Circuit Court for Montgomery County
Case No. 435789

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 920

September Term, 2018

MICHAEL J. BOBBITT

v.

CRAIG HANNA

Graeff,
Nazarian,
Arthur,

JJ.

Opinion by Graeff, J.

Filed: October 22, 2019

This case involves a dispute between Michael Bobbitt, appellant, and Craig Hanna, appellee, regarding the division of proceeds from the sale of a residential property at 30 Wellesley Circle, Glen Echo, Maryland ("the Property"). The deed listed the parties, an unmarried couple with a son, as joint tenants. Mr. Hanna, however, paid the full down payment on the house, and he paid the mortgage payments, property taxes, and maintenance costs, with no expectation of reimbursement.

On August 29, 2017, after the parties' relationship dissolved, the house was sold for $600,000, and the proceeds of approximately $279,000 were placed in an escrow account. Mr. Hanna subsequently filed a Complaint for Declaratory Judgment in the Circuit Court for Montgomery County seeking contribution from Mr. Bobbitt for half of all payments he made for the maintenance and upkeep of the Property over the years. In a bench trial held on May 16, 2018, the circuit court found that Mr. Hanna was the sole owner of the Property, as well as the proceeds resulting from the sale of the Property.

On appeal, Mr. Bobbitt presents the following questions for this Court's review, which we have consolidated and rephrased, as follows:

1. Did the circuit court err in finding that Mr. Hanna was the sole owner of the property when the pleadings and the deed made clear that the parties owned the Property as joint tenants?

2. Did the circuit court err in finding that Mr. Hanna did not make a gift to Mr. Bobbitt and the joint tenancy was an "accommodation," even though there was no language in the deed stating any limit or condition to his tenancy interest?

3. Did the parties form a binding contract when Mr. Hanna promised in an e-mail to split the proceeds from the sale of the property with Mr. Bobbitt in

exchange for Mr. Bobbitt's agreement to abandon legal proceedings objecting to the sale?

For the reasons set forth below, we answer the first question in the affirmative, and therefore, we shall vacate the judgment of the circuit court and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

A.

Factual History

Michael Bobbitt, appellant, and Craig Hanna, appellee, met and began a romantic relationship in Washington, D.C. in 1996. At the time, Mr. Hanna owned a townhome in D.C., and Mr. Bobbitt lived with a roommate. When they met, Mr. Hanna was the "financially better off party," with an annual income of approximately $140,000, in comparison to Mr. Bobbitt's piecemeal income "working odd jobs and trying to land acting jobs when he could."[1]

Mr. Bobbitt subsequently moved in with Mr. Hanna at his townhome. Mr. Hanna continued to own the house in his sole name and made all the necessary payments on the property. Mr. Hanna did not ask Mr. Bobbitt to reimburse him for any living costs such as utilities or mortgage payments.

[1] Both parties' financial situations had improved at the time of trial. Mr. Bobbitt's attorney proffered that Mr. Bobbitt's income working in the performing arts was more than $80,000. Mr. Hanna's attorney stated that Mr. Hanna's income was "much more" than it was in 1996 when he was making $140,000.

In 2002, while living together in Mr. Hanna's townhome, the parties adopted a boy from Vietnam.[2] The couple decided to relocate in 2003 because they were considering adopting a second child and desired a larger home for their growing family.

The Property was purchased in November 2003 for $575,000. Mr. Hanna used the proceeds from the sale of his townhome, in addition to some out-of-pocket money, for a $210,000 down payment on the Property. Mr. Hanna took out a mortgage solely in his name to pay for the remaining purchase price of the home. Mr. Bobbitt did not contribute to the down payment on the Property, and Mr. Hanna testified that he had no expectation that he would be reimbursed by Mr. Bobbitt for these costs.

