Circuit Court for Montgomery County
Case No. 452860V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1007

September Term, 2020

SHAWN A. GRITZ

v.

1116 DUNOON RD LLC, *ET AL.*

Nazarian,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: February 11, 2022

This appeal arises out of a long-running dispute between Shawn Gritz, the Personal Representative of the Estate of Harold Golding (the "Decedent"), and 1116 Dunoon Road, LLC (the "LLC"), the record title owner of the Decedent's house, over real and personal property that originally belonged to the Estate. Mr. Gritz appeals the decision of the Circuit Court for Montgomery County granting in part and denying in part his motion to enforce a settlement agreement placed on the court record. The LLC cross-appeals the court's decision to award prejudgment interest after the LLC failed to pay money due under a settlement agreement. We affirm the judgment.

I. BACKGROUND

The backdrop for this case is a real estate transaction involving real property located at 1116 Dunoon Road, Bethesda (the "Property"). The Property was owned by the Decedent until his death on November 12, 2011. On February 24, 2012, Glenn Golding, the Decedent's son, was appointed as personal representative of the Estate. On or about January 4, 2013, the Property fell into foreclosure and was scheduled to be sold at a foreclosure sale on March 6, 2013. But before the Property was sold, Mr. Golding and his brother Marc agreed to sell the premises to the LLC for $185,000. The Golding brothers and the LLC executed a contract for the sale on February 28, 2013. Kenneth Brown, property manager for Quasar Property Management and Real Estate, created the LLC and agreed to purchase the home.

Mr. Gritz replaced Glenn Golding as the Personal Representative of the Estate on July 29, 2015. Mr. Gritz sought to have title to the Property transferred back to the Estate

under an alleged oral agreement with the LLC. After communication between the parties deteriorated and no agreement was reached, Mr. Gritz filed suit in the Circuit Court for Montgomery County against the LLC and numerous other parties for detinue and negligence, among other things.[1]

The parties then agreed to a settlement at a mediation hearing on September 26, 2019. The court outlined the terms of the settlement on the record, and they included an agreement by the LLC to pay the Estate $60,000 from the proceeds of the sale of the Property by April 30, 2020. In addition, the agreement allowed Mr. Gritz to make arrangements, through counsel, to retrieve personal belongings of the Estate from the Property:

> [F]or the record, the Court met with the parties in chambers over the course of approximately the last hour and a half. As a

1 Mr. Gritz named the following parties: (1) 1116 Dunoon Road LLC, (2) Quasar Property Management and Real Estate, LLC, (3) James Gerson, (4) Baltimore Five Rock, LLC, (5) Kenneth N. Brown, (6) Olivia Surge, (7) Legends Title Group, LLC, and (8) John Doe. While Mr. Gritz mentions multiple parties in his Brief, the only party relevant to this appeal is 1116 Dunoon Road, LLC.

The relevant complaint for purposes of this appeal is the third amended complaint filed on September 3, 2019, which included the following claims against the LLC:

> Count I – Specific Performance of Agreement to Purchase the Property
>
> Count II – Constructive Trust
>
> Count III – Violation of the Protection of Homeowners in Foreclosure Act
>
> Count IV – Detinue
>
> Count V – Negligence
>
> Count VI – Declaratory Judgment

> result of those discussions, the parties have entered into an agreement that will resolve the matter now pending before the Court pursuant to the following terms and conditions, which I will endeavor to put on the record, and if I misstate them, then counsel can feel free to correct me.
>
> But [Mr. Gritz] has agreed to dismiss any and all claims it has against the defendants . . . in exchange for an agreement by [the LLC], who is the current title holder of the property at issue, to pay the sum of $60,000 from the proceeds of the sale of the property. Those proceeds to be paid no later than April 30th of 2020.
>
> ***
>
> The parties have further agreed that the Estate may make arrangements through counsel and Ms. Pallozzi to retrieve personal property belonging to the Estate, but shall make arrangements to do that through counsel, shall not just appear, and further shall provide counsel with a list of the property that they believe to be remaining on the premises which they would like to retrieve.

Seven months of silence followed the mediation hearing. Then, on April 23, 2020, counsel for Mr. Gritz emailed counsel for the LLC and asked to retrieve a list of personal items from the Property:

> We would like to schedule a time to retrieve estate property from the house at 1116 Dunoon Road. The property that we contend belongs to the estate is listed below and was listed in one of Mr. Gritz's answers to interrogatories. To ensure that all the estate property is removed and no property belonging to the current occupants is removed, I suggest we schedule a time when I can walk through the house, identify the estate property, identify any property that the occupants claim does not belong to the estate, and leave the disputed property in the house until we resolve the dispute.

