Circuit Court for Baltimore City
Case No. 24-C-15-004307

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2500

September Term, 2016

PETER ST. JOHN REID

v.

TITAN STEEL CORPORATION

Eyler, Deborah S.,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: February 26, 2018

Peter Reid worked at Titan Steel Corporation from 1975 to 2013. Over the course of his work at Titan, he signed a number of employment agreements. Under a 2006 Agreement, which is at issue in this appeal, Reid was terminated and retained as a consultant, thus entitling him to a $1.5 million fee. According to Reid, he was not required to provide consulting services in order to receive post-termination payments; Titan, conversely, maintained that payments were conditioned on consulting services. In July 2015, Titan ended Reid's consultancy on the grounds that he failed to perform under the consulting agreement. Reid subsequently filed a complaint in the Circuit Court for Baltimore City alleging breach and anticipatory breach of the 2006 Agreement. Following a bench trial, the court entered judgment in favor of Titan. Reid timely appealed and raises the following issue we have reworded as follows[1]:

I. Did the circuit court err in granting judgment in favor of Titan?

For the reasons to follow, we shall affirm the judgment of the circuit court.

BACKGROUND

Appellant, Peter Reid, began working for appellee, Titan Steel Corporation, as a trainee in 1975. He eventually filled a number of executive positions, including President

[1] Reid phrases the questions presented in the following way: (1) "Did The Trial Court Err in Finding As A Matter of Law That The Employment Agreement Required Reid to Provide Consulting Services to Titan in Order to Receive Post-Termination Payments?"; (2) "Did The Trial Court Err in Finding As A Matter of Law That The June 4, 2013 Consulting Letter Was A 'Clarification' of The Employment Agreement Rather Than A Modification Requiring Valid New Consideration?"; (3) Did The Trial Court Err in Finding As A Matter of Law That The June 4, 2013 Consulting Letter Required Appellant to Work A Certain Number of Hours, Accomplish Specific Defined Tasks, Accomplish Certain Goals, And Provide Services to be Determined at A Later Date in Order to Receive Post-Termination Payments?"

of Titan and Executive Vice President of Titan Industrial Corporation (Titan's parent company). Reid and Titan entered into five employment agreements between 1988 and 2006: a 1988 Agreement, a 1995 Agreement, a 2001 Agreement, a 2003 Agreement, and a 2006 Agreement. The 2006 Agreement (the Agreement) is at issue in this litigation. Section 10(a) of the Agreement, which sets forth the contested consulting fees provision, provides:

> If there is a termination of the Employee's contract (other than a termination for cause under Paragraph 8(a)), the Corporation shall retain the Employee as a consultant to the Corporation for a period of five years and shall pay to the Employee and the Employee shall accept, in lieu of any damages or remedies to which the Employee might otherwise be entitled, a Consulting Fee, payable quarterly on the first business day of each calendar quarter . . . in 20 installments of $75,000 each.

The Agreement also includes a two-year non-compete clause, under which Reid could not "directly or indirectly solicit or hire any employee of [Titan] or any of its Subsidiaries or affiliates for employment by any business, individual, partnership, firm, corporation, other person, group or entity, not induce or seek to induce any employee of [Titan] or any of its Subsidiaries or affiliates to terminate such employment."

Michael Levin, the Chairman and CEO of Titan, and William Hutton, Titan's President, met with Reid in December 2012 to discuss his retirement. The three ultimately reached an agreement where Reid would retire as Executive Vice President effective June 4, 2013, and his consultancy would begin the following day.[2] Hutton subsequently gave Reid a letter that "confirm[ed their] discussion concerning [Reid's] retirement" and stated

[2] The parties disagree whether Reid retired or was terminated. There is no dispute, however, that Reid was in good standing and there was no cause for his termination.

that Reid would be retained as a consultant for a five-year period. According to Levin, Reid did not contest or take issue with the letter.

