

Circuit Court for Anne Arundel County Maryland
C-02-CV-16-2301

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2576

September Term, 2016

PMIG 1024, LLC

v.

SG MARYLAND, LLC

Meredith,
Wright,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: January 23, 2018

*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 breach of contract action that sought specific performance in the sale of four properties between PMIG 1024, LLC (“PMIG”), Appellant-Lessee, and SG Maryland, LLC (“SG”), Appellee-Lessor. After a hearing on SG’s Motion for Summary Judgment, the Circuit Court for Anne Arundel County granted SG’s Motion for Summary Judgment and denied PMIG’s counter motion. PMIG timely appealed and presents the following issues for our consideration, which have been condensed and reworded for clarity:¹

1. Did the circuit court err by finding that PMIG did not have an enforceable contractual right to purchase SG’s premises?
2. Did the circuit court err by ruling that PMIG did not properly exercise its right and option to purchase any of SG’s premises pursuant to Section 8.4 of a lease agreement modification?

¹ PMIG presented the following issues:

1. Where a lease amendment modified a provision in the original lease to give the tenant the option to purchase properties identified by the amendment, did the amendment establish a purchase option that was in addition to rights that already existed in the provision before the adoption of the amendment?
2. Where a contract grants an option to buy property at fair market value, is the contract sufficiently certain regarding price so that it can be enforced?
3. Where a lease amendment gave the tenant the option to purchase properties at fair market value - a value which shall not be less than an amount designated by the amendment - did the tenant properly exercise the option when it gave notice that it would buy four properties either at the amount designated by the amendment or the property’s otherwise fair market value?
4. Did the circuit court’s declaratory judgment adequately declare the rights of the parties and give the parties fair notice of what the court had determined?

For reasons to follow, we hold that PMIG did not have an enforceable contractual right to purchase SG’s premises and, therefore, we need not reach the second issue. We affirm the judgment of the circuit court.

BACKGROUND

The dispute between PMIG and SG, regarding PMIG’s claim that it exercised option, to purchase four properties² is related to two documents: a Lease Agreement dated April 1, 1968 (the “Original Lease”), and a Lease Amendment dated July 1, 2006 (the “Second Lease Amendment”), which modified the Original Lease.

On April 1, 1986, Crown Central Petroleum Company (“Crown”), PMIG’s predecessor-in-interest, entered into an Original Lease with UTF-Maryland Limited Partnership, SG’s predecessor-in-interest. The Original Leases contained a Primary Term of 20 years, with options to renew for two 5-year terms, which PMIG could only exercise 12 months before the end of the Primary Term. Section 3.1 of the Original Lease

² The properties are, or at one time were, operated as retail motor fuel service stations. The properties at issue in the case are:

a. 245 West Street, Annapolis, Maryland 21401 (the “Annapolis Premises”);

b. 8201 Veterans Highway, Millersville, Maryland 21108 (the “Millersville Premises”);

c. 1600 Eastern Boulevard, Baltimore, Maryland 21221 (the “Baltimore Premises”); and

d. 10801 Pulaski Highway, White Marsh, Maryland 21162 (the “White Marsh Premises”).

contained a purchase option that allowed the Tenant to purchase every one of the 24 properties subject to the Original Leases on three dates: March 31, 2006, March 31, 2011, and March 31, 2016 (“Section 3.1”). Section 8.4 and Section 3.1 of the Original Lease provided for termination of the lease if the properties became uneconomic or unsuitable.

Section 8.4 provides:

Section 8.4 Termination of Lease Upon Discontinuance of Operations on a Leased Property. At any time after the first five (5) years of the Primary Term, if in the good faith judgment of Lessee, as reflected in an officer’s certificate delivered to Lessor, the Premises (as opposed to Lessee’s business operations in general) become uneconomic or unsuitable for Lessee’s continued use and occupancy, Lessee, if no Event of Default shall have occurred, may give Lessor notice of termination of this Lease as to the Premises, effective on the first day which immediately precedes the Basic Rent payment date occurring not less than ninety (90) days after such notice is given (the “Termination Date”), accompanied by an offer to purchase the Premises (including the amount of the net award or net insurance proceeds, as the case may be) on the Termination Date at a price equal to twelve (12) times the then annual Basic Rent (“Termination Price”).