The deed listed a conveyance of the Property from Anne C. Lewis, grantor, to "**Craig A. Hanna and Michael Bobbitt**, in fee simple, as JOINT TENANTS," and the parties agreed that the Property was purchased and owned as a joint tenancy. Both parties also were listed on the deed of trust as borrowers, but Mr. Hanna testified that Mr. Bobbitt was not personally obligated on the mortgage.[3]

[2] Adoption rules in Vietnam preclude two men from adopting, so Mr. Hanna adopted their son first while abroad, and upon returning to the United States, Mr. Hanna and Mr. Bobbitt legally adopted the boy in Washington D.C. At the time of trial in 2018, their son was 16 years old**.**

[3] Despite this testimony, Mr. Hanna's position on appeal is that they were both jointly and severally liable to repay the mortgage. Mr. Bobbitt's attorney proffered that Mr. Bobbitt's name had to be on the deed of trust as a joint tenant in order to protect the bank's full interest in case of default, but he was not the actual borrower. In addressing the motion for summary judgment, the court stated that this was a fact in dispute, but the issue was not addressed by the trial court.

With respect to the decision to establish a joint tenancy, Mr. Hanna testified regarding his intent in adding Mr. Bobbitt's name to the deed:

> [Mr. Hanna]: [Mr. Bobbitt] actually asked me to add him to the deed with the thought that if anything should happen to me, since we were unmarried, for the sake of our child, that he would then have to go through probate, and I, I agreed to put him on the deed.
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> [Counsel]: Did you intend to give Mr. Bobbitt an ownership interest in the property?
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> [Mr. Hanna]: No.
>
> [Counsel]: Why not?
>
> [Mr. Hanna]: Financially, I was on the hook for that property, and I viewed it as my property. And, and certainly, we were living together in a relationship, but I did not view him as having any ownership.
>
> * * *
>
> [Counsel]: Did you intend on making a gift of this property to Mr. Bobbitt?
>
> [Mr. Hanna]: No.

Mr. Bobbitt similarly testified that the purpose of the joint tenancy was for their son's benefit. He added, however, that it also was a reflection of their long-term relationship.

Following the transfer of the deed to the couple as joint tenants, Mr. Hanna took no subsequent steps to assert or establish a sole ownership interest in the Property. In this regard, the following colloquy occurred,

> [Counsel]: At the time that you agreed to put Mr. Bobbitt's name on the deed, creating a joint ownership interest, in the Wellesley Circle property, did you intend that there would be some set of future circumstances under which he would have to give back his ownership interest in the property to you?

> [Mr. Hanna]: I was actually concerned about it. I can't say whether it was at the point where the deed was signed, but given that we had no marriage and the future is always uncertain, you never know that there could be a parting of the ways, so it was always in the back of my mind.
>
> [Counsel]: Okay. Did you take any steps to ensure that should the circumstances that you're talking about occur, Mr. Bobbitt would be required to give back his half interest in the property to you?
>
> * * *
>
> [Mr. Hanna]: I took no steps. I just continued to be concerned.

Mr. Hanna testified that he was never the sole owner of the property. He paid the monthly mortgage payments of $2,217, as well as the tax payments, however, with no expectation that Mr. Bobbitt would reimburse him for these expenses or half the down payment.

For the next 14 years, Mr. Hanna paid all the mortgage payments, property taxes, and the vast majority of the maintenance and upkeep costs for the home.[4] Mr. Bobbitt testified that, on many occasions, he offered to help pay for the expenses for the Property, but Mr. Hanna avoided the issue. Mr. Hanna stated that, in more recent years, when Mr. Bobbitt's financial situation improved, "he began to offer to take some financial responsibility[,]" including taking over the cable bill. Mr. Hanna, however, put more than

[4] Mr. Hanna testified that he paid $89,575 in property taxes over the years, total mortgage payments of $365,933, and he paid for other "big ticket items," such as rebuilding the staircase, wiring for overhead lighting, adding a retaining exterior wall, painting, major appliance breakdowns, renovation of the basement, plumbing fees, etc. Mr. Bobbitt referred to the house as a "fixer upper."

$665,000 into the Property, and he estimated that Mr. Bobbitt contributed less than $8,000, for items such as cable, phone, maid services, and a handful of repairs.[5]

During their time in the Glen Echo home, Mr. Bobbitt proposed marriage twice, but Mr. Hanna refused both times. Mr. Hanna testified that he "did not feel comfortable cementing [their] bond," and it "was more of a political statement than about [them,]" because the proposals followed the legalization of same-sex marriage in D.C. and Maryland. Mr. Hanna, however, purchased three sets of wedding bands for Mr. Bobbitt at various times throughout their relationship, a gesture that Mr. Bobbitt interpreted as an expression of their committed relationship.