In June 2013, Levin met with Reid to discuss his consultancy. During the meeting, Levin presented Reid with an additional letter that "confirm[ed] the terms of [Reid's] consulting and provide[d] additional details and clarification regarding [Titan's] expectations during the consulting period." These duties included tasks related to: 1) knowledge transfer and mentoring; 2) increasing volume in non-tinmill products; 3) technology, specifically, Titan's C4+ computer software; and 4) other services as assigned by Levin or Hutton. Reid did not object to any of the listed responsibilities in the letter, though he did inquire about his role as it related to technology. Reid had the letter reviewed by an attorney and signed it approximately one week later.

During the course of the consultancy, Reid attended half of the weekly sales force meetings. Janet Adamsky, a Titan employee who worked closely with Reid during both his employment and consultancy, discussed business and family matters with Reid after the meetings; she also testified that Reid was helpful in transferring knowledge about one of his former clients. Outside of his conversations with Adamsky, however, Reid did not reach out to other sales employees or provide any knowledge transfer. When Reid discussed the possibility of pursuing non-tinmill products with Hutton and Adamsky, he was told they were not interested. As a result, Reid did not attempt to develop new leads—though he did not communicate this with Levin. In addition, Reid never contacted John Philpott, who was in charge of Titan's C4+ computer software. Reid explained that

his previous conversations with Philpott were through Hutton, and that he relied on Hutton to translate technical language into layman's terms.

On February 19, 2014, Levin sent Reid an e-mail explaining that Titan "need[ed] more from [him] as a consultant to the company" and that he expected Reid to "generate real leads and form suggested plans to attack new markets."[3] Reid acknowledged his understanding of Levin's requests but did not recall sending a response. In another email on April 9, 2014, Levin thanked Reid for coming to the office to talk and noted his appreciation for Reid's "intention to start looking for new clients in [Titan's] under served markets." One week later, Reid responded to Levin's e-mail listing three company names he found by running an internet search for "Tinplate can manufacturers in India." Reid did not contact the firms beforehand to determine whether a deal could be made, and Titan's subsequent sales calls proved unsuccessful.

On April 29, 2014, Levin sent Reid another e-mail asking for his assistance in finding clients. Reid responded with the name of a mill forwarded from an old contact but did not make any further inquiries. When pressed by Levin for the "next steps, budgets, goal[s], clients, impact etc[.]," Reid said that Titan should be the one to follow-up to determine what specifications the mill could offer. Reid also provided names of three clients Titan had worked with in the past; the contacts, however, were over ten years old, and Reid did not verify whether their names or addresses had changed. Reid could not

[3] Although Reid was expected to generate new business for Titan, his ability to do so was limited by Levin's request that he not close any sales.

identify any other lead he provided from April 2014 through June 2015, at which point Titan ended his consultancy and cut off his post-termination payments.

Reid filed a complaint in the Circuit Court for Baltimore City on August 21, 2015, alleging breach and anticipatory breach of the 2006 Agreement. Following a two-day bench trial, the court issued a written memorandum opinion and order. The court found that Reid "produced very little, if anything, during his period as a consultant, and [Reid] could not point to anything he produced of value which would justify the fees he was receiving as a consultant." Based on this failure to perform, the court concluded that Titan "was justified in declaring [Reid] in breach of the contract and terminating it." As a result, the court entered judgment in favor of Titan. This appeal followed.

DISCUSSION

"Our jurisprudence on contract interpretation is well settled and oft-stated. As is the case with statutory interpretation, the cardinal rule of contract interpretation is to give effect to the parties' intentions." *Dumbarton Imp. Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 51 (2013) (quotations and citations omitted). "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 it is used." *John L. Mattingly Const. Co. v. Hartford Underwriters Ins. Co.*, 415 Md. 313, 326 (2010) (citation omitted). By contrast, a contract is "ambiguous if it is subject to more than one interpretation when read by a reasonably prudent person." *Id.* at 327 (citation omitted). "If the contract is ambiguous, the court must consider any extrinsic evidence which sheds light on the intentions of the parties at the time of the execution of the contract." *Id.* (citation omitted). "Our task,

therefore, when interpreting a contract, is not to discern the actual mindset of the parties at the time of the agreement, but rather, to determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated." *Dumbarton Imp. Ass'n*, 434 Md. at 52 (quotations and citations omitted).

