

Circuit Court for Charles County  
Case No. C-08-CV-21-000411

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1942

September Term, 2022

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VISHUP KUMAR SACHDEVA

v.

AA ROADSIDE SERVICES, LLC

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Wells, C.J.  
Tang,  
Eyler, Deborah S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Wells, C.J.

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Filed: May 7, 2024

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Vishup Kumar Sachdeva filed suit in the Circuit Court for Charles County against appellee AA Roadside Services, LLC (“AA Roadside”) to recover money allegedly owed under an oral employment agreement. Following a bench trial, the circuit court granted judgment in favor of AA Roadside.

Sachdeva presents two questions for our review, which we distill into one:<sup>1</sup>

Did the circuit court err in finding that Sachdeva failed to establish by a preponderance of the evidence the total amount of payments he received from AA Roadside and the amount he was owed?

For the reasons set forth below, we affirm the judgment of the circuit court.

### **BACKGROUND**

The following facts were elicited at trial.

AA Roadside provides emergency roadside assistance services under an agreement with American Automobile Association (AAA). In 2019, Rajbir Singh (“Rajbir”) and Amrit Thiara (“Thiara”) owned and operated AA Roadside.<sup>2</sup> Rajbir was also a part owner of STAG International (“STAG”), a company that also provided roadside assistance and towing services to AAA. Harmeet Singh (“Harmeet”) was Rajbir’s partner and the co-

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<sup>1</sup> Sachdeva’s verbatim questions to us are:

1. Did the circuit court commit reversible error when it shifted the burden of production and persuasion on the affirmative defense to the plaintiff?
2. Did the circuit court abuse its discretion by ignoring unequivocal testimony corroborated by bank records in favor of speculative testimony?

<sup>2</sup> Rajbir discontinued his relationship with AA Roadside in 2021.

owner of STAG. Thiara and Harmeet, who were personal acquaintances of Sachdeva, encouraged him to work for AA Roadside and STAG.

In April of 2019, Sachdeva entered into an oral agreement with AA Roadside whereby Sachdeva would respond to calls for roadside services assigned to AA Roadside by AAA. While working for AA Roadside, Sachdeva also worked part-time for STAG on occasions when STAG did not have drivers available to respond to roadside assistance calls.

Sachdeva testified that he was offered a choice of two compensation options from AA Roadside: the first option involved the use of a company vehicle, and the second option involved Sachdeva using his own vehicle and the opportunity to receive a higher commission percentage “because all the expenses for the company would be reduced” and he would be reimbursed for his expenses and issued a W-2. Initially, AA Roadside agreed to pay Sachdeva a commission of 60% of the fee it received from AAA for each service call. From June 16, 2019 through August 2019, AA Roadside paid Sachdeva a 65% commission. Because AA Roadside did not have a vehicle for Sachdeva to use, he used his own vehicle. According to Sachdeva, AA Roadside agreed to pay for his fuel, maintenance costs, and expenses. Sachdeva believed that he was hired as an employee of AA Roadside, and not as an independent contractor.

Sachdeva testified that he began requesting reimbursement from Rajbir and Thiara over the phone for each expense he incurred on a daily basis. Rajbir and Thiara eventually asked him to “establish an amount” that represented his expenses “on a daily basis or whatever,” which he did. Sachdeva expected that he would receive payment for his

expenses in his paycheck. “In June or July of 2019” Sachdeva discovered that he was not receiving reimbursement for his expenses in his paycheck. He notified Rajbir and Thiara of his concern, but he claimed that he “never got a straight answer” from them. Sachdeva “sometimes” purchased products or “technical stuff” for AA Roadside, and he was reimbursed in cash for those purchases. Sachdeva introduced copies of his checking account statements which showed charges that he claimed he incurred that were not reimbursed by AA Roadside.

Sachdeva’s bank records showed that he deposited checks from AA Roadside in the total amount of \$20,807.58. Sachdeva received a 1099-MISC income tax form for 2019 that reflected his compensation from AA Roadside as \$21,988.15. He testified that he should have received \$25,337.05 in commissions from AA Roadside for the service calls he completed. Sachdeva was fired by AA Roadside in September 2019 “[b]ecause [he] was constantly badgering them about [his] reimbursements and they said no.” After leaving AA Roadside, Sachdeva began working full-time for STAG.

On cross-examination Sachdeva testified that he had studied for a master’s degree in accounting in India and Australia, but he did not complete the programs. He acknowledged that he received a monthly accounting from AA Roadside showing exactly how much he was paid. He confirmed that at no time did he submit a request for reimbursement in writing. Sachdeva received a tax refund for the year 2019 and acknowledged that he likely would not have received a refund had he received a W-2 tax statement. On or about August 9, 2019, Sachdeva received \$4,000 from STAG for the down payment on a new vehicle. Sachdeva denied that the \$4,000 was from AA Roadside.