In 2016, Mr. Bobbitt and Mr. Hanna began to experience unresolvable "relationship difficulties," and they separated in December 2016. Mr. Hanna moved out, and Mr. Bobbitt remained in the home with their son. The parties agreed that the house should be sold "as quickly as possible." They determined that Mr. Bobbitt would remain in the home with their son until it was sold. Throughout this period, Mr. Hanna continued to make the mortgage payments on the house. Mr. Bobbitt testified that he offered to take over the mortgage payments, but Mr. Hanna did not respond to the offer. With respect to how Mr. Hanna intended the proceeds of the house to be distributed, the following occurred:

[5] Mr. Hanna's estimate of $665,000 includes the down payment, mortgage payments, property taxes, and upkeep and maintenance costs. Mr. Bobbitt did not provide a dollar estimate for his contributions over the years. He testified: "I paid for cable and telephone, and maid service, and a few repairs here, here and there. Most of my contribution was in managing the contractors and actually doing some of the work myself."

> [Counsel]: Well, did you intend to, once you sold the property, to give [Mr. Bobbitt] half of the proceeds from the sale? Did you intend to do that?
>
> [Mr. Hanna]: Early on when we were talking about selling the house, I did expect that I would evenly divide the proceeds. However, during a very aggressive back and forth regarding the child support, settlement, I ultimately decided that I, I would not make that division.

On June 18, 2017, at 11:10 a.m., Mr. Hanna sent an e-mail to Mr. Bobbitt stating the following: "Confirm that I agree to split the proceeds of the house 50/50 after netting out whatever repair expenses I pay into it prior to sale[.]" Mr. Bobbitt responded at 11:12 a.m., copying their attorneys, "This is to [c]onfirm that I received Craig's note."

The circumstances under which this e-mail was sent are disputed by the parties. On direct examination, Mr. Bobbitt testified about the incident as follows:

> [Mr. Bobbitt]: Mr. Hanna came to the house to have an outing with our son, and he brought documents for me to sign, the listing agreement document for me to sign. I recall [our son] being upstairs getting ready to go. We were, Mr. Hanna and I were standing in the family room. He walked up to me and handed me the papers with a pen.
>
> I looked at him and said, are you still planning on splitting the house 50/50?
>
> His response was, we'll see.
>
> I said nothing and just handed the documents back to him and walked away. When I walked away, he screamed at me, Michael, it's not fair, I pay the mortgage and the taxes.
>
> I was, responded and said, I gave you . . . 20 years of a, of a committed relationship.
>
> He said, okay.
>
> And then I said, please send an e-mail to our lawyers stating this . . . .

When I saw the e-mail pop into my inbox, I saw that it wasn't signed by him, and I asked him to send it again with his name on it, and he did. And I took the documents and I signed it. And he took them and walked, and left.

[Counsel]: At any point during this exchange, did you raise your voice?

[Mr. Bobbitt]: I did not.

[Counsel]: At any point during this exchange, did you block Mr. Hanna's egress from the room?

[Mr. Bobbitt]: No. In fact, I walked away from him, and there were two other points of egress for Mr. Hanna.

By contrast, Mr. Hanna testified:

[Mr. Hanna]: [Mr. Bobbitt] confronted me when I had gone to the property to pick up my son for an outing, and raised with me moving ahead with the sale of the house. I indicated to him at that time that it was not my intention to evenly split the proceeds. He became very agitated and upset, saying that he would refuse to sell. I felt threatened. He demanded that I send an e-mail that I would agree to an even split so that he would have something in writing, apparently, to block me into that agreement.

[Counsel]: Did you send such an e-mail, sir?

[Mr. Hanna]: I did.

[Counsel]: Did you intend to evenly split the proceeds of the sale, sir?

[Mr. Hanna]: At the time, I sent the e-mail simply to get out of the house. I felt threatened. I, I still did not want to evenly split the proceeds. And subsequently, I went back to that position.

[Counsel]: So you never promised Mr. Bobbitt that you were to evenly split the proceeds of the sale of the house, is that correct?