One source of extrinsic evidence upon which a court may rely to resolve an ambiguous contract is "an interpretation of the term employed by one of the parties before the dispute arose." *Cole v. State Farm Mut. Ins. Co.*, 359 Md. 298, 305 (2000); *see also Tackney v. U.S. Naval Acad. Alumni Ass'n*, 408 Md. 700, 717 (2009) ("The construction placed upon the ambiguous language before any controversy has arisen holds significant importance."). "The interpretation given by the parties themselves to the contract as shown by their acts will be adopted by the court, and to this end not only the acts but the declarations of the parties may be considered." *Gallagher's Estate v. Battle*, 209 Md. 592, 604 (1956).

Reid raises two primary arguments as to why the trial court erred in finding that he breached the 2006 Agreement. First, he argues Section 10(a) is clear, unambiguous, and does not require him to perform consulting services. Second, the court erred in admitting the June 4, 2013 consulting letter; and even if the letter was admissible, he performed the consulting services as required. We shall address each of these arguments in turn.

A. Section 10(a) of the 2006 Employment Agreement

Reid argues that the trial court's ruling is unsupported by the language of Section 10(a), which states "the Corporation shall retain the Employee as a consultant to the

Corporation for a period of five years" but fails to specify any duties that would be required. The relevant part of Section 10(a) provides:

> If there is a termination of the Employee's contract (other than a termination for cause under Paragraph 8(a)), the Corporation shall retain the Employee as a consultant to the Corporation for a period of five years and shall pay to the Employee and the Employee shall accept, in lieu of any damages or remedies to which the Employee might otherwise be entitled, a Consulting Fee, payable quarterly on the first business day of each calendar quarter . . . in 20 installments of $75,000 each.

The court's ruling, according to Reid, ignores that Titan is required to make quarterly payments even if he dies or becomes permanently disabled. It also ignores contractual language that, in exchange for the consulting fees, requires him to waive all claims against Titan; he was obligated not to compete with Titan for a period of two years; and the only basis on which Titan could stop payment was a violation of the covenant not to compete. Additionally, there is no statement that defines performance standards, that the standards were to be solely determined by Levin, or that Titan could terminate payments if Reid failed to perform to Levin's expectations.

On the other hand, Titan argues that the terms "the Corporation shall retain the Employee as a consultant" and "shall pay to the Employee and the Employee shall accept . . . a Consulting Fee" demonstrate that Reid was required to provide consulting services. Next, the parties eliminated the "Severance" provision from the 1988 Agreement and added a new "Consulting Fees" provision from the 1995 Agreement onward. Finally, Reid's proposed reading of the 2006 Agreement would render meaningless the language that Titan would "retain [Reid] as a consultant."

The trial court made the following findings of fact with regard to the Agreement: "[w]hile a breach of Section 11 of the Agreement, i.e. the non-compete provision, was one basis for a breach of Section 10, Section 10 clearly envisioned that an employee receiving the $75,000 quarterly payments was also expected to provide consulting services."

Turning to the language of the 2006 Agreement, we agree with Titan and the trial court that a plain reading of Section 10(a)—specifically, the language that Reid would be retained "as a consultant"—required him to perform consulting services. *See* Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/consultant (last visited Feb. 15, 2018) (defining a consultant as "one who gives professional advice or services"). But we cannot review this language in isolation; rather, like the trial court, we review the contract in its entirety. Section 10(a) also states that "the Employee shall accept, in lieu of any other damages or remedies to which the Employee might otherwise be entitled, a Consulting Fee[.]" This provision makes clear that Reid was required to waive all claims against Titan in exchange for consulting fees; it does not, however, absolve Reid from performing consulting services. Similarly, Section 10(c), which states that Titan is required to make quarterly payments in the event Reid dies or becomes permanently disabled, describes a method of payment *after* consulting services have already been provided. Finally, Section 11(d), which prohibits Reid from competing against Titan for a two-year period, provides an alternative basis under which he could be liable for breach of contract. Reid's argument that he is not required to perform consulting services is thus unsupported by the language of the Agreement.

