UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1910

September Term, 2015

NORTHWAY IMPROVEMENT CORPORATION, ET AL.

v.

VARSITY AT HOPKINS GP, LLC, ET AL.

Wright,
Arthur,
Leahy,

JJ.

Opinion by Wright, J.

Filed: December 7, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

This appeal arises from a dispute between partners to a Maryland limited partnership known as H.B. Northway Limited Partnership ("the Partnership"). At the time of the judgment in this case, the appellants, the Blonder Group, and appellees, the Potomac Group, were fifty-fifty partners[1] in the Partnership which owned a student housing building across from the main campus of Johns Hopkins University ("the Property"). The affairs of the Partnership were governed by the Second Amended and Restated Partnership Agreement ("the Partnership Agreement").

In September 2014, after the Partnership renovated the Property, a third party approached the Partnership with a letter of intent to purchase the Property. The terms of the Partnership Agreement stated that the sale of the Property was a "major decision" which required consent of a majority of the partnership. The parties disagreed on whether or not to sell the Property to the third party.

The parties also disagreed over the voting system required to approve the sale as a "major decision." The appellants took the position that the Partnership Agreement, with respect to "major decisions," provided a two-tiered voting system which required the

[1] At the time of the action, the parties and partnership were arranged as follows: The Blonder Group consisted of Northway Improvement Corporation ("NIC"), the Blonder Family Dynasty Trust ("the Trust"), and Miriam T. Gilliland ("Gilliland"). The Potomac Group consisted of Varsity at Hopkins GP, LLC ("Varsity GP") and Varsity at Hopkins LP, LLC ("Varsity LP"). The Blonder Group and the Potomac Group each had a fifty percent (50%) total partnership interest. There were two general partners: NIC, which maintained a partnership interest of one percent (1%); and Varsity GP, which maintained a partnership interest of one one-hundredth of one percent (.01%). There were three limited partners: the Trust, which maintained a partnership interest of forty-eight and one half percent (48.5%); Gilliland who maintained a partnership interest of one-half of one percent (0.5%); and Varsity LP, which maintained a partnership interest of forth-nine and ninety-nine one hundredths percent (49.99%).

affirmative vote of the general partners before seeking the consent of the partnership as a whole. The appellees took the position that a "major decision" is not first considered by the general partners, but instead that it is considered only by the partnership as a whole. This distinction is relevant as the method of voting necessarily determines the path to a contractual "deadlock." A "deadlock" was a condition precedent to the special buyout provision included in the Partnership Agreement which required one group buy out the other if invoked.

Due to the disagreements regarding the sale, appellees invoked the special buyout provision. Appellants refused to either elect to sell their ownership interest to appellees or to purchase appellees' ownership interest because they did not believe that a "deadlock" had occurred. Appellees regarded this refusal to make such an election as a breach of contract and commenced an action seeking specific performance of the special buyout provision and "such other relief as the Court may deem appropriate."

Following a two-day bench trial, the Circuit Court for Montgomery County found for the appellees. The court entered an interim order directing appellants to make their election whether to buy or sell within ten days. Appellants appealed and filed emergency motions to stay enforcement of the order in the circuit court and this Court. Both courts denied the requests, and appellants elected to buy out appellees' interests. The circuit court then entered a final order which included a deadline for the transaction of sale to take place. Appellants filed a second notice of appeal and again filed motions for stay of enforcement in the circuit court, this Court, and the Court of Appeals. All three courts denied the motions for stay of enforcement.

Following the decision and the denial of the motions, the parties entered into a transaction pursuant to which appellants purchased appellees' interests. Closing on the transaction occurred in January 2016. The appellants obtained financing through a third-party lender and paid off the existing construction loan. Since November 2015, appellants have been managing all aspects of the Property without involvement by appellees. The parties also agreed to terms relating to the continued use of the appellees' brand name for a specified period of time. At argument, the parties advised this Court at argument that the appellants recently sold the students housing building to a third party.

Appellants' appeal of the circuit court's final order is not before this Court. Additional facts will be included as they become relevant to our discussion below.

Questions Presented

Appellants ask:

> 1. Did the trial court err in finding that the Appellants had waived the negative defense of capacity to sue where that negative defense was pled in the Answer and evidence substantiating that defense was admitted without contradiction?
>
> 2. Did the trial court err in finding that the Appellants waived any objection to the admission of parol or extrinsic evidence where the Appellants, with the acquiesces of the trial court, and prior to the commencement of any testimony, placed a standing objection on the record, and the court reserved its ruling on the Appellants' Motion in *Limine* to Exclude Extrinsic Evidence?
>
> 3. Did the trial court err by basing its judgment on extrinsic evidence while simultaneously declaring the partnership agreement at issue to be "not ambiguous?"
>
> 4. Did the trial court err by ordering injunctive relief inconsistent with the unambiguous terms of the partnership agreement and based solely upon the

> unilateral submission by Appellee's counsel of factual allegations which were never presented at trial and were unsupported by affidavit?
>
> 5. Did the trial court err by ordering injunctive relief that was not pled in the Complaint?

Before addressing appellants' questions, we first address appellees' assertion that the subsequent agreements and actions between the parties have rendered the case moot. For the reasons discussed below, we conclude that the closing on the sale of the Property did indeed render the issue moot and accordingly dismiss the appeal.

Discussion

Appellants are before us, arguing legal error by the circuit court in (1) finding that appellants had waived the negative defense of capacity to sue; (2) finding that appellants waived any objection to the admission of parole evidence; (3) basing its judgment on extrinsic evidence; (4) ordering injunctive relief that appellants allege was inconsistent with the terms of the partnership and unsupported by fact and affidavit; and (5) ordering injunctive relief that was not pled in appellees' complaint. Appellants ask that if we find error on the part of the circuit court, we (1) vacate the judgments of the circuit court; or (2) reverse and remand this matter to the circuit court for further proceedings consistent with this Court's opinions; and (3) grant such other relief as the nature of this cause of action requires.