[Mr. Hanna]: I wrote that e-mail, but it was under duress in, in a very heated, threatening encounter. And I literally sent it because it was demanded of me, and I felt cornered.

[Counsel]: What did you mean you felt cornered?

> [Mr. Hanna]: Both physically, not able to extricate myself from the interaction, as well as his statement that he would not proceed with the sale. I was threatened in, in both manners.

On cross-examination, Mr. Hanna described Mr. Bobbitt's tone during this conversation as "very stern and threatening[,]" and he stated that, at one point during the interaction, Mr. Bobbitt slammed something down.

Following this e-mail, Mr. Hanna did not communicate to Mr. Bobbitt that he had no real intention of splitting the proceeds. Operating under the belief that he would receive half the proceeds, Mr. Bobbitt agreed to list the house. The real estate contract for sale to Synergy Real Estate Solutions was signed by both Mr. Bobbitt and Mr. Hanna on July 5, 2017, and the parties agreed to a closing date of August 29, 2017.

On August 16, 2017, Mr. Bobbitt discovered that Mr. Hanna did not plan to honor his promise to split the proceeds. In response, Mr. Bobbitt sent an e-mail to Mr. Hanna and their realtor, stating: "I am sorry that we won't be closing on the house on [August] 29. I suspect that there will be legal action and penalties. I don't even know if you'll continue to represent us."

Ultimately, and after Mr. Hanna filed his Complaint for Declaratory Judgment, the parties and the buyer did close on the house as intended on August 29, 2017. The purchase price for the Property was $600,000, and proceeds of $279,000 were placed in an escrow account.

B.

Procedural History

On August 18, 2017, 11 days prior to closing on the sale of the house, Mr. Hanna filed the Complaint for Declaratory Judgment, requesting a declaration that each party had a one-half undivided interest in the Property, and Mr. Hanna was entitled to contribution from Mr. Bobbitt for half of all payments he had made for "maintenance and upkeep of the Property."[6] On February 12, 2018, Mr. Bobbitt filed a motion for summary judgment, arguing that there was no dispute of material fact, and he was entitled to judgment as a matter of law.[7]

On March 29, 2018, following a hearing, the circuit court denied Mr. Bobbitt's motion for summary judgment. The court found that there were numerous disputes of material fact, including whether a contract existed, whether the money put into the property

[6] The initial complaint filed August 18, 2017, included a count against Mr. Bobbitt for breach of the real estate sales contract, but this count was eliminated in the First Amended Complaint for Declaratory Judgment and Contribution filed on February 22, 2018. The contribution figure also was increased from $324,857 to $332,754 in the First Amended Complaint.

[7] Mr. Bobbitt argued that he was entitled to judgment as a matter of law for the following reasons: (1) Mr. Hanna entered into a binding contract which precluded him from receiving the full amount of the proceeds; (2) the payments on the property constituted gifts and thus were not subject to recoupment by contribution; (3) there was no right to contribution for the mortgage payments because Mr. Bobbitt was not obligated on the mortgage; (4) the statute of limitations had run on any action relating to the down payment of the house, as well as tax and mortgage payments made more than three years prior to the date the complaint was filed.

constituted a gift, whether any waiver of contribution had been made, and whether Mr. Bobbitt was obligated under the loan.

On May 16, 2018, trial began. Mr. Bobbitt and Mr. Hanna were the only two witnesses to testify. Mr. Hanna testified that the house sold for $600,000, and proceeds in the amount of $279,000 were being held in escrow. He asserted that Mr. Bobbitt was not entitled to a portion of the sale proceeds held in escrow because Mr. Bobbitt's contribution to the house over the years had been "de minimis," and he requested that the full proceeds be awarded to him as contribution.[8] Mr. Hanna testified that he did not intend for the Property to be a gift for Mr. Bobbitt, and in making him a joint tenant, he intended Mr. Bobbitt to be "an owner in name only." Because he was making all the necessary payments on the Property, he expected to eventually recoup the full value of the Property when the house was sold.

With respect to the June 18 e-mail, Mr. Hanna asserted that no valid contract was formed because there was a lack of consideration. Mr. Hanna also testified that he sent the email under duress during a "very heated, threatening encounter."

