to contract interpretation is well-established:

> Maryland adheres to the principle of the objective interpretation of contracts. If the language of a contract is unambiguous, we give effect to its plain meaning and do not contemplate what the parties may have subjectively intended by certain terms at the time of formation. Thus, our search to determine the meaning of a contract is focused on the four corners of the agreement.
>
> Under the objective theory of contracts, we look at what a reasonably prudent person in the same position would have understood as to the meaning of the agreement. Ambiguity arises if, to a reasonable person, the language used is susceptible of more than one meaning or is of doubtful meaning . . . .
>
> [W]hen the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.
>
> * * *
>
> [A] contract must be construed in its entirety and, if reasonably possible, effect must be given to each clause so that a court will not find an interpretation which casts out or disregards a meaningful part of the language of the writing unless no other course can be sensibly and reasonably followed.

Cochran v. Norkunas, 398 Md. 1, 16–18 (2007) (citations, quotation marks, and footnotes omitted).

When a contract contains an integration clause, such as the one at issue here, courts "should refrain from considering outside evidence of prior statements or understandings when interpreting a contract . . . because the clause indicates that the contract is the

complete iteration of the parties' agreement." *Pinnacle Group, LLC v. Kelly*, 235 Md. App. 436, 462 (2018). "Under the integration doctrine, then, when an agreement purports to be a final agreement between the parties, only those terms control and preclude consideration of extrinsic evidence." *Pinnacle Group*, 235 Md. App. at 436.

We conclude that the parties mutually assented to the Lease. This result is based not only on the integration clause itself, but also because the allegations in the complaint indicate that *both* parties performed their obligations under the Lease until Still Point defaulted. The terms of the Lease are unambiguous and definite, and Still Point has not offered any argument to the contrary. Instead, Still Point tries to abrogate the Lease through the use of extrinsic evidence. But "[w]e have frequently barred the admission of extrinsic evidence when the written contractual language is unambiguous." *Calomiris v. Woods*, 353 Md. 425, 437 (1999). The Lease's unambiguity is underscored by the language of the integration clause itself (emphasis added):

> This instrument contains *all of the agreements and conditions made between the parties* and may not be modified orally or in any other manner than by an agreement in writing signed by both parties or their respective successors in interest.

An integration clause such as this "indicates that the contract is the complete iteration of the parties' agreement," and so "precludes[s] consideration of extrinsic evidence." *Pinnacle Group*, 235 Md. App. at 462. Thus, we agree with the circuit court that the integration clause present in the Lease was dispositive that the parties intended to be bound by the Lease.

Perhaps what is most compelling is that Still Point acted in accordance with the Lease for several years, despite its assertion that the alleged partnership agreement controlled the conduct of the parties. By signing the Lease, Still Point ratified its terms. Still Point further validated the Lease by executing two amendments to the Lease. Still Point has not pointed to any allegation in its complaint that it objected to any provisions in the Lease when it was originally executed or later amended. Under these circumstances, we will not allow Still Point to abrogate the Lease and supplant it with an entirely different agreement after it has reaped the benefits of the bargain over several years.

Still Point then argues that the extrinsic evidence (*i.e.*, the e-mails) it offers is not barred by the parol evidence rule. For support, Still Point cites to several cases in which the courts ultimately found that signed agreements to be unenforceable. Still Point is correct that "[p]arol evidence is admissible to show that what appears on its face to be a full and complete contract was not intended to be a contract at all." *Rinaudo v. Bloom*, 209 Md. 1, 8-9 (1956). Still Point relies on *4500 Suitland Road Corp. v. Ciccarello*, 269 Md. 444, 453 (1973) (holding that parol evidence was admissible to show that the parties did not have a meeting of the minds for a contract for the sale of a gas station.); *Catholic University of America v. Bragunier Masonry Contractors, Inc*., 139 Md. App. 277, 304 (2001) (holding that parol evidence was admissible to show that a construction management agreement did not constitute a valid contract between the parties.); and *Nice Ball Bearing Co. v. Bearing Jobbers, Inc*., 205 F. 2d 841, 846 (1953) (holding that extrinsic evidence was admissible

to show that a sales contract for stock from a parent company to its employee was a sham designed to fool competitors.).

The problem with all of these cases from Still Point's perspective is that the parties in them never followed the terms of the signed agreements. Rather, the parties acted in accordance with other, oral agreements, counter to the terms expressed in the signed agreements, permitting the court to abrogate the signed agreements and find that another agreement controlled the conduct of the parties. As we have just discussed, Still Point and Columbia Association performed under the Lease—at least until Still Point defaulted on its obligations to pay rent.

3.

Finally, we reach Still Point's contention that the circuit court erred in dismissing its unfair competition and fraudulent misrepresentation claims. The totality of Still Point's argument as to these issues is:

> Appellants have sufficiently pleaded claims of Unfair Competition and Fraudulent Misrepresentation. Moreover, the trial court erred in dismissing these counts without leave to amend. *See Tavakoli-Nouri v. State*, 139 Md. App. 716, 733 (2001).

Still Point's *ipse dixit* substantive argument fails to comply with the requirements of Md. Rule 8-504(a)(5), which provides that a brief must contain "[a]rgument in support of the party's position on each issue." *See e.g.*, *Hartford Acc. & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'ship,* 109 Md. App. 217, 288 n.18 (1996), *aff'd on other grounds*, 346 Md. 122 (1997). Its procedural contention fares no better—*Tavakoli-Nouri* holds that a trial

court abuses its discretion when it dismisses a complaint on *a technical ground* without leave to amend. 139 Md. App. at 733 ("The failure to plead separate counts should not be a fatal one given the ease with which it may be cured. Technical pleading defects that do not impede the defendants' right to be informed of the nature of the action against them do not warrant dismissal without leave to amend."). In the present case, the circuit court did not dismiss the unfair competition and misrepresentation counts because Still Point failed to frame them in separate counts or a similar technical pleading defect.

THE JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.