Before addressing appellants' arguments on the merits, appellees first contend that this Court should dismiss this case for mootness because the parties moved forward with negotiations that culminated in the buyout of the appellees' interest by the appellants. The appellants have negotiated their way into full ownership of the Property and continue

to use appellees' intellectual property and software in its operation. Further, appellants obtained financing through a non-party lender to pay off existing debt. Appellees further aver that appellants used the circuit court's deadline to its advantage in ongoing negotiations throughout the sale and closing. Ultimately, the closing occurred on January 28, 2016, nine days after the circuit court's initial deadline, with terms and concessions that were not part of the final order. While the details of the negotiations are not relevant to our holding, the finality of the closing on the sale of the Property is relevant. Appellees correctly conclude that this Court must first address whether a controversy currently exists before us at all.

Appeals may be dismissed for mootness under Md. Rule 8-602(a)(10).[2] "Generally, appellate courts do not decide academic or moot questions." *Attorney Gen. v. Anne Arundel Cnty. Sch. Bus Contractors Ass'n, Inc.,* 286 Md. 324, 327 (1979). The test for mootness is whether "a case presents a controversy between the parties for which, by way of resolution, the court can fashion an effective remedy." *Carroll Cnty. Ethics Comm'n v. Lennon,* 119 Md. App 49, 57 (1997) (quoting *Adkins v. State*, 324 Md. 3641 (1991)). Put another way, a case is moot "when there is no longer an existing

[2] Md. Rule 8-602. Dismissal by Court.

(a) Grounds. On motion or on its own initiative, the Court may dismiss an appeal for any of the following reasons:

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(10) the case has become moot.

controversy when the case comes before the Court . . . ." *Suter v. Stuckey,* 402 Md. 211, 219 (2007) (citations omitted).

The following cases illustrate a number of different ways a controversy can become moot. In *Hagerstown Reproductive Health Services v. Fritz,* 295 Md. 268, 270 (1983), the Court of Appeals stayed this Court's reversal and remand of an injunction preventing a wife from having an abortion against her husband's wishes. The Court later declared the issue moot because the abortion was performed in the interim when the woman did not have knowledge of the stay issued by the Court of Appeals. *Id.* at 270-71. In *Nat'l Collegiate Athletic Ass'n v. Tucker,* 300 Md. 156 (1984), the Court of Appeals held that the appeal from a denial of a preliminary injunction against players participating in inter-collegiate lacrosse games was moot where the season ended before the appeal was heard. In *Campbell v. Lake Hallowell Homeowners Ass'n,* 152 Md. App. 139 (2003), this Court held that an appeal of an injunction obtained by a homeowners association for covenant violations was moot because the appellant homeowners had moved from the development. These cases illustrate the manner in which the passage of time or actions by parties during the appellate process can render an issue moot by eliminating the underlying dispute or rending the court's options for remedies ineffective.

We now turn to the case at bar. If we consider, *arguendo,* that appellants would prevail in their contention that they were forced to make an election due to error on the part of the circuit court, the only relief this Court could grant would be to reverse and remand or to vacate. In either case, appellants have already made the election to buy out appellees and moved forward with the purchase of the property. Even if it was within our

power to undo the election by one party to buy and the other to sell, the recent sale of the property completely prevents the parties to return to their respective positions at the time of the circuit court's finding. As such, there is no effective remedy that we can offer.

Not only are we unable to fashion an effective remedy, but there is also no longer an active dispute between the parties. The closing on the transaction resolved all of the underlying issues within the Partnership regarding the Partnership Agreement. Any additional involvement by *any party*, including further involvement from the courts, would further muddle an already complicated, final, business arrangement. As appellees state, this "negotiated and consummated deal cannot simply be undone; the appellees cannot be returned to its equity position in the Partnership; there is a new lender (or lenders) with a new mortgage on the Property that cannot be repaid without a huge repayment penalty; and the mortgage that was on the Property when the appellees were a fifty percent owner cannot be reinstated." We agree. The Partnership no longer exists and the Property is no longer jointly held. Therefore, the underlying dispute, as to the details required in order to sell the Property, is no longer active.

Because we conclude that we cannot fashion an effective remedy and because there is no longer an underlying dispute, we conclude that the case is indeed moot as appellees argue.

Unlike the federal courts, there is no constitutional prohibition which bars us from expressing our view of the merits on a case which became moot during the appellate proceedings. *Carroll Cnty. Ethics Comm'n,* 119 Md. App at 57. However, "moot cases should be decided only in rare instances," and we do not find this to be one such instance.

Id. at 60 (citation omitted). The Court of Appeals has consistently held that appellate courts may decide moot cases, but "we must be persuaded that there exists an 'urgency of establishing a rule of future conduct in matters of important public concern' which 'is both imperative and manifest.'" *Hagerstown Reproductive Health Servs.,* 295 Md. at 272 (quoting *State v. Ficker,* 266 Md. 500, 507 (1972)). The ownership arrangement and sale of a privately held apartment building is certainly not one of both imperative and manifest important public concern.

Finally, even if we were to find that the current case fit into an exception that allows us to consider the merits, it would still be prudent to decline to do so. If we were to find for the appellants on the merits, which we do not begin to address, reversing the case for additional proceedings would create additional litigation and controversy which have been put to rest by the actions of the parties. To do so would compromise the integrity of this Court and would cut against the judicial values of finality and efficiency.

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY DISMISSED. COSTS TO BE PAID BY APPELLANTS.