Harmeet testified that he participated in conversations between Rajbir and Sachdeva in 2019 regarding Sachdeva's employment with AA Roadside. Harmeet recalled that Sachdeva and Rajbir discussed that Sachdeva would be hired as an employee with "all the benefits" that STAG provided, including reimbursement for expenses such as fuel costs, repairs, overall "wear and tear and maintenance." Harmeet testified that Sachdeva did not complain to him that he was not paid properly while he was employed by AA Roadside. He recalled that Sachdeva was surprised, however, when he received a 1099 tax form from AA Roadside, rather than a W-2. Harmeet denied loaning Sachdeva \$4,000 or repaying a loan to Sachdeva in the amount of \$4,000. In 2021, Harmeet and Sachdeva became business partners and co-owners of Mid Atlantic Roadside services.

Thiara testified that Sachdeva began working for AA Roadside in 2019 as an independent contractor. Thiara recalled that Sachdeva requested that he be paid in cash. According to Thiara, he and Rajbir offered Sachdeva a commission of 60% of the fee AA Roadside received from AAA. Thiara recalled that Rajbir offered to make Sachdeva an employee, but because Sachdeva wanted to be paid in cash, Rajbir informed him that he would have to pay him as an independent contractor with a 1099 tax form. Thiara noted that Sachdeva used his own vehicle and set his own hours. Thiara had no recollection of Sachdeva discussing with him that AA Roadside should be paying his expenses.

Thiara testified that Rajbir paid \$4,000 for a down payment on a vehicle for Sachdeva using a STAG credit card. Rajbir then "retrieved the \$4,000" from the AA Roadside account. Thiara stated that Sachdeva was aware that Rajbir had deducted \$4,000 from AA Roadside to repay STAG. According to Thiara, Sachdeva often received an

advance on his pay that would be deducted from his paycheck, which likely accounted for the \$200 deduction for an “old balance” referenced in an email on which he was copied from Rajbir to Sachdeva regarding commissions Sachdeva had earned from May 16-31, 2019. The email also referenced a deduction of \$79.74 for a “rental bill”.

At the close of all evidence, the court entered judgment in favor of AA Roadside. This appeal followed.

### **STANDARD OF REVIEW**

In an action tried without a jury, we review the trial court’s decision “on both the law and the evidence.” Md. Rule 8-131(c). We “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c); *Friedman v. Hannan*, 412 Md. 328, 335 (2010). When reviewing a decision for clear error, “we must consider the evidence in the light most favorable to the prevailing party and decide not whether the trial judge’s conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence.” *Royal Investment Grp., LLC v. Wang*, 183 Md. App. 406, 430 (2008) (quoting *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 676-77 (2007)) (further citation omitted). We review a trial court’s legal conclusions, including the interpretation of contracts, without deference. *Pines Plaza Ltd. P’ship v. Berkley Trace, LLC*, 431 Md. 652, 663 (2013) (citing *City of Bowie*, 398 Md. at 677).

### **DISCUSSION**

Sachdeva argues that the circuit court erred in awarding judgment in favor of AA Roadside because the court shifted the burden of production and persuasion to him on the

issue of whether AA Roadside had paid him \$4,000. He contends further that the circuit court failed to properly consider evidence regarding the \$3,348.90 he alleged that he was owed in unpaid commissions.

AA Roadside responds that the circuit court correctly found that Sachdeva failed to meet his burden of production as to his unpaid commission claim. AA Roadside asserts that because Sachdeva failed to meet his burden of production, the burden of production did not shift to AA Roadside to prove the affirmative defense of payment of the debt owed.

To recover damages for a breach of contract, the party alleging the breach has the burden of establishing the existence of the contract. *Bontempo v. Lare*, 217 Md. App. 81, 136-37 (2014) (holding that the trial judge did not err in finding that the party alleging the breach of an oral compensation agreement had failed to prove the existence of the agreement). A valid contract “must express with definiteness and certainty the nature and extent of the parties’ obligations.” *County Comm’rs for Carroll County v. Forty West Builders, Inc.*, 178 Md. App. 328, 377 (2008). “[T]he existence and terms of an oral contract, when disputed, are for the trier of facts to determine, and we will not overturn those findings unless they are clearly erroneous. *Bontempo*, 217 Md. at 136 (citations and internal quotation marks omitted).

