

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2670

September Term, 2015

205 PARK ROAD, LLC

v.

BARBARA ANN CRIM REVOCABLE
LIVING TRUST

Meredith,
Graeff,
Leahy,

JJ.

Opinion by Meredith, J.

Filed: August 14, 2017

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.

205 Park Road, LLC (“205 LLC”), appellant and cross-appellee, filed suit in the Circuit Court for Montgomery County, seeking specific enforcement of a contract to purchase real estate from the Barbara Ann Crim Revocable Living Trust (“the Trust”), appellee and cross-appellant. After the circuit court granted summary judgment in favor of the Trust, the Trust filed a motion seeking reimbursement of its attorney’s fees. The circuit court denied the request for attorney’s fees. 205 LLC noted an appeal, and the Trust noted a cross-appeal.

QUESTIONS PRESENTED

We have condensed the parties’ questions into the following three questions:¹

¹ 205 LLC presented the following questions in its brief:

1. Did the Circuit Court err when it granted summary judgment to the Defendant, when the Defendant relied upon an affidavit (directly saying that the Defendant lacked the authority to make the contract) which affidavit contradicted the written Contract?
2. Did the Circuit Court err when it granted summary judgment to the Defendant without giving the Plaintiff the full opportunity to depose the Defendant or its witness when (a) the affidavit upon which the Defendant relied clearly contradicted the Defendant’s own written contract; and (b) there were more than eleven weeks left in the discovery period for the Plaintiff to depose the Defendant and its witness; and (c) Plaintiff specifically requested the opportunity to conduct this critical discovery?
3. Did the Circuit Court err in granting summary judgment to the Defendant when the Defendant’s claim was that it lacked any authority to enter in to the Contract, even though the Defendant had previously stated *in writing* that it possessed *actual authority* to enter in to the subject Contract?

continued...

1. Did the circuit court abuse its discretion by granting the Trust's motion for summary judgment prior to the close of discovery?
2. Did the circuit court err by granting the Trust's motion for summary judgment?
3. Did the circuit court err by denying the Trust's motion for attorney's fees and expenses?

We answer "No" to Questions 1, 2, and 3, and affirm the judgments of the Circuit Court for Montgomery County.

FACTUAL & PROCEDURAL BACKGROUND

On June 17, 2013, 205 LLC executed a document that appeared on its face to be a contract of sale (the "Contract") for the purchase of certain real property located at 205 Park Road, Rockville, Maryland (the "Property"), for the purchase price of \$600,000. The Contract identified "The Barbara Ann Crim Revocable Living Trust, Barbara Ann Crim, Trustee" as the "seller," and "205 Park Road LLC" as the "buyer."

Although the Trust was the only party that signed the Contract as "seller," it became clear, at some point in time after the Contract was executed, that the Trust was

continued...

The Trust raised the following question as cross-appellant:

Did the Circuit Court err in failing to award attorney's fees to Appellee/Cross Appellant, who prevailed on summary judgment, when the contract upon which Appellant brought suit mandates that the prevailing party be awarded attorney's fees?

not the sole owner of record of the Property. The Property was, in fact, owned by the following as tenants in common:

- The Barbara Ann Crim Revocable Living Trust: 3/8
- Mildred F. Gettings: 1/8
- William Martin Crim: 2/8
- Washington Milton Crim and his wife Barbara C. Crim: 1/8
- Lisa Marie Osbon: 1/24
- Jeffery Howard Crim: 1/24
- James Allen Crim: 1/24

The Contract contemplated that closing would take place on or about November 15, 2013. By addendum dated September 25, 2013, the purchase price was reduced to \$500,000. But, 205 LLC alleged, at some point thereafter, the Trust attempted to sell the Property to a different buyer and refused to go to closing on the Contract.

On May 21, 2015, 205 LLC filed a complaint in the Circuit Court for Montgomery County against the Trust, seeking specific performance of the Contract as the sole remedy claimed in the single count asserted. In its answer, the Trust denied that the Contract was enforceable, and asserted the following negative and affirmative defenses:

Pursuant to Maryland Rule 2-323(f), Defendant hereby asserts a negative defense with respect to Plaintiff's averment of the execution of a written instrument. Defendant did not have legal authority to enter into or effectuate a contract to sell the Subject Property without the agreement of the other title holders, and such agreement was never obtained.