Mr. Bobbitt testified that, when the Property was purchased, it was his understanding that Mr. Hanna was going to give him 50% of the proceeds, although Mr. Hanna did not explicitly say that. His counsel argued that Mr. Hanna made a gift to Mr.

[8] Mr. Hanna's counsel explained that Mr. Hanna had contributed $665,508 toward the purchase, maintenance, and taxes for the Property, and half of that would be $332,754, which is why Mr. Hanna was arguing that the court should order that the $279,000 held in escrow be paid to Mr. Hanna.

Bobbitt under either of two theories. First, he argued that the deed granting a joint tenancy was a gift, and Mr. Hanna did not reserve the right to revoke the transfer. In the alternative, he argued that contribution could not be granted against Mr. Bobbitt because he was not a signatory on the note and had no obligation to satisfy the mortgage. Additionally, counsel argued that a presumption of a gift applied given the relationship between the parties, and Mr. Hanna failed to rebut that presumption.

Finally, Mr. Bobbitt argued that a valid contract was formed by the June 18 e-mail from Mr. Hanna, and he was entitled to half the proceeds under the contract. Counsel stated that the consideration for the contract was Mr. Bobbitt letting the sale go forward in exchange for Mr. Hanna's promise to split the proceeds. With respect to Mr. Hanna's duress argument, Mr. Bobbitt argued that Mr. Hanna failed, as required, to repudiate the agreement after the alleged duress had been lifted.

The circuit court then rendered its ruling. It began by making factual findings, including that Mr. Hanna made the down payment on the Property, and he paid all the mortgage payments, all the upkeep on the Property, and all the real estate taxes on the Property. The court stated: "We are here because the deed and deed of trust to the Glen Echo property, I find, lists both the plaintiff and the defendant as joint tenants."

The court noted that Mr. Bobbitt contended that there was a gift, and Mr. Hanna asserted that he did not make a gift, but rather, the deed was an accommodation that was not intended to be irrevocable and without condition. The court then stated:

> I find that there never was a gift in this case. I find that what occurred was an accommodation.

> I credit the plaintiff's testimony that he did not intend to make an irrevocable transfer of an interest in land to the defendant. I find it was done as an accommodation to be effective only when they were, while they were together, and only because of, they had a child together by adoption, and it was an attempt, if you will, to avoid or bypass probate. Was it the most efficacious way? Not really. That would have been a different instrument. But that is, obviously, what they did without the benefit of counsel.
>
> Given that I find affirmatively that there was no gift, **I declare that the plaintiff is the sole owner of the real property, and is the sole owner of the proceeds in any escrow account, which resulted from the sale of the real property.**

(Emphasis added.)

Counsel for Mr. Bobbitt then stated that there was "still the matter of the e-mail and the contract issue." The court responded:

> Well, I am not persuaded that a contract was formed. I am not persuaded. I am persuaded, affirmatively -- this is for Judge Moylan -- am affirmatively persuaded there was no gift, as those terms have been defined by the Court of Appeals; that is to say, irrevocable transfer with donative intent at the time. And I've explained why I have found there was no gift.
>
> I find important the two occasions in which the defendant asked, or requested, or suggested to the plaintiff that the parties get married. The plaintiff said no. Whether that was a good choice or a bad choice is not for me to say, but it simply, it does highlight for me, and illustrate the notion that there was no intent to be married and no intent to get the benefit of any, ours, D.C.'s, Idaho's, doesn't matter, full faith and credit, any marital property. That could have been done, but it evidences intent to not do that.

On May 18, 2018, the court issued the Declaratory Judgment. The order decreed that Mr. Hanna was the sole owner of the Property from the date of purchase on November 12, 2003, until the sale on August 29, 2018, and Mr. Hanna was entitled to receive the full $279,792 held in escrow.

This appeal followed.