If Lessor accepts such offer (i) Lessor shall upon receipt from Lessee of the Termination Price and any Basic Rent and other amounts due and payable hereunder convey title to the Premises to Lessee on the Termination Date by good and sufficient deed with covenants only against Lessor’s acts, free of any mortgage imposed by Lessor and subject only to this Lease, the lien of any taxes, exceptions subject to which the Premises were conveyed to Lessor, exceptions created or consented to or existing by reason of action by Lessee, and all Legal Requirements, and (ii) this Lease shall thereupon terminate as to the Premises on the Termination Date, provided Lessee is not then in default hereunder.

On March 17, 2006, the Estate of Sol Goldman, Lessor and SG’s predecessor-in-interest, entered into a lease amendment with PMIG (the “First Lease Amendment”) to extend the Primary Term from March 31, 2006, to midnight on July 31, 2006.

On July 31, 2006, the Estate of Sol Goldman and PMIG again extended the Primary Term to midnight on July 31, 2016 (which is the “Second Lease Amendment”). This lease amendment contained a provision, Paragraph 5, which modified³ Section 8.4 of the Original Lease. It states in relevant part:

5. Right to Sell Individual Properties. Section 8.4 of the Current Leases is hereby modified to provide that during the Primary Term (but not during the Extended Terms) the Lessee shall have the right and option to purchase or cause the sale of all or any of the properties leased pursuant to the Leases listed on Exhibit C attached hereto for a price that is equal to the then-current fair market value, but which in any event shall not be less than the amount which is shown on Exhibit C. The prices shown on Exhibit C shall be subject to annual increases of two percent (2%) effective as of July 31 of each year. Except for the Properties identified on Exhibit C attached hereto, the Lessee shall not have the right to sell any other Leased Property pursuant to Section 8.4. All proceeds of sale after payment of reasonable and customary costs incurred to consummate any such sale, including sales commissions (not to exceed 5%), transfer and recordation taxes, and closing expenses, shall be paid to the Lessor by the closing attorney or title company conducting the closing of any such sale. The Lessor covenants and agrees to join promptly in all contracts of sale, deeds, closing documents and other necessary agreements required to complete any of such sales, provided no liability or expense shall be imposed thereby upon the Lessor.

On April 26, 2016, PMIG notified SG that it was exercising its right to purchase the White Marsh Premises and Annapolis Premises pursuant to Section 5 of the Second Lease Amendment. PMIG claimed that Paragraph 5 of the Amendment called for the purchase price to be equal to the fair market value of the premises, but no less than the

³ In *Harvey v. Marshall*, the Court of Appeals relied on Black’s Law Dictionary’s definition of the term “modification.” It noted, ‘Black’s defines ‘modification’ as ‘[a] change; an alteration or amendment which introduces new elements into the details, or cancels some of them, *but leaves the general purpose and effect of the subject-matter intact.*’” *Harvey v. Marshall*, 389 Md. 243, 260-62 (2005).

prices described in Exhibit C⁴. PMIG also claimed that “the purchase prices as calculated under Exhibit C [exceeded] the fair market value of the properties.” It proposed to purchase the properties at “calculated amounts⁵,” \$719,207.00 for the White Marsh Premises and \$926,436.00 for the Annapolis Premises.