Pursuant to Maryland Rule 2-323(g), Defendant hereby asserts the following affirmative defenses:

1. Plaintiff's claim is barred by laches.
2. The purported contract attached as Exhibits 1 and 2 of the Complaint was neither binding nor enforceable as written because Defendant did not have legal authority to sell the Subject Property.

On September 2, 2015, the Trust moved for summary judgment, contending that the Contract was not susceptible of being specifically enforced because all owners of the Property had not signed the Contract, and at least one of the co-owners was unwilling to sell the Property to 205 LLC upon the terms contained in the Contract. In support of the motion for summary judgment, the Trust filed an affidavit of William Martin Crim, owner of a 2/8ths interest in the Property. In the affidavit, William Martin Crim affirmed, in pertinent part:

4. I understand that the plaintiff in this case, 205 Park Road LLC, alleges that it entered into a contract to purchase the Property for \$500,000 in 2013.

5. I did not sign any such contract, and indeed have no recollection of having seen such a contract.

6. I understand that the plaintiff in this case, 205 Park Road LLC, alleges that it entered in[to] that contract with The Barbara Ann Crim Revocable Living Trust, of which Barbara Ann Crim was acting as Trustee.

7. I never authorized Barbara Ann Crim to sell my share of the Property to 205 Park Road LLC, or to sell the Property to anyone for \$500,000. Indeed, in 2013, I was of the view that the Property was worth significantly more than \$500,000 and would not have agreed to sell the Property for that price to any purchaser.

8. Therefore, if, in 2013, Barbara Ann Crim in fact agreed to sell the Property to 205 Park Road LLC, she did so without my knowledge or authority.

205 LLC opposed the Trust's motion, contending: (1) the Trust's motion for summary judgment was premature because discovery had not yet closed; and (2) based on representations made by the Trust, the Trust had either actual or apparent authority to enter into the Contract with 205 LLC, rendering the Contract valid and enforceable. In

support of its opposition to the Trust's motion for summary judgment, 205 LLC filed an affidavit of Gregory Myers (the manager of 205 LLC) and a copy of the purported Contract. In support of the claim of 205 LLC that the Trust had either actual or apparent authority to sell the Property, Mr. Myers asserted in his affidavit:

16. At all times before, and at the time the parties entered into the Contract, and entered into the referenced subsequent changes, Defendant represented that it had full authority to enter into an agreement to sell the Subject Property to Plaintiff, and that Defendant was ultimately agreeable to sell the Subject Property to Plaintiff for Five Hundred Thousand Dollars (\$500,000.00).

On November 12, 2015, the circuit court held a hearing on the Trust's motion for summary judgment. Following arguments from each party, the circuit court ruled in favor of the Trust and granted its motion for summary judgment. The circuit court explained that, "what must have happened in order for [the sale] to occur is that the other owners [of the Property] would have had to make representations to the purchaser that the revocable [T]rust had the authority to work on their behalf in order for the theory of apparent authority to apply in this case. There's no representation [in the affidavit and other documents filed in opposition to the motion showing] that that occurred." For similar reasons, the circuit court also rejected 205 LLC's contention that there was a dispute of material fact concerning whether the Trust had been given actual authority to sell the Property by all the other tenants in common. The order granting summary judgment was docketed on November 17, 2015.

On November 30, 2015, 205 LLC filed a timely motion to alter or amend the circuit court's judgment, contending that the circuit court erred by granting summary

judgment before the date discovery was scheduled to close (which was February 1, 2016).² The Trust opposed the motion to alter or amend, and shortly thereafter, moved for an award of attorney's fees and expenses in the amount of \$10,326.88, contending that Paragraph 35 of the Contract provided for the prevailing party in an action regarding the Contract to "receive reasonable attorney's fees from the other party." 205 LLC's motion to alter or amend the circuit court's judgment was denied via order entered January 8, 2016.

On January 19, 2016, 205 LLC filed a motion in opposition to the Trust's motion for attorney's fees, as well as a motion to vacate the circuit court's prior orders.³

By order entered February 4, 2016, the circuit court denied both the Trust's motion for attorney's fees and expenses, and 205 LLC's motion to vacate. 205 LLC appealed, and the Trust filed a timely cross-appeal.