While it is clear the Agreement contemplated that Reid would perform consulting services, it does not define the nature and extent of the services that are required. Therefore, we agree with the circuit court that the language "as a consultant" is ambiguous, and that extrinsic evidence was needed to understand "what a reasonable person in the position of the parties would have meant at the time [Section 10(a)] was effectuated." *Dumbarton Imp. Ass'n*, 434 Md. at 52 (quotations and citations omitted).

B. June 4, 2013 Consulting Letter

First, Reid argues that the court's admission of the letter was in error because it was drafted more than six years after the Agreement was executed, and the universe of parol evidence that a court may consider is limited to evidence that predated or is contemporaneous with the signing of the contract. Additionally, Reid contends that "[t]he trial court, interpreting Section 10 under the guise of parol evidence, incorporated the entire Consulting Letter into Section 10 as if stated verbatim in the Employment Agreement, so that any alleged breach of the Consulting Letter would be a breach of the Employment Agreement." As a result, because the letter required Reid to perform additional services, it also required additional consideration. On the other hand, Titan, relying on *Eisenberg v. Air Conditioning, Inc.*, 225 Md. 324 (1961) and *Tackney v. U.S. Naval Acad. Alumni Ass'n*, 408 Md. 700 (2009), argues that the parties confirmed their understanding of the consulting fees provision by signing the consulting letter years prior to any dispute over the meaning of that provision. Since Reid never disputed the obligations in the consulting letter, Titan argues that the letter is admissible to define what duties Reid was to perform while working as a consultant.

We agree with Titan. In *Eisenberg v. Air Conditioning, Inc.*, Bernard Soothcage was employed to sell commercial and industrial air conditioning units.[4] 225 Md. at 329. Soothcage entered into an employment agreement with Air Conditioning, Inc., where he would receive commissions "at the rate of ten per cent 'and as amended in the future[.]'" *Id.* at 334. A dispute later arose as to the amount Soothcage was entitled to receive for one of his sales. *Id.* at 333. Soothcage argued that he was entitled to ten percent of the net sale price of the units; the company argued that he was owed a reduced commission, pointing to the "as amended in the future" language in the employment agreement. *Id.* at 334. In order to ascertain the parties' intent, the trial court admitted a letter and accounting sheet in which Soothcage listed the lesser amounts claimed by the company as the amounts owed to him. *Id.* The Court of Appeals explained that the "construction placed upon an ambiguous contract by both parties, before any controversy has arisen, is important in aiding in its interpretation," and it held that the letter and accounting sheet were admissible as extrinsic evidence to determine the interpretation that was given to the contract by the parties. *Id.* at 334–35.

In *Tackney v. U.S. Naval Acad. Alumni Ass'n*, members of the United States Naval Academy Alumni Association filed suit against the Association. 408 Md. at 704. The members argued that three trustees were seated in violation of the tenure provision of the Associations' bylaws, which prohibited trustees from serving more than three terms. *Id.* at 705. Before analyzing the language of the bylaws, the Court of Appeals favorably cited

[4] Soothcage passed away during the proceedings and his administrator, Samuel Eisenberg, was substituted as plaintiff. *Id.* at 330.

Eisenberg and added that a party's construction of a contract before any controversy has arisen "holds significant importance." *Id.* at 717. The Court then emphasized that "prior to the instant challenge, and over one year before litigation ensued, the Board had repeatedly determined that the Bylaws enabled an Immediate Predecessor of the Chair to serve irrespective of the general term limitation[.]" *Id.* at 717–18. As a result, the Court held that the board did not act "in a manner sufficiently arbitrary to invoke intervention by a Maryland court." *Id.* at 718.

In light of *Eisenberg* and *Tackney*, we do not agree that the universe of parol evidence that a court may consider is limited to evidence that predated or is contemporaneous with the signing of a contract. Having found that the Agreement unambiguously required Reid to perform consulting services, we find no merit in his argument that the circuit court improperly incorporated the consulting letter as if stated verbatim in the Agreement. Instead, we agree with the court that the letter—which Reid signed two years before litigation ensued—was relevant to clarify the nature of the consulting services in the Agreement, and, as a result, no new consideration was required.

