

Circuit Court for Anne Arundel County
Case No.: C-02-CV-23-001572

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2140

September Term, 2024

HKP PRO-ACTIVE SOLUTIONS, LLC, ET
AL.

v.

NEKOL TSEKLENIS

Ripken,
Tang,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: April 29, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

HKP Pro-Active Solutions, LLC (“HKPO”) and Jennifer Ralston, appellants, sent an employment termination letter to Nekol Tseklenis, appellee. Ms. Tseklenis filed a complaint for declaratory relief in the Circuit Court for Anne Arundel County, and after a bench trial, the circuit court entered judgment in her favor. Appellants noted the instant appeal, where they ask the following question: “Did the [c]ircuit [c]ourt err in [its] interpretation of [a] contract, including in its findings of ambiguity and waiver?” Finding no error or abuse of discretion, we shall affirm. We discuss.

BACKGROUND

Ms. Tseklenis and Ms. Ralston were friends who, in 2020, decided that Ms. Tseklenis would become a member of HKPO, a limited liability company started by Ms. Ralston several years earlier. Under their agreement, Ms. Ralston was to remain the chief executive officer and maintain 51% ownership of HKPO, and Ms. Tseklenis was to serve as the chief operating officer and hold 49% ownership of HKPO.

In accordance therewith, in April of 2020, the parties executed a Limited Liability Company Operating Agreement (“Operating Agreement”). The Operating Agreement provides that “[e]ach [m]ember shall be required to perform full-time services for [HKPO] and shall devote her best efforts to the performance of the services for [HKPO].” Under the Operating Agreement, members could only be terminated for cause, including, but not limited to, “[f]ailure to provide full[-]time services” to HKPO.

HKPO experienced financial difficulty, and by 2022, could not afford to pay Ms. Ralston and Ms. Tseklenis. In November of 2022, Ms. Tseklenis expressed to Ms. Ralston that she needed to find an additional source of income. Ms. Tseklenis explained that she

wanted additional employment that she “can do in [her] sleep so [she] can still help with HKPO[.]” Ms. Ralston understood, and the pair started having conversations about “what that relationship would look like together moving forward[.]” In those conversations, Ms. Ralston would assert that Ms. Tseklenis’s position with HKPO “was a full-time job.” They discussed revising the Operating Agreement to adjust Ms. Ralston’s and Ms. Tseklenis’s ownership interests to 70% and 30%, respectively, but ultimately, the Operating Agreement was not amended.

As Ms. Tseklenis was job searching, she shared offers of employment with Ms. Ralston and with HKPO’s corporate counsel. Ms. Ralston suggested that HKPO’s corporate counsel review Ms. Tseklenis’s job opportunities for “free counsel[.]” In February of 2023, Ms. Tseklenis was offered a job as an enterprise account executive. Ms. Tseklenis shared the offer with Ms. Ralston and sent the employment agreement to HKPO’s corporate counsel. HKPO’s corporate counsel redlined the employment agreement for Ms. Tseklenis, and Ms. Ralston purportedly agreed that the job was “a good way to move forward[.]” Ms. Tseklenis accepted the job, which began on February 13, 2023.

Ms. Ralston and Ms. Tseklenis disagree about the amount of work completed by Ms. Tseklenis from that point on. In any event, the relationship soured, and in June of 2023, Ms. Ralston and counsel for HKPO notified Ms. Tseklenis that her membership interest in HKPO had been terminated for cause for failure to provide full-time services to HKPO.

Ms. Tseklenis filed a complaint for declaratory relief against Ms. Ralston and HKPO in the Circuit Court for Anne Arundel County. On October 11, 2024, the parties

appeared before the court for a bench trial. In December of 2024, the court ruled in favor of Ms. Tseklenis, finding that the Operating Agreement was ambiguous and that appellants had waived the requirement therein that Ms. Tseklenis work full-time. Appellants timely filed the instant appeal.

STANDARD OF REVIEW

When an action has been tried without a jury, we “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and [we] will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). In accordance therewith, “[t]he trial court’s evaluation of the evidence is reviewed under a clearly erroneous standard.” *Falls Rd. Cmty. Ass’n, Inc. v. Baltimore Cnty.*, 437 Md. 115, 135 (2014). Further, “whether subsequent conduct of the parties amounts to a modification or waiver of their contract is generally a question of fact to be decided by the trier of fact.” *Hovnanian Land Inv. Grp., LLC v. Annapolis Towne Ctr. at Parole, LLC*, 421 Md. 94, 122 (2011) (quoting *Univ. Nat’l Bank v. Wolfe*, 279 Md. 512, 523 (1977)). “[I]f any competent material evidence exists in support of the trial court’s factual findings, those findings cannot be held to be clearly erroneous.” *Spencer v. State*, 450 Md. 530, 548 (2016) (quoting *Webb v. Nowak*, 433 Md. 666, 678 (2013)).

DISCUSSION

Appellants assert that the circuit court erred in determining that the Operating Agreement is ambiguous and that they had waived the requirement that Ms. Tseklenis work full-time. Ms. Tseklenis disagrees and contends that the circuit court correctly determined

both that the Operating Agreement is ambiguous and that appellants had waived the full-time provision therein.

When determining whether waiver of a contractual provision has occurred, “[w]e look to the totality of a party’s actions[.]” *Hovnanian Land Inv. Grp.*, 421 Md. at 122. Waiver is defined as the “intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, and may result from an express agreement or be inferred from circumstances.” *Id.* (quoting *Food Fair Stores, Inc. v. Blumberg*, 234 Md. 521, 531 (1964)). “[A]cts relied upon as constituting a waiver of the provisions[] of a contract must be inconsistent with an intention to insist upon enforcing such provisions.” *Id.* (quoting *Gold Coast Mall, Inc. v. Larmar Corp.*, 298 Md. 96, 109 (1983)).

Based upon the facts before us, we agree that appellants waived their claims regarding Ms. Tseklenis’s alleged violation of the full-time requirement in the Operating Agreement. The evidence indicates that Ms. Ralston understood that Ms. Tseklenis was seeking full-time employment elsewhere and acknowledged that Ms. Tseklenis had “mentioned it many times.” Ms. Ralston encouraged Ms. Tseklenis’s job search; she suggested that Ms. Tseklenis take advantage of “free counsel” from HKPO’s attorney as she considered outside opportunities and even encouraged Ms. Tseklenis to accept at least one such opportunity – a CEO position offering a salary of \$400,000. Ms. Tseklenis testified, and Ms. Ralston did not dispute, that Ms. Tseklenis would “share . . . opportunities with the corporate attorney and with [Ms. Ralston] so that they could either approve it or deny it or help [her] make sure it was no conflict of interest.” Based upon these facts, we

cannot say that there was no competent material evidence in support of the circuit court’s waiver determination.

Although Ms. Ralston testified that she reminded Ms. Tseklenis that her role with HKPO was full-time and that Ms. Tseklenis understood those reminders to be in reference to the Operating Agreement, the circuit court concluded, and Ms. Ralston does not dispute, that there was no evidence presented supporting her claim. Nor was there any evidence or testimony indicating that Ms. Ralston objected to Ms. Tseklenis accepting full-time employment or informed Ms. Tseklenis that her position with HKPO would be terminated if she began full-time employment elsewhere. As the circuit court put it, Ms. Ralston “allowed [Ms. Tseklenis] to take a full