² 205 LLC's motion to alter or amend was filed more than ten days after the circuit court's entry of judgment granting the Trust's motion for summary judgment. *See* Maryland Rule 2-534 (requiring that a motion to alter or amend must be filed "within ten days after entry of judgment."). But the tenth calendar day -- November 27, 2015 -- was a Court holiday for the day after Thanksgiving, and November 28 and 29 fell on a weekend. Therefore, 205 LLC's motion to alter or amend was timely filed. In any event, 205 LLC has not submitted any argument in its brief challenging the circuit court's denial of its motion to alter or amend the grant of summary judgment.

³ 205 LLC's motion to vacate was not a timely motion for the circuit court to exercise revisory power over the judgment that had been docketed on November 17, 2015. *See* Maryland Rule 2-535 ("On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment . . ."). Regardless, 205 LLC has not presented any argument in its brief disputing the circuit court's denial of its motion to vacate.

DISCUSSION

A. Standard of Review

With respect to 205 LLC's contention that the circuit court should have deferred its consideration of the motion for summary judgment in order to permit additional discovery, we review such rulings for abuse of discretion. As we explained in *Chaires v. Chevy Chase Bank*, 131 Md. App. 64, 88 (2000), "[t]he timing of a summary judgment ruling, *i.e.*, whether it is to be postponed pending completion of discovery or denied in favor of submission to the fact-finder, falls within the trial court's discretion and will be reviewed only for abuse of discretion." Paul Niemeyer & Linda Schuett, MARYLAND RULES COMMENTARY, Rule 2-501, at 95 (2nd ed. 1992, Supp.1998)."

The standard of appellate review we apply to the merits of the circuit court's grant of summary judgment is the *de novo* standard of review:

A circuit court's decision to grant summary judgment is reviewed *de novo*. *Iglesias v. Pentagon Title & Escrow, LLC*, 206 Md. App. 624, 657, 51 A.3d 51 (2012). We must determine whether there was "a genuine dispute of material fact on the summary judgment record" and "whether the party that obtained summary judgment was entitled to judgment as a matter of law." *Id.*

Reiner v. Ehrlich, 212 Md. App. 142, 151 (2013) (internal quotation omitted). The Court of Appeals has added that, "[t]he existence of a dispute as to some non-material fact will not defeat an otherwise properly supported motion for summary judgment, but if there is evidence upon which the jury could reasonably find for the non-moving party or material facts in dispute, the grant of summary judgment is improper." *Okwa v. Harper*, 360 Md. 161, 178 (2000).

Regarding the circuit court's denial of the Trust's motion for attorney's fees and expenses, the Court of Appeals has held that while "the determination of reasonableness of attorney's fees is left to the discretion of the trial court, the trial court [does] not have discretion to refuse to award fees altogether . . . [when the] attorney's fees provision in the parties' contract plainly states that the prevailing party 'shall be entitled to receive reasonable attorney's fees from the other party.'" *Myers v. Kayhoe*, 391 Md. 188, 207–08 (2006) (emphasis omitted). Because the circuit court denied the Trust's motion for attorney's fees and expenses entirely, we review the circuit court's ruling *de novo*. *Id.*

B. Summary Judgment Prior to the Close of Discovery

205 LLC asserts that the circuit court abused its discretion when it granted the Trust's motion for summary judgment before the close of discovery. "There is an abuse of discretion 'where no reasonable person would take the view adopted by the [trial] court.'" *Metheny v. State*, 359 Md. 576, 604 (2000) (quoting *Fontaine v. State*, 134 Md. App. 275, 288 (2000)) (alteration in original). But, "where a trial court's ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal." *Id.*

205 LLC contends that the circuit court abused its discretion when it granted the Trust's summary judgment motion roughly eleven weeks before discovery was scheduled to close. 205 LLC asserts that, if it had been given additional time for discovery, it would have deposed the Trust, William Martin Crim, and the Trust's real estate agent, Billy Williams. 205 LLC asserts in its brief that, "[a]lthough the depositions of Billy Williams,

Barbara Ann Crim, and William Martin Crim had not yet taken place . . . [c]ounsel for [205 LLC] proffered to [the circuit court] what he believed this testimony would be.” At the summary judgment hearing, counsel for 205 LLC provided the following explanation of the additional facts that might be discovered if the court delayed its ruling of the motion for summary judgment:

There’s a significant dispute of material fact in that the affidavit of Mr. [William Martin] Crim is directly contrary to what he represented to his own realtor, that he wanted to sell the property. That will be the testimony of the realtor, Billy Williams; that will be testimony of the managing member of [205] LLC, Mr. Myers.