On April 29, 2016, SG responded to PMIG’s letter and rejected its offer to purchase the properties because “[t]he Landlord believes that the purchase prices listed in your letter are not consistent with the fair market value for [the White Marsh Premises] and [the Annapolis Premises].” A month later on May 12, 2016, PMIG responded that “[p]ursuant to our subsequent telephone conversations regarding the Landlord’s position, Tenant proposes the following process by which the fair market values can be established[.]” The process suggested was: (1) each party appoint a qualified appraiser; (2) if the qualified appraisers calculated appraisals that were within 15% of each other, the parties would agree that the fair market value was the average of the two appraisals; and (3) if the two appraisals differed more than 15%, the parties selected a third appraiser who was mutually acceptable and that appraiser determined the fair market value. This suggested process mirrored that contained in Section 3.1 of the Original Lease. SG never responded to the May 12, 2016 letter.

⁴ Exhibit C listed the purchase prices for the White Marsh and Annapolis Premises at \$590,000 and \$760,000, respectively.

⁵ At the preliminary injunction hearing, Mr. Bucaro, the Director of PMIG, testified that PMIG calculated these proposed purchase prices by taking “the floor or the minimum prices that were in the Exhibit C and the amendment of lease and applied the 2 percent annual increase effective every July of each year since the lease amendment.” Mr. Bucaro also testified that he “knew that was the minimum and our belief was that those minimums, the floors, were greater than the fair market value of those properties.”

On June 7, 2016, PMIG wrote SG’s counsel that “if we do not hear back from you by close of business on June 15, 2016, with the Landlord’s position as to the fair market values for the two Premises or as to a procedure to arrive at such, we will have no choice but to take appropriate legal action[.]” SG’s counsel responded on June 15, 2016, and argued, “any offer by Tenant must also include an appraisal and all supporting documentation, including but not limited, to, offers to purchase, offers to lease and any marketing materials.” SG’s counsel described PMIG’s offer as a “conclusory statement of fair market value” that was “wholly unsupported.” Last, SG wrote, “the Lease requires the Tenant to bear the initial burden of demonstrating that its offer complies with the terms of the Lease.” Therefore, PMIG had not properly exercised its right to purchase the properties. PMIG responded on June 20, 2016, arguing that “Tenant’s prior communications are more than a mere offer . . . [t]he 2006 Amendment places no burden on the Tenant to ‘demonstrate that its offer price complies with the requirements of the Lease,’ nor does it include any requirement that Tenant provide an appraisal or any supporting material as a condition to the exercise of its option to purchase the Premises.”

On June 22, 2016, and July 15, 2016, PMIG notified SG of its offer to purchase the Millersville and Baltimore Premises, respectively. PMIG argued that the prices described in Exhibit C⁶ for the Millersville and Baltimore Premises exceeded the fair market value of the properties and proposed to purchase the Millersville Premises for

⁶ Exhibit C listed the purchase prices for the Millersville and Baltimore Premises at \$710,000 and \$510,000, respectively.

\$848,516.00 and the Baltimore Premises for \$609,497.00. SG did not respond to either of PMIG's purchase offers.

On July 19, 2016, PMIG filed suit against SG in the circuit court seeking declaratory relief and an order of specific performance. PMIG sought a Temporary Restraining Order to maintain the status quo during the pendency of the action to allow PMIG to remain on the properties until the dispute was resolved. PMIG averred that it exercised its option to purchase the Premises pursuant to Section 8.4 of the Original Lease, modified by Paragraph 5. PMIG also averred that SG breached its contract and, as a result, PMIG was at risk of losing the use of the Premises upon the expiration of the Primary Term of the Lease on July 31, 2016, at midnight.

On August 22, 2016, the parties appeared before the circuit court for the Preliminary Injunction Hearing. After hearing argument from counsel, the court issued a preliminary injunction finding that PMIG was likely to prevail on the merits, that PMIG would suffer irreparable injury unless the injunction were granted, and that SG would suffer no greater injury if the injunction were granted.

On September 2, 2016, SG filed a Motion for Summary Judgment and a Request for Hearing in the circuit court. SG argued that PMIG's evidence demonstrated that it did not properly exercise any option to purchase contained in the lease documents, that the plain language of the lease agreements did not require SG to accept PMIG's offers, and that PMIG did not have a contractual right to purchase SG's properties.