In breach of contract and tort cases, the rule in Maryland is “that the burden of proof is on the plaintiff, or on the party who asserts the affirmative of an issue, and that burden never shifts.” *Bd. of Trustees, Comty. Coll. of Balt. Cty. v. Patient First Corp.*, 444 Md. 452, 469 (2015) (citation and internal quotation marks omitted). “The party that bears the burden of production must produce sufficient evidence on an issue to present a triable issue

of fact and avoid a directed verdict.” *Id.* (citation omitted). The burden of production shifts to the opposing party only after the pleading party has met his or her burden of production. *Id.* at 470-71 (citation omitted). “The burden of production may shift to the defendant, who can either do nothing or present evidence to disprove the plaintiff’s allegations.” *Id.* at 470. The burden shifts to one of persuasion only after the parties have carried their burdens of production and the fact finder assigns equal weight to the evidence they submitted. *Id.* (citations omitted).

At the conclusion of the evidence, the trial court described the parties’ agreement as “a loose and fuzzy operation[.]” The court found:

[T]here was certainly an agreement that [Sachdeva] was to be paid sixty to sixty-five percent of what was received from AAA by AA Roadside Services.

But after that, there is a dispute whether it was expenses were to be incurred, there was a dispute about how the payments were to be made, what deductions were to be taken, what the payments ... neither party testified as to what the \$200 payment reimbursement was for, whether it was an advance?

There was another rental payment on there that I don’t believe either party testified as to what the rental payment was.

There was a lot of accounting going on in this case between the parties that is not clear. It is just unclear what occurred between these parties in all the circumstances.

There was a payment made, there was \$20,807 paid in checks, in Plaintiff’s Exhibit 6. There was \$21,989 on a 1099 that was issued, that was submitted to the IRS by Mr. Sachdeva as correct.

So there is ... and then there was an issue regarding a \$4,000 payment from STAG which directly equals pretty close to the \$3,348, which would be the difference if the \$21,989 was correct. It would be a little bit less if the \$20,807 was correct, it would be about \$4,500, from \$25,337.05[.]

There is just so much going on that the [c]ourt cannot find by a preponderance of the evidence what occurred or what should have occurred. Therefore, ... the [c]ourt is entering judgment on behalf of [AA Roadside].

Here, Sachdeva had the burden of demonstrating the existence of an agreement, the terms of that agreement, and the amount that he claimed he was owed under the agreement. Sachdeva testified that the parties had agreed to the payment of a sixty to sixty-five percent commission for his services, and he introduced evidence showing that he was entitled to commissions totaling \$25,337.05. Sachdeva also alleged that AA Roadside had agreed to reimburse him for his expenses but failed to do so. Sachdeva did not testify to the total amount of reimbursement he was seeking for expenses, though he introduced his checking account statement where he highlighted the charges he claimed he was owed, which his counsel calculated as \$489.

With respect to the total amount that AA Roadside had paid to him, however, he introduced conflicting evidence. His personal bank account statement showed that he received \$20,807 from AA Roadside, while his 1099 tax statement for 2019 showed that he received \$21,989 from AA Roadside. Sachdeva offered no explanation for this discrepancy, nor did he offer any explanation for additional “deductions” noted in an email to him from Rajbir regarding his commissions.

Based on the evidence presented, the circuit court found that the parties had agreed to the payment of a sixty to sixty-five percent commission for Sachdeva’s services. The circuit court determined that the remaining issues in the case regarding Sachdeva’s compensation from AA Roadside remained disputed, and the confusing and contradictory

evidence regarding the parties’ business dealings undercut Sachdeva’s claim that he was entitled to \$3,348 in outstanding commissions from AA Roadside. The credibility of the witnesses on the issue of the \$4,000 payment to Sachdeva was also a consideration for the circuit court.

As we have noted, we “give due regard to the opportunity of the trial court to judge the credibility of the witnesses,” Md. Rule 8-131(c), and “if any competent material evidence exists in support of the trial court’s factual findings, those findings cannot be held to be clearly erroneous.” *Bontempo*, 217 Md. App. at 137 (citations and internal quotation marks omitted). This rule is “particularly true when the judge is *not* persuaded of something.” *Id.* (noting that it is “almost impossible for a judge to be clearly erroneous when he [or she] is simply NOT PERSUADED of something”) (alteration in original) (citation and internal quotation marks omitted).

Based on the evidence presented, we conclude that the circuit court’s finding that Sachdeva failed to carry his burden of establishing that AA Roadside owed him unpaid commissions was not clearly erroneous.

**JUDGMENT OF THE CIRCUIT COURT FOR  
CHARLES COUNTY AFFIRMED. COSTS TO BE  
PAID BY APPELLANT.**