You’ll also notice that the other family members at issue did not provide affidavits. The discovery in this case is going to elicit what was said by each of these family members to whom[,] and identifying [sic] the authority they provided to sell the property -- their representation that they wanted to sell the property, their intention was to sell [the] property, and the trust, in fact, did have the ability, the actual authority, to sell the property.

In response, the Trust contends that the circuit court did not abuse its discretion because 205 LLC had nearly six months to conduct discovery between the filing of its complaint in May 2015 and the summary judgment hearing on November 12, 2015. The Trust additionally points out that two months passed between the filing of the Trust’s motion for summary judgment and the summary judgment hearing, during which time 205 LLC could have taken any needed depositions. Because 205 LLC neglected to take any depositions during that time, the Trust argues that the circuit court did not abuse its discretion in refusing to grant additional time before ruling upon the motion.

Maryland Rule 2-501(d) provides that a court has discretion to deny a motion for summary judgment if the court is persuaded by an affidavit from the party opposing the motion (*i.e.*, 205 LLC) that essential facts cannot be provided unless additional time is allowed. The Rule states:

(d) Affidavit of Defense Not Available. If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

In this case, the affidavit filed by 205 LLC did not persuade the motion court that there were such facts and that delay was required. The affidavit of Mr. Myers was executed on October 2, 2015, and, although it said that no discovery had been completed as of that date, it did not represent that there was any circumstance that had prevented the plaintiff from conducting discovery. Although counsel for 205 LLC proffered at the hearing what he believed various witnesses would say, counsel filed no affidavits containing such facts. Even though 205 LLC argued, in part, that the Trust had apparent authority to act for all the owners of the Property, 205 LLC filed no affidavits attesting to the representations made by the other owners. To the extent that 205 LLC wished to argue that it had relied upon any representations made by any of the other owners relative to the authority of the Trust, representatives of 205 LLC would have had full knowledge of those facts and could have set forth the material representations in an affidavit without deposing anyone else.

205 LLC has not persuaded us that the circuit court abused its discretion by granting the Trust's motion for summary judgment before the close of discovery. In *Utica Mut. Ins. Co. v. Miller*, 130 Md. App. 373, 391–92 (2000), we commented upon the broad discretion of a motion court to deny a request to defer ruling on a motion for summary judgment, stating:

In *A.J. Decoster Co. v. Westinghouse Elec. Corp.*, 333 Md. 245, 634 A.2d 1330 (1994), the Court of Appeals addressed the requirements to justify additional discovery before a grant of summary judgment. In *Decoster*, the trial court granted a defendant's summary judgment motion on limitations grounds. The plaintiff argued that the trial court erred because if it was allowed to complete discovery, it may have been able to allege the existence of material facts that would have extended the limitations period. Conversely, the defendant argued that its affidavit supported the grant of summary judgment and mere speculation was not enough to generate an issue of material fact. *See id.* at 261, 634 A.2d 1330.

The Court of Appeals held that the trial court did not err in granting the motion for summary judgment. Writing for the Court, Chief Judge Murphy explained that “[w]hile . . . [a trial] court has discretion to deny a motion for summary judgment so that a more complete factual record can be developed, it is not reversible error if the court chooses not to do so.” *Id.* at 262–63, 634 A.2d 1330. Because the plaintiff below “failed to set forth facts controverting those proffered” by the defendant, the Court held that the trial court did not err in granting summary judgment. *Id.* at 263, 634 A.2d 1330.

(Alterations in original.) *Accord Honeycutt v. Honeycutt*, 150 Md. App. 604, 620–22 (2003).

As we have previously held, a “factually unsupported theory” will not be sufficient to defeat a motion for summary judgment. *Honeycutt, supra*, 150 Md. App. at 622. Additionally, “[a] general allegation that there is a dispute of material fact is insufficient to defeat a motion for summary judgment.” *Utica, supra*, 130 Md. App. at

391. Rather, if a party fails “to set forth facts controverting those proffered,” summary judgment will be appropriate. *A.J. Decoster Co. v. Westinghouse Elec. Corp.*, 333 Md. 245, 261 (1994). As we stated in *Utica*, the circuit court does not abuse its discretion by granting a motion for summary judgment prior to the close of discovery where a party merely asserts that “it may have been able to allege the existence of material facts” in dispute if given more time for discovery. *Utica, supra*, 130 Md. App. at 391.