Counsel for the LLC replied that the personal items had been "removed and discarded back in February" and that sale of the home had been slowed by COVID-19:

> I spoke with my client. Any items that were in the house were removed and discarded back in February. My client waited until the last possible moment for you to schedule a time to remove the items before he needed to make arrangements to get the house ready for sale per the agreement.
>
> Unfortunately, my client has been unable to move forward with the sale due to the recent COVID-19 crisis, as the same as effectively crippled the housing market. As noted above, my client was significantly delayed in its ability to get the house to market due to your client's substantial delay in reaching out to schedule a time to remove the items.

A week later, the April 30, 2020 deadline passed, and the LLC did not pay Mr. Gritz the $60,000. So on June 26, 2020, Mr. Gritz filed a motion to enforce that sought to enforce the oral settlement terms. Mr. Gritz also asked the court to assess additional damages and to enter sanctions against the LLC and Mr. Brown. On July 31, 2020, the LLC filed its opposition to the motion to enforce and on August 28, 2020, Mr. Gritz filed a response.

On September 9, 2020, the court held a hearing on the motion to enforce the settlement agreement, assess additional damages, and for sanctions. During the hearing, Mr. Gritz argued it was undisputed that there was a settlement agreement and that the LLC had not performed in good faith because it failed to tender payment and had disposed of the personal property in the home. Mr. Gritz requested three forms of relief: (1) to enforce the settlement agreement by entering a judgment against the LLC for $60,000, (2) to schedule a hearing to allow Mr. Gritz to present evidence on the value of the personal property as well as attorney's fees, and (3) to impose sanctions on the LLC and Mr. Brown for acting in bad faith.

The LLC conceded that the $60,000 was outstanding and would be paid from the

proceeds of the newly renovated house once it sold, and that COVID-19 had impaired the LLC's ability to sell the home in a timely manner. Alternatively, the LLC asked the court to re-open the matter to try the case or attempt to come to an alternative settlement agreement.

The court took the matter under advisement and on September 10, 2020, issued an Order, granting in part and denying in part the motion to enforce. The court reduced the $60,000 payment to a judgment against both the LLC and Mr. Brown and awarded prejudgment interest in the amount of $1,292.05, beginning from May 1, 2020. The court denied Mr. Gritz's request to schedule an evidentiary hearing and denied his request for sanctions.

On September 14, 2020, the LLC and Mr. Brown filed a joint Motion to Alter or Amend Judgment and asked the court to strike the entry of the judgment against Mr. Brown because he was not the owner of the Property. In addition, the parties filed a Supplemental Motion to Alter or Amend on September 21, 2020, arguing that the prejudgment interest beginning on May 1, 2020 was incorrect. Mr. Gritz opposed both motions. On October 19, 2020, the court granted in part and denied in part the motions, struck Mr. Brown's name from the judgment, declined to strike the prejudgment interest, and denied Mr. Gritz's request for additional damages and sanctions.

Mr. Gritz appeals the October 19 Order. The LLC cross-appeals. We supply additional facts as necessary below.

II. DISCUSSION

Mr. Gritz challenges the circuit court's decisions to deny in part and grant in part the motion to enforce in favor of the LLC.[2] Mr. Gritz raises two arguments that, he claims, compel us to reverse the judgment of the circuit court. *First*, he argues that the circuit court erred by dismissing his claim for property damage against the LLC because (1) the LLC assumed the duties of a bailee and (2) the LLC breached the settlement agreement by destroying the Estate's personal property. *Second*, Mr. Gritz argues that the circuit court

[2] Mr. Gritz raises two Questions Presented:

> 1. Whether the circuit court erred by dismissing Mr. Gritz's claim for property damage against the appellees who had assumed the duties of a bailee as a matter of law and breached the settlement agreement by destroying the Estate's personal property?
>
> 2. Whether the circuit court erred in denying Mr. Gritz's request for sanctions because of the bad faith conduct of the LLC, Quasar and Mr. Brown in breaching the settlement agreement and their history of employing vexatious litigation tactics throughout the lawsuit?