SG avers that the Lease Amendment created a purchase option which modified the terms of the Original Lease. SG contends that the text of Section 8.4 remained intact,

except where Paragraph 5 expressly altered a term, or when two terms were in conflict. SG averred that to determine the rights and obligations of the parties under the lease, PMIG, or any tenant, must read Section 8.4 and Paragraph 5 of the Lease Amendment together to determine which provisions of the Original Lease were modified and which were not. More importantly, SG argued that PMIG did not properly conform to the lease terms because of its failure to comply with the newly modified Section 8.4.

PMIG responded that the Lease Amendment created an entirely new option to purchase that lived in a parallel universe alongside the provisions in Section 8.4. PMIG averred that SG did not have a right to reject PMIG's exercise of its purchase option pursuant to Paragraph 5 of the Lease Amendment.

On December 5, 2016, the parties appeared before the circuit court for the Motion for Summary Judgment hearing. PMIG argued that when the parties modified Section 8.4, they did not provide a procedure that stated what [PMIG] was supposed to do when it exercised its purchase option. After a lengthy discussion about whether any facts were in dispute, the court granted SG fifteen days to file a reply in opposition to PMIG's Motion for Summary Judgment and, after review, granted SG's Motion for Summary Judgment and denied PMIG's motion.

Additional facts will be included as they become relevant to our discussion, below.

STANDARD OF REVIEW

“The standard for appellate review of a trial court’s grant of summary judgment is whether the trial court was legally correct.” *Lerner Corp v. Assurance Co. of Am.*, 120 Md. App. 525, 529 (1998). “Summary judgment is proper where the trial court determines that there are no genuine disputes as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 152 (2008). *See also* Md. Rule 2-501. The parameter for appellate review is determining “whether a fair minded jury could find for the plaintiff in light of the pleadings and the evidence presented, and there must be more than a scintilla of evidence in order to proceed to trial [.]” *Laing*, 180 Md. App. at 153. Additionally, “if the facts are susceptible to more than one inference, the court must view the inferences in the light most favorable to the non-moving party.” *Id.* “An appellate court ordinarily may uphold the grant of a summary judgment only on the grounds relied on by the trial court.” *Ashton v. Brown*, 339 Md. 70, 80 (1995).

DISCUSSION

I.

As a preliminary matter, we note that we need only reach the first issue raised by PMIG – whether the circuit court erred in finding that it did not have an enforceable contractual right. Guided by this Court’s decision in *Hanna v. Bauguess*, 49 Md. App. 89 (1981), we answer this question in the negative. We hold that there was no enforceable contractual right, and no valid purchase option, because the purchase option created by Section 8.4 of the Original Lease, and modified by Paragraph 5 of the Second Lease

Amendment, is unenforceable because it defines neither fair market value, nor a process for determining fair market value.

PMIG contends that the circuit court erred in finding that PMIG did not properly exercise its purchase option as provided for in the Original Lease, and that SG properly rejected PMIG's offers of purchase. PMIG also argues that the court failed in not explaining its rationale of why it denied this purchase option. According to PMIG, Paragraph 5 of the Second Amendment met all the requirements for creating a valid purchase option. PMIG reads this purchase option as a newly formed purchase option that was in addition to the rights that already existed in Section 8.4 of the Original Lease.

SG avers that Section 8.4, modified by Paragraph 5, created a purchase option, but it is unenforceable. SG argues that the purchase option is unenforceable because it lacks essential and definite terms regarding price. Additionally, SG contends that PMIG's interpretation of the effect of Paragraph 5 is inconsistent with the Original Lease and creates results that "defy common sense." We agree.