Consequently, we hold the circuit court did not abuse its discretion by granting the Trust’s motion for summary judgment prior to the close of discovery in this case.

C. Summary Judgment Denying Specific Performance

Maryland Rule 2-501(f) states that the circuit court “shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” As we have explained, “[i]n order for there to be disputed facts sufficient to render summary judgment inappropriate ‘there must be evidence on which the jury could reasonably find for the plaintiff.’” *Danielewicz v. Arnold*, 137 Md. App. 601, 612–13 (2001) (quoting *Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md. App. 236, 244 (1992)).

(1) Apparent Authority

205 LLC contends that there was a genuine dispute as to whether the Trust was acting as an authorized agent for the other owners of the Property and had apparent authority to enter into the Contract to sell the Property. The Trust replies that 205 LLC

never proffered any evidence of any representations made by the other owners of the Property to 205 LLC, and therefore, there was no genuine dispute of facts with respect to the apparent authority of the Trust.

We have previously explained that, “[u]nder the equitable doctrine of apparent authority, a principal will be bound by the acts of a person purporting to act for him when ‘the **words or conduct of the principal** cause the third party to believe that the principal consents to or has authorized the conduct of the agent.’” *Jackson v. 2109 Brandywine, LLC*, 180 Md. App. 535, 566 (2008) (quoting *Johns Hopkins University v. Ritter*, 114 Md. App. 77, 96 (1996)) (emphasis added); *see also Miller v. Mueller*, 28 Md. App. 141, 148 (1975) (“Apparent authority may arise when the **actions of the principal**, reasonably interpreted, cause a third person to believe in good faith that the principal consents to the acts of the agent.” (emphasis added)).

In its opposition to the Trust’s motion for summary judgment, 205 LLC asserted that “[t]here can be no dispute that each of [the elements of apparent authority had] been satisfied and that Defendant [*i.e.*, the Trust] represented to [205 LLC] that it had apparent, if not actual, authority to enter into the subject Contract and to bind Defendant [*i.e.*, the Trust] to sell the property to [205 LLC].” Similarly, at the summary judgment hearing, 205 LLC explained to the circuit court:

All the representations made from the principal, the [T]rust, to their agent, the realtor, was that everyone was in agreement, there were people involved in this trust that had to make the decision together, and they did so, and they let [the real estate agent] act on their behalf to facilitate this sale, and they did so with **the signature of the trustee of the**

[T]rust, Barbara Crim, who signed all of the documents on behalf of what was represented to be the ownership interest of the property.

(Emphasis added.)

But despite making an argument that there had been representations as to authority, 205 LLC did not present any evidence in the circuit court indicating that any of the other owners of the Property – the purported principals – ever represented *to* 205 LLC that the Trust could sell the Property without their express approval. 205 LLC’s contention that apparent authority existed because the trustee of the Trust “signed all of the documents on behalf of what was represented to be the ownership interest of the property” ignores the requirement that the words or conduct manifesting that an agent has the authority to act *must come from the principal*, which, in this case, would be all the other owners of the Property. *Jackson, supra*, 180 Md. App. at 566. Statements made solely by the Trust, or the real estate agent employed by the Trust, indicating that the Trust had authority to sell the Property could not establish apparent authority of the non-signatory owners because there was no evidence of any representations directly from the purported principals to 205 LLC.

Therefore, because 205 LLC did not provide the motion court with any admissible evidence indicating that all the owners of the Property had authorized the Trust to sell the Property to 205 LLC, the circuit court properly rejected 205 LLC’s assertion that the Trust had apparent authority to sell the Property.

(2) Actual Authority

205 LLC contends, in the alternative, that there was a genuine dispute of material fact in the record before the circuit court as to whether actual “authority to sell the Property to [205 LLC] was given to the Trustee of [the Trust] from all of the principals with an ownership interest in the Property.” In its opposition to the Trust’s motion for summary judgment, 205 LLC asserted that the Trust’s motion “fails as a matter of law due to the fact that [the Trust] represented to [205 LLC] that it had actual authority to enter into the Contract.” However, the affidavit filed by 205 LLC contained no evidence that could support a finding that the other owners of the Property had given the Trust actual authority to sell the Property. *See Reiner, supra*, 212 Md. App. at 151 (stating that we review *de novo* whether there was “a genuine dispute of material fact **on the summary judgment record**”) (emphasis added).