STANDARD OF REVIEW

In reviewing an action that has been tried without a jury, the standard of review for this Court is as follows:

> "An appellate court reviews a trial court's factual findings for clear error, and reviews the trial court's legal conclusions *de novo*. *See* Md. R. 8-131(c) (An appellate court "will not set aside the judgment of [a] 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."); *Ramlall v. MobilePro Corp.*, 202 Md. App. 20, 30 A.3d 1003 (2011) ("The clearly erroneous standard does not apply to [a trial] court's legal conclusions, however, to which [an appellate court] accord[s] no deference and which [the appellate court] review[s] to determine whether [or not] they are legally correct."). The appellate court views the evidence in the light most favorable to the prevailing party, *City of Bowie v. MIE Props., Inc.*, 398 Md. 657, 676, 922 A.2d 509 (2007), and resolves all evidentiary conflicts in the prevailing party's favor. *First Union Nat'l Bank v. Steele Software Sys. Corp.*, 154 Md. App. 97, 107 n.1, 838 A.2d 404 n.1 (2003), *cert. denied*, 380 Md. 619, 846 A.2d 402 (2004)."

Brault Graham, LLC v. Law Offices of Peter G. Angelos, P.C., 211 Md. App. 638, 659–60 (quoting *Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403, 451 (2012)), *cert. denied*, 434 Md. 312 (2013).

DISCUSSION

I.

Ownership Interest

Mr. Bobbitt contends that the circuit court erred in finding that Mr. Hanna was the sole owner of the Property from the time of purchase. He gives two reasons in support of this contention. First, Mr. Bobbitt asserts that, because Mr. Hanna did not ask the court to determine ownership of the Property, but only requested contribution, the court's finding

that Mr. Hanna was the sole owner of the Property granted relief to Mr. Hanna that he never sought. And it resulted in him going into the trial without notice that his ownership interest was at risk. Second, Mr. Bobbitt asserts that the language of the deed stating that the parties were joint tenants precluded the court from finding that Mr. Hanna was the sole owner.

Mr. Hanna does not dispute, nor could he, that both parties are listed as joint tenants on the deed. He asserts that, because the Property has been sold, ownership is no longer in controversy, and the court reached the right conclusion, even if for the wrong reason, "in awarding Mr. Hanna the proceeds from the sale as contribution from Mr. Bobbitt."[9]

The deed provides, and the parties agree, that the parties owned the Property as joint tenants. "In a joint tenancy, each tenant owns an undivided share in the whole estate, has an equal right to possess, use, and enjoy the property, and has the right of survivorship." *Roland v. Messersmith*, 208 Md. App. 532, 540 (2012) (cleaned up). Joint tenancies are disfavored and must be explicitly created by a written instrument to be effective. *Downing v. Downing*, 326 Md. 468, 475 (1992); Md. Code (2010 Repl. Vol.) § 2-117 of the Real Property Article.

Upon sale of the property, joint tenants are presumed to be entitled to equal shares of the property and any proceeds. *Carozza v. Murray*, 63 Md. App. 496, 500 (1985), *cert.*

[9] Mr. Hanna also argued that the court properly "reformed the deed to reflect the parties' intentions" at the time of execution, i.e., that "Mr. Hanna did not intend to vest any ownership interest in Mr. Bobbitt." This was not a ground relied upon by the circuit court or argued by the parties below, and therefore, we shall not consider this contention. *See* Md. Rule 8-131(c).

denied, 304 Md. 297 (1985). This presumption of equal shares can be rebutted by "evidence raising inferences contrary to the idea of equal interest in a joint estate," including "evidence of actual cash outlay, unequal contributions in money or services or both, and unequal expenditures in removing encumbrances from the property." *Id.* at 501–02. The party opposing the presumption has the burden of proof, by a preponderance of the evidence. *Id.* at 502.

Based on this case law, the circuit court's finding that Mr. Hanna was, and always had been, the sole owner of the Property was clearly erroneous. As Mr. Hanna notes, however, the Property had been sold and the issue before the court was who should receive the proceeds of the sale that were being held in escrow.

Mr. Hanna contends that, with respect to the proceeds, we should affirm the court's decision because, even if its analysis was flawed, its conclusion was correct. He asserts that the court properly awarded Mr. Hanna the proceeds from the sale as contribution from Mr. Bobbitt. *See Premium of America, LLC v. Sanchez*, 213 Md. App. 91, 121 (2013) (quoting *Pope v. Bd. of Sch. Comm'rs of Balt. City*, 106 Md. App. 578, 591 (1995)) (Appellate court can "'affirm the trial court if it reached the right result for the wrong reasons.'").