Next, Reid argues that the consulting letter is unenforceable under Maryland law because it is silent as to the nature and extent of the "additional duties" that were required.[5]

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[5] The consulting letter tasked Reid with "the following ongoing responsibilities.

1. *Knowledge Transfer and Mentoring*
   As you transition into your new role, we expect you will transfer your knowledge of and experience with Titan's business operations to other employees, and become proactive reaching out to them.

(footnote continued . . .)

Reid also maintains that the trial court erred in holding that Michael Levin had the ability to dictate the scope of his post-termination work beyond the consulting letter. Titan responds that the clause is common in employment and consulting agreements, that Reid never suggested to Levin or anyone else at Titan that he was not obligated to perform the duties therein, and that Reid agreed to its terms after reviewing it with his counsel.

We agree with Titan. Reid's argument rests on the mistaken premise that the consulting letter—not the 2006 Agreement—formed the basis of his contract. *See Maslow v. Vanguri*, 168 Md. App. 298, 321 (2006) (emphasis added) ("[A] *contract* is not enforceable unless it expresses with definiteness and certainty the nature and extent of the parties' obligations and the essential terms of the agreement."). Yet the circuit court found that Reid's obligation to perform consulting services came directly from the Agreement, and the consulting letter provided extrinsic evidence of what services the parties intended

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2. *Increase volume in non-tinmill products*
   As you know it is very important at this time that we increase the volume of our business at reasonable margins. You shall continue to be a key part of this effort. You should work to increase the sales volume of secondary non tin mill products, and other steel items such as stainless, galvanized, tubing and OCTG; following the latest Titan Quality Policy manual process.

3. *Technology*
   One of the most important assets that Titan has is the C4+ system including inventory management, order management, accounting and more. You will work with John Philpott to improve C4+ and other Titan technology. It may seem complicated to you, but your involvement in the ongoing improvement of this system will be one of the most important aspects of your service.

4. *Other Services*
   Throughout the consulting period, there may be additional duties assigned to you by the Chairman or President (me or Bill) as required."

for him to perform. Nevertheless, we note that the "additional duties" provision was restricted by the language in the Agreement, and that, as a practical matter, it would be impossible for an employer to predict and enumerate the entire range of tasks in a job description.

Lastly, Reid challenges a number of the court's factual findings. He maintains that "the trial court selected those portions of Section 10 that supported its opinion and ignored the rest, an error as a matter of law." To this end, Reid points to testimony of employees (other than Michael Levin) that did not have complaints about his performance; that he offered to pursue non-tinmill business; and that internal management emails stressed the importance of preventing him from working for a competitor. Reid also argues that Titan's payment of fees for the two-year period is evidence that it ratified any purported performance issues and that the non-compete provision was the real reason for terminating payments.

Titan argues that the trial court's factual determination that Reid did not perform consulting duties as required is not clearly erroneous. Titan notes that Reid attended half of the weekly sales meetings; he did not contribute anything in the meetings themselves; he provided very little by way of knowledge transfer to sales employees; he did not improve Titan's technology; he did not make any effort to increase sales of non-tinmill products, nor did he communicate this with Levin; he was informed by Levin about his failure to perform as a consultant both in person and in writing; and he could not point to anything he produced of value that would justify the fees he was receiving as a consultant.

A trial court's factual findings cannot be held to be erroneous if there is any competent evidence to support those findings. *Solomon v. Solomon*, 383 Md. 176, 202 (2004); *see also In re Adoption/Guardianship No. 3598*, 347 Md. 295, 331 (1997) (explaining that the role of a reviewing court "is to assess the sufficiency of the evidence, not embark on an independent fact-finding mission and substitute its judgment for that of the trial judge. It is the trial judge's role to assess the evidence and the credibility of witnesses, and to resolve the conflicting evidence"). The record provides ample evidence from which the trial court could find that Reid failed to perform his duties as a consultant. As such, its findings are not clearly erroneous.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.