Because there was no affidavit contradicting the affidavit of William Martin Crim (who swore he “never authorized” the Trust to enter into the Contract on his behalf), the motion court correctly concluded there was no genuine dispute of material fact with respect to the availability of the remedy of specific enforcement (which was the only relief prayed in the complaint). The transcript of the motion hearing reflects the following exchange:

[205 LLC]: Your Honor, for the record, just to be clear, we did argue that the authority was not vested from the trust to the purchaser. The authority was from the principals, the -- the individual -- we didn’t know this at the time, because a title search had not been run and would not be run until right before closing, as is typical -- the representation was from the individual people that was reported to be part of the trust that would later

turned out that they were individual owners, that they all agreed to the sale, and they vested their agreement to sell the property in the trustee.

THE COURT: Right, and **that's not set forth anywhere in your opposition.**

[205 LLC]: It is set forth in the --

THE COURT: Okay. Where is that? Maybe I missed that.

[205 LLC]: In the affidavit of paragraph -- and it was also argued today orally, but, again, without discovery --

THE COURT: I'm sorry. Where is it? Where is it in the papers?

* * *

[205 LLC]: Okay. It was paragraph 16 of Mr. Myer's affidavit.

THE COURT: Right, exactly. That's my point. So **in 16 it says the defendant, the revocable trust, represented** that it had full authority to enter into an agreement to sell the property.

[205 LLC]: Based upon the authority the trust was granted by the other, what turn out to be, owners.

* * *

THE COURT: Well, **the affidavit that was submitted says** exactly what the complaint says, which is **the revocable trust represented that it had full authority. So the only way that apparent authority would benefit the first initial purchaser would be if the other title owners represented . . . that the revocable trust had authority** to act on its behalf.

* * *

[205 LLC]: Agreed, but the evidence will show and the testimony from both Mr. Myers and Mr. -- the real estate agent would be that the other owners, what turned out to be owners, were contacted and they gave their authority, their express authority to enter into the contract.

THE COURT: Okay.

[205 LLC]: They did that both to the real estate agent as well as to the trustee of the trust.

THE COURT: All right.

[205 LLC]: And --

THE COURT: So based upon what's been presented, I'll grant the motion for summary judgment.

* * *

THE COURT: . . . I can't tell you what to do. What I can tell you is that **based upon the facts that you presented in this complaint and the information presented in the opposition for summary judgment, the summary judgment is being granted.**

(Emphasis Added.)

We are persuaded that the circuit court did not err in finding that there was no genuine dispute of material fact as to whether the Trust had actual authority to sell the Property to 205 LLC. There is no dispute regarding the fact that William Martin Crim held an ownership interest in the Property. As noted above, the Trust supported its motion for summary judgment with the affidavit of William Martin Crim, who owned a 2/8 interest in the Property. William Martin Crim's affidavit states unequivocally: "I never authorized Barbara Ann Crim to sell my share of the Property to 205 Park Road LLC, or to sell the Property to anyone for \$500,000. Indeed, in 2013, I was of the view that the Property was worth significantly more than \$500,000 and would not have agreed to sell the Property for that price to any purchaser."

In its opposition to the Trust's motion for summary judgment, 205 LLC contended that the affidavit of Gregory Myers, the manager of 205 LLC created a dispute of material fact as to whether the Trust had actual authority to sell the Property. Paragraph 16 of Gregory Myers's affidavit states:

At all times before, and at the time the parties entered into the Contract, and entered into the referenced subsequent changes, Defendant [*i.e.*, the Trust] represented that it had full authority to enter into an agreement to sell the Subject Property to Plaintiff [*i.e.*, 205 LLC], and that Defendant [*i.e.*, the Trust] was ultimately agreeable to sell the Subject Property to [205 LLC] for Five Hundred Thousand Dollars (\$500,000.00).

205 LLC provided the motion court no other evidence to show that the Trust had been given actual authority to sell the Property by William Martin Crim, or that William Martin Crim was willing to sell the Property upon the terms contained in the Contract.

The affidavit of Gregory Myers, stating merely that *the Trust* "represented that it had full authority" to sell the Property, does not create a dispute of material fact as to whether all the owners of the Property, including William Martin Crim, gave the Trust actual authority to sell the Property.