Generally, a "cotenant who pays the mortgage, taxes, and various carrying charges of joint-owned property is entitled to contribution from the other." *Spessard v. Spessard*, 64 Md. App. 83, 88 (1985). "The right to contribution between cotenants exists to insure that a cotenant of property who advances money for the common benefit of all the cotenants

should be reimbursed by his cotenants for their pro rata share of the money advanced." *Kamin-A-Kalaw v. Dulic*, 322 Md. 49, 55 (1991). A "co-tenant who is a donee" of a gift, however, is not liable for contribution. *Meyer v. Meyer*, 193 Md. App. 640, 661 (2010).

The Court of Appeals has discussed two acceptable methods to calculate a contribution amount:

> The trial court could [direct] that the entire amount of the advance be deducted from the net proceeds of the sale and repaid to the paying cotenant before dividing the balance between the cotenants. This is the method suggested in *Crawford v. Crawford*, 293 Md. [307,] 311, 443 A.2d [599,] 601 [(1982)] and *Lingo v. Lingo*, 267 Md. [707,] 714, 299 A.2d [11,] 14 [(1973)]. An equally acceptable method . . . [is] to divide the net proceeds of the sale between the paying cotenant and the non-paying cotenant and then deduct one-half of the advance from the share of the non-paying cotenant and augment the paying cotenant's share by the amount of that deduction. This is the method indicated in *Pino v. Clay*, 251 Md. 454, 458, 248 A.2d [101,] 103 [(1968)], and *Spessard v. Spessard*, 64 Md. App. 83, 93, 494 A.2d 701, 706 (1985). Either approach produces the same result and satisfies the paying cotenant's equitable right to contribution.

Kamin-A-Kalaw, 322 Md. at 55.

Here, it is undisputed that Mr. Hanna paid the mortgage, property taxes, and most other carrying costs for the upkeep and maintenance of the house. There is, however, another layer of analysis in assessing the issue of contribution.

A co-tenant cannot be held liable for contribution costs for mortgage payments if he was not an obligated party to the mortgage. *Aiello v. Aiello*, 268 Md. 513, 518–19 (1973), *Meyer*, 193 Md. App. at 661. Here, there is an unresolved issue regarding whether Mr. Bobbitt was personally obligated on the mortgage. As indicated, he is listed as a borrower on the deed of trust, but Mr. Hanna testified that the mortgage was solely in his name. And

Mr. Hanna has taken conflicting positions in this litigation regarding whether Mr. Bobbitt was liable on the mortgage.

Therefore, further findings need to be made with respect to the contribution analysis. It may be that, after the proper analysis, the court determines that Mr. Hanna is entitled to the full amount of proceeds in contribution. Without that analysis, however, we cannot say that the trial court reached the "right result for the wrong reasons." *Premium of America, LLC*, 213 Md. App. at 121. Accordingly, we vacate the judgment of the circuit court and remand to the circuit court to make the necessary factual determinations regarding contribution, and if appropriate, the proper amount.[10]

II.

Contract

Mr. Bobbitt contends that, even if his status as a joint tenant owner of the Property did not entitle him to half of the proceeds from the sale of the Property, he was entitled to half the proceeds because the June 18, 2017, e-mail constituted an enforceable contract to split the proceeds of the house evenly.[11] The circuit court, when prompted to address the

[10] Mr. Bobbitt contends that Mr. Hanna cannot seek contribution because his payments for the Property constituted gifts to Mr. Bobbitt. The circuit court, after listening to the parties, rejected this argument and made a factual finding that there was no gift. Given Mr. Hanna's explicit testimony that he did not intend to give Mr. Bobbitt an ownership interest in the Property, we cannot say that this factual finding was clearly erroneous. *See Rudo v. Karp*, 80 Md. App. 424, 432–33 (1989) (whether a gift was intended is a factual issue that will be reversed only if it is clearly erroneous).