Maryland law follows the law of objective contract interpretation. *Long v. State*, 371 Md. 72, 84 (2002). Under this standard, "the written language embodying the terms of an agreement will govern the rights and liabilities of the parties . . ." *Id.* When the clear language of a contract is unambiguous, the court will give effect to its plain, ordinary, and usual meaning, taking into account the context in which its used." *Sy-Lene of Washington, Inc. v. Starwood Urban Retail II, LLC*, 376 Md. 157, 166-67 (2003).

The parties rely heavily on this Court's decision in *Hanna*, 49 Md. App. at 87, which we agree is dispositive. In *Hanna*, the appellants-lessees of real property sought

specific performance of a purchase option in a lease. The option provided for a purchase price “arrived at by three independent realty appraisers [sic].” *Id.* at 88. In determining whether the option clause was sufficiently certain to grant specific performance we held the following:

[A]lthough price is an essential element in a contract for the conveyance of land; it has been held in this State that specific performance may be granted even though the exact price is not stated, provided *the contract defines a method which renders the price readily ascertainable.*

Id. at 93 (emphasis added). *See also Foard v. Snider*, 205 Md. 435, 109 (1954).

The *Hanna* Court cited *Shayeb v. Holland*, 321 Mass. 429 (1947), which stands for the proposition that a court will grant specific performance even for a contract that contains no price. Although the Court treated *Shayeb* favorably, we held nonetheless in *Hanna* that a court would not grant specific performance of a contract lacking a definite price if the contract did not include a method for determining price.

Section 8.4 of the Original Lease, unlike the lease at issue in *Hanna*, does not provide for a fair market value. If Section 8.4 is read as to its “plain meaning,” it is evident that it does not provide for a definite price. As mentioned above, Section 8.4 states that the Tenant can make an “offer to purchase the Premises on the Termination Date at a price equal to twelve (12) times the then annual Basic Rent [.]” Section 8.4 does not reference fair market value or its equivalent. At trial, counsel for SG argued that “[i]f there are terms in the original lease that are not referenced in the lease amendment, they remain in place and that is contained in the lease amendment itself.” Paragraph 5 granted the Tenant the right and option “to purchase . . . all or any of the properties leased

pursuant to the Leases listed on Exhibit C . . . for a price that is equal to the then-current fair market value.” While Paragraph 5 referred to fair market value, it did not refer to how fair market value would be calculated.

Hanna instructs that if a contract does not explicitly define what fair market value is, it must specify a process to determine fair market value. Neither Section 8.4 nor Paragraph 5 refer to a process for determining fair market value. At trial, counsel for PMIG testified that “[counsel for SG] said to [PMIG’s representative] go and get an appraisal done” SG’s attorney “suggested that [PMIG’s representative] send her a proposal in writing” on a process for determining fair market value. When PMIG’s counsel sent a process lifted from Section 3.1, SG rejected the proposal. At trial SG’s counsel argued that SG was not bound to the appraisal process set forth in Section 3.1, because it did not relate to Section 8.4, as modified by Paragraph 5. We agree. Section 3.1 is the only provision in the lease that refers to a process for determining fair market value in an entirely different context-- an appraisal process. We cannot add it to Paragraph 5, as it is concerned with a different purchase scenario. The Court of Appeals has held that to be valid “the exercise of an option must be unequivocal and in accordance with the terms of the option.” *Katz v. Pratt St. Realty Co.*, 257 Md. 103, 118 (1970).

PMIG did not and could not properly exercise the purchase option. The purchase option was silent as to fair market value, and the process for determining the fair market value. Guided by *Hanna*, contracts are unenforceable when they do not speak to fair market value or a process for determining it. The option clause itself did not provide a

“practicable method by which the price could be determined,” nor was there testimony that there was an understanding between the parties of a method. *Hanna*, 49 Md. App. at 96. We hold that where an amendment to a purchase option is silent as to price and a process for determining price, that purchase option is unenforceable and does not warrant specific performance. The circuit court in its Orders of December 29, 2016, made this finding. Accordingly, we affirm the judgment of the circuit court.

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