The Court of Appeals has held that one owner may not unilaterally sell property owned as tenants in common, or affect the ownership interest of other owners, without the approval of the other owners. *See Arbesman v. Winer*, 298 Md. 282, 294 (1983) (citing *Cook v. Boehl*, 188 Md. 581 (1947)); *Morris v. Wilson*, 187 Md. 217, 224 (1946). 205 LLC's opposition to the Trust's motion for summary judgment does not ever allege, let alone provide evidence that would show, that all of the owners of the Property gave the Trust actual authority to sell the Property without their express approval. The

evidence in the record before the circuit court instead demonstrated that at least one of the owners of the property – William Martin Crim – did not approve of the sale of the Property. Therefore, because there was no genuine dispute of material fact regarding the enforceability of the Contract, the circuit court did not err in granting the Trust’s motion for summary judgment.

D. The Trust’s Motion for Attorney’s Fees & Expenses

On cross-appeal, the Trust contends that the circuit court erred in denying its motion for attorney’s fees and expenses, which, in the Trust’s view, the court was required to award pursuant to Paragraph 35 of the Contract, which states: “In any action or proceeding between Buyer and Seller based, in whole or in part, upon the performance or non-performance of the terms and conditions of this Contract, including, but not limited to, breach of contract, . . . the prevailing party in such action or proceeding shall be entitled to receive reasonable attorney’s fees from the other party as determined by the court or arbitrator.”

The Trust relies primarily upon *Myers v. Kayhoe*, 391 Md. 188 (2006), for support of its claim for attorney’s fees. We view this case as presenting different circumstances from those in the *Myers* case.

In *Myers*, a contract for the purchase of residential real estate was expressly contingent upon the buyers securing financing for the purchase. The buyers submitted an application for financing, but the application was denied because the potential lender was not satisfied with the appraised value of the property. 391 Md. at 195. The buyers

declined to pursue alternative financing, and did not consummate the purchase. *Id.* at 196. The sellers sued the buyers for breach of contract. The circuit court granted the buyers' motion for summary judgment as to liability, but denied the buyers' claim for attorney's fees pursuant to the fee-shifting provision in the contract of sale. When the case made its way to the Court of Appeals, that Court agreed that the buyers had properly exercised their right under the financing contingency, and were, therefore, not in breach of the contract. *Id.* at 203–04. Consequently, with respect to the buyers' claim for attorney's fees pursuant to the contract, the Court of Appeals held that the circuit court "committed an error of law by failing to award [the buyers] any reasonable attorney's fees." *Id.* at 207. The Court explained:

Although the determination of reasonableness of attorney's fees is left to the discretion of the trial court, the trial court did not have discretion to refuse to award fees altogether. The attorney's fees provision in the parties' contract plainly states that the prevailing party "*shall* be entitled to receive reasonable attorney's fees from the other party" (emphasis added). Under the trial court's disposition of the case, **appellants were the prevailing parties in the litigation under the contract**, and were therefore entitled them to recover their legal expenses, to the extent the fees charged were reasonable.

Id. at 207–08 (bold emphasis added).

Under the circumstances in the present case, however, the Trust did not prevail by performing its obligations as seller "under the contract," but, instead, avoided enforcement of the Contract by successfully arguing that it lacked authority to bind the owners of the Property a contract of sale. Although the Trust asserts in its brief in this Court that it "never argued that the contract was 'null and void,'" the pleadings filed by

the Trust did indeed assert that the Contract was “neither binding nor enforceable.” As noted above, in the answer the Trust filed in response to 205 LLC’s complaint, the Trust contended:

Pursuant to Maryland rule 2-323(f), Defendant [*i.e.*, the Trust] hereby asserts a negative defense with respect to Plaintiff’s averment of the execution of a written instrument. **Defendant did not have legal authority to enter into or effectuate a contract to sell the Subject Property** without the agreement of the other title holders, and such agreement was never obtained.

Pursuant to Maryland Rule 2-323(g), Defendant hereby asserts the following affirmative defenses:

* * *

2. **The purported contract attached as Exhibits 1 and 2 of the Complaint was neither binding nor enforceable as written because Defendant did not have legal authority to sell the Subject Property.**

(Emphasis added.)

The Trust prevailed in the circuit court by contending that the Contract *was not enforceable* because of the Trustee’s lack of authority to enter into the Contract. Because the Trust persuaded the circuit court that the “purported contract . . . was neither binding nor enforceable,” the circuit court did not err in failing to award the Trust attorney’s fees pursuant to a provision of that unenforceable purported contract.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE DIVIDED
EQUALLY BETWEEN APPELLANT AND
APPELLEE .**