[11] As indicated, the e-mail from Mr. Hanna to Mr. Bobbitt stated: "Confirm that I agree to split the proceeds of the house 50/50 after netting out whatever repair expenses I pay into it prior to sale[.]"

issue, stated only that it was "not persuaded that a contract was formed," and it then continued to discuss its finding that there was not a gift. Mr. Bobbitt contends that the circuit court "erred by not deciding this issue," and he "is entitled to his bargained-for equal split of the proceeds from the sale of the Property under the contract."

Although one joint tenant may have the right to contribution from the other joint tenant for monies paid for the property, the parties may agree to a different result. *See Sachse v. Walger*, 265 Md. 515, 517, 522 (1972) ("[B]y agreement, the parties altered the normal responsibilities and obligations of co-owners."). Mr. Hanna does not challenge this general proposition, but he argues that there was no enforceable contract, for either of two reasons. First, Mr. Hanna argues that there was no consideration to support a contract, asserting that Mr. Bobbitt's forbearance of his right to not consent to the sale was not sufficient consideration because Mr. Hanna had the right to file a complaint for sale of the Property. Second, he asserts that, "if there was any contract between the parties, it was obtained by duress and is void."

We address first Mr. Hanna's argument that there was no enforceable contract because there was not sufficient consideration. Mr. Bobbitt contends that there was consideration, i.e., his agreement not to oppose the sale of the Property.

Consideration "may be established by showing a benefit to the promisor or a detriment to the promisee. . . . A promise becomes consideration for another promise only when it constitutes a binding obligation. Without a binding obligation, sufficient consideration does not exist to support a legally enforceable agreement." *Cheek*, 378 Md.

at 148. Courts generally will "not inquire as to the adequacy of consideration[,]" because it "is not the province of the Courts to interfere with the natural rights of the parties to contract, and to exercise their own will and judgment upon the subject[.]" *Lillian C. Blentlinger, LLC v. Cleanwater Linganore, Inc.*, 456 Md. 272, 303 (2017) (quoting *Vogelhut v. Kandel*, 308 Md. 183, 190–91 (1986)).

Forbearance to assert a claim or exercise a right generally is valid consideration, even if the claim is "doubtful," as long as it is made in good faith. *Hoffman v. Seth*, 207 Md. 234, 241 (1955) (forbearance to assert a claim made in good faith is "good consideration"). *Accord Chernick v. Chernick*, 327 Md. 470, 480 (1992) ("Forbearance to exercise a right or pursue a claim, or an agreement to forbear, constitutes sufficient consideration to support a promise or agreement."); *Fiege v. Boeham*, 210 Md. 352, 360–61 (1956) ("[F]orbearance to sue for a lawful claim or demand is sufficient consideration for a promise to pay for the forbearance if the party forbearing had and [sic] honest intention to prosecute litigation which is not frivolous, vexatious, or unlawful, and which he believed to be well founded.").

Here, as Mr. Hanna notes, even if Mr. Bobbitt refused to consent to the sale, he could have filed a complaint for sale in lieu of partition. Md. Code (1974) § 14-107(a) of the Real Property Article provides that:

> A circuit court may decree a partition of any property, either legal or equitable, on the bill or petition of any . . . joint tenant . . . . If it appears that the property cannot be divided without loss or injury to the parties interested, the court may decree its sale and divide the money resulting from the sale among the parties according to their respective rights.

Although Mr. Hanna would have been entitled to sale if it was shown that the Property could not be divided without loss or injury to the parties, *see Kemp v. Waters*, 165 Md. 521, 523 (1934) (right to sale absolute "when the circumstances designated by the statutes are found to exist"), he would have had to persuade a circuit court judge in this regard, and this process undoubtedly would have prolonged the time it would take to sell the Property. Mr. Bobbitt's agreement to sell the Property, therefore, arguably constituted consideration. We further note that Mr. Bobbitt testified that he did not understand at the time that Mr. Hanna had the option as a joint tenant to attempt to force the sale of the house by filing a partition action. The circuit court made no factual finding whether Mr. Bobbitt's agreement not to oppose the sale in exchange for half the proceeds was made in good faith.

Accordingly, because the court failed to state the basis for its finding that there was no contract, we remand for the court to explain its rationale, including any requisite factual findings.[12]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

[12] Depending on its ultimate ruling, the court may need to address Mr. Hanna's duress argument.