The LLC raises three Questions Presented:

> 1. Did the Lower Court properly deny Appellant's claim for damages to the Estate's personal property?
>
> 2. Was the Lower Court clearly erroneous in finding that Appellees did not act in bad faith or without substantial justification and did the Lower Court properly exercise its discretion in denying Appellant's request for sanctions against Appellees?
>
> 3. Did the Lower Court err in entering prejudgment interest against Appellee 1116 Dunoon?

erred in denying his request for sanctions because the LLC acted in bad faith. The LLC responds in turn that (1) the circuit court properly denied Mr. Gritz's claim for damages, (2) the circuit court properly exercised its discretion in denying the request for sanctions, and (3) the circuit court erred in entering prejudgment interest against the LLC.

A. The Trial Court Properly Denied Mr. Gritz's Claim For Damages.

First, Mr. Gritz argues, for the first time on appeal, that the LLC assumed the duties of a bailee.[3] Mr. Gritz states that:

> [t]he allegations in the Third Amended Complaint regarding how the LLC and Quasar obtained possession of the personal property indicates creation of a bailment for hire or for mutual benefit because it arose in the context of the agreement to hold the Property in trust for benefit of the Golding Brothers until they qualified for a mortgage loan. Alternatively, the LLC and Quasar were gratuitous bailees.

The LLC argues that this claim should be rejected because it was never argued below.

Maryland Rule 8-131(a) states that "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Although we have the discretion to consider matters not relied upon by the trial judge or raised by parties, this discretion is not unchecked; if an issue does not fall within a common exception to the general "raise or waive" rule, we should evaluate carefully whether the consideration of an issue not raised in the lower court is necessary or desirable to guide the trial court or to

[3] Mr. Gritz also names Quasar Management Company in his Brief, however, the company was not a party to the settlement agreement and is not a party to this appeal.

avoid the expense and delay of another appeal. *Barber v. Cath. Health Initiatives, Inc.*, 180 Md. App. 409, 437 (2008).

In contending that the issue was raised, Mr. Gritz mischaracterizes the law of bailment. As the Court of Appeals explained in *General Refining Co. v. International Harvester Co.*, 173 Md. 404, 414–15 (1938), a bailment forms only by contract:

> A bailment is said, in *Dobie on Bailment and Carriers*, to be: "The relation created through the transfer of the possession of goods or chattels, by a person called the bailor to a person called the bailee, without a transfer of ownership, for the accomplishment of a certain purpose, whereupon the goods or chattels are to be dealt with according to the instructions of the bailor." Other definitions cited by Dobie are these: "Bailment is defined by Sir William Jones as being a delivery of goods in trust, *on a contract, express or implied*, that the trust shall be duly executed, and the goods redelivered as soon as the time or use for which they were bailed shall have elapsed or been performed. According to Judge Story a bailment is 'a delivery of a thing in trust, for some special object or purpose, and *upon a contract, express or implied*, to conform to the object or purpose of the trust.' In *Kents Commentaries* a bailment is said to be 'a delivery of goods on trust, *upon a contract, express or implied*, that the trust shall be duly executed, and the goods restored by the bailee, as soon as the purpose of the bailment shall be answered.'"
>
> ***
>
> To constitute a bailment there must be an existing subject-matter, *a contract with reference to it* which involves possession of it by the bailee, delivery, actual or constructive, and acceptance, actual or constructive.

(Cleaned up.) (Emphasis added.)

The Third Amended Complaint does not allege any contract, express or implied, that remotely could be read to form a bailment relationship. And simply identifying personal property that someone else possesses can't create the duties of a bailee in the

possessor, even impliedly. Accordingly, Mr. Gritz's belated contention that the LLC assumed the duty of exercising reasonable care over the Estate's personal property, and therefore formed a bailment, is not before us and we decline to consider the possibility of a bailment relationship for the first time on appeal.

Second, Mr. Gritz argues that the trial court improperly denied his claim for damages from the disposal of the Estate's personal property. There is no dispute as to whether the parties had formed an enforceable settlement agreement, but Mr. Gritz disputes the terms the agreement encompassed, and contends in particular that the agreement required the LLC to arrange for the property to be returned to him. Whether an agreement was formed is a question of law we review *de novo*, *Griffin v. Bierman*, 403 Md. 186, 195 (2008), and similarly, "[t]he interpretation of a contract, including the determination of whether a contract is ambiguous, is a question of law, subject to *de novo* review. . . ." *Maslow v. Vanguri*, 168 Md. App. 298, 317 (2006) (citations omitted).

Maryland courts adhere to the objective theory of contract interpretation, "giving effect to the clear terms of agreements, regardless of the intent of the parties at the time of contract formation." *Myers v. Kayhoe*, 391 Md. 188, 198 (2006) (*citing Towson v. Conte*, 384 Md. 68, 78 (2004)). Under the objective theory,

> A court construing an agreement under the objective theory must first 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. In addition, when the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant is not what the parties to the contract

> intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.

Id. (cleaned up).

Mr. Gritz contends that the motions court construed the April 23, 2020 request to schedule a time to retrieve personal property from the Property as a waiver of the Estate's right to the property. But the real question is whether the settlement agreement required the LLC to arrange for the personal property to be turned over to Mr. Gritz and the Estate, which turns on what the parties actually agreed vis-à-vis the personal property.

A settlement agreement is a contract entered "for the settlement of a previously existing claim by a substituted performance," *Consolidated Constr. Servs., Inc. v. Simpson*, 372 Md. 434, 465 (2002) (citation omitted), and settlement agreements are governed by ordinary principles of contract law. *Nationwide Mut. Ins. Co. v. Voland*, 103 Md. App. 225, 231 (1995). "When parties settle a case, they give up any meritorious claims or defenses they may have had in order to avoid further litigation." *Id.* at 233. And "[c]ourts look with favor upon the compromise or settlement of [lawsuits] in the interest of efficient and economical administration of justice and the lessening of friction and acrimony." *Chertkof v. Harry C. Weiskittel Co.*, 251 Md. 544, 550 (1968). Treating settlement agreements as any other binding contract is consistent with this public policy. *Smelkinson Sysco v. Harrell*, 162 Md. App. 437, 448–49 (2005). Courts treat settlement agreements as any other binding contract so long as the basic requirements to form a contract are present. *Erie Ins. Exch. v. Est. of Reeside*, 200 Md. App. 453, 461 (2011) (citations omitted).

We don't need to guess whether there was a meeting of the minds here. To the contrary, we can watch it unfold at the mediation hearing, where the parties agreed on the record to the court's recitation of the settlement terms:

> For the record, the Court met with the parties in chambers over the course of approximately the last hour and a half. As a result of those discussions, the parties have entered into an agreement that will resolve the matter now pending before the Court pursuant to the following terms and conditions, which I will endeavor to put on the record, and if I misstate them, then counsel can feel free to correct me.
>
> But [Mr. Gritz] has agreed to dismiss any and all claims it has against the defendants . . . in exchange for an agreement by [the LLC], who is the current title holder of the property at issue, to pay the sum of $60,000 from the proceeds of the sale of the property. Those proceeds to be paid no later than April 30th of 2020.
>
> ***
>
> The parties have further agreed that the Estate may make arrangements through counsel and Ms. Pallozzi to retrieve personal property belonging to the Estate, but shall make arrangements to do that through counsel, shall not just appear, and further shall provide counsel with a list of the property that they believe to be remaining on the premises which they would like to retrieve.

There can be no dispute, then, that the parties agreed to settle the case. And although neither party mentioned a deadline for the retrieval of the property, there can also be no dispute that an agreement to sell the house would involve the retrieval of property. We agree with the LLC that when Mr. Gritz agreed to settle this case, he agreed to take on the responsibility of contacting the LLC about retrieving the personal property—the court's recitation that "the Estate may make arrangements through counsel" recognized the parties' agreement that this burden fell on Mr. Gritz.

Mr. Gritz was on notice that the house *could* be sold before April 30, 2020—April 30 was a deadline, not a date certain—and he did not act in a timely fashion when he waited until a week before that deadline to contact the LLC. This was a failure to act on a discretionary term and a waiver of the Estate's right to retrieve the property. We recognize that to Mr. Gritz, the property had significant sentimental value. But whatever its value, Mr. Gritz allowed seven months to pass, and nearly the entire period of time before the agreed sale date for the house, before even contacting the LLC about it. Mr. Gritz had the opportunity to make arrangements to retrieve the property and he didn't, and we see no error in the court's decision to deny his request for damages.

B. The Trial Court Did Not Abuse Its Discretion By Denying Mr. Gritz's Request For Sanctions.

Next, Mr. Gritz contends that the trial court abused its discretion when it denied his request for sanctions against the LLC for disposing of the personal property of the Estate, acting in bad faith, and failing to pay the $60,000 by April 30, 2020.

Maryland Rule 1-341 authorizes a court to impose costs and attorney's fees on a party that maintains or defends a proceeding without substantial justification or in bad faith. When reviewing a circuit court's ruling on a motion for sanctions under this Rule, we apply a two-step analysis:

> First, the judge must find that the proceeding was maintained or defended in bad faith and/or without substantial justification. This finding will be affirmed unless it is clearly erroneous or involves an erroneous application of law. Second, the judge must find that the bad faith and/or lack of substantial justification merits the assessment of costs and/or attorney's fees. This finding will be affirmed unless it was an abuse of

discretion.

Inlet Assocs. v. Harrison Inn Inlet, Inc., 324 Md. 254, 267–68 (1991).

Rule 1-341 sanctions are warranted only if a party "proceed[s] in the courts without any colorable right to do so," and the court should only view the party's action "at the time it took place, not with the benefit of judicial hindsight." *Legal Aid Bureau, Inc. v. Bishop's Garth Assocs. Ltd. P'ship*, 75 Md. App. 214, 224 (1988); *Garcia v. Foulger Pratt Dev., Inc.*, 155 Md. App. 634, 684 (2003). We evaluate the claim, and its justification, "under the totality of the circumstances presented to the court . . . ." *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 23 (2018).

Mr. Gritz contends that "Mr. Brown's refusal to pay the agreed settlement amount, wanton if not deliberate destruction of the Estate's personal property having obvious sentimental value to the Golding brothers, and making a false police complaint accusing undersigned counsel's wife of embezzlement were prima facie bad faith actions[.]" He argues that the circuit court's failure to manage the proceedings effectively "emboldened" Mr. Brown and his attorney to "continue employing vexatious litigation tactics[.]" But the police report filed by Mr. Brown against counsel's wife is not before us, and Mr. Brown's filings in a separate matter are not before us in this one.

We review whether the motions court abused its discretion in finding, on the record it had, that the LLC did not defend Mr. Gritz's claims in bad faith. We have defined "bad faith" under Rule 1-341 as "'vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons.'" *Seney v. Seney*, 97 Md. App. 544, 554 (1993)

(*quoting Inlet Assocs.*, 324 Md. at 268). And the motion court's findings that the LLC's disposal of the personal property before the April 30, 2020 deadline, and its failure to tender payment by that date because the house had not yet sold, ends the inquiry. The court held that the sale of the property was not a condition precedent to the payment of $60,000.00, but the failure of the LLC to pay prior to this ruling was not evidence of bad faith, and we cannot say on the record before us that the circuit court abused its discretion in so finding on this record.

C. The Trial Court Did Not Err In Entering Prejudgment Interest Against The LLC.

Last, the LLC cross-appeals the entry of pre-judgment interest in the amount of $1,292.05. A party's right to prejudgment interest is governed by Maryland Rule 2-604(a). "Our interpretation of the Maryland Rules is a question of law, and therefore we review a circuit court's decision to award prejudgment interest under a *de novo* standard of review to determine whether it is legally correct." *Nationwide Prop. & Cas. Ins. Co. v. Selective Way Ins. Co.*, 473 Md. 178, 188–189 (2021).

Prejudgment interest is permissible as a matter of right when the duty to pay and the amount due are "'certain, definite, and liquidated by a specific date prior to judgment so that the effect of the debtor's withholding payment was to deprive the creditor of the use of a fixed amount as of a known date.'" *Id.* at 193; *see also Buxton v. Buxton*, 363 Md. 634, 656 (2001) (stating that "the right to pre-judgment interest as of course arises under written contracts to pay money on a day certain, such as bills of exchange or promissory notes, in actions on bonds or under contracts providing for the payment of interest, in cases where

the money claimed has actually been used by the other party, and in sums payable under leases as rent").

The LLC was given approximately seven months from the mediation hearing to the April 30, 2020 deadline to follow through with the terms of the agreement. The LLC had a duty to pay and the amount due was certain and definite. There is no dispute that the LLC's $60,000 settlement payment to Mr. Gritz was due on April 30, 2020. For reasons the LLC explained to the trial court, the home did not sell and the $60,000 wasn't paid by the deadline.[4] But those explanations don't excuse the LLC's obligation to pay, and we agree with the circuit court that prejudgment interest was appropriate here.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.

[4] During oral argument, counsel for Mr. Gritz stated that since the time judgment was entered, the Property has been sold and the LLC has paid the $60,000 plus the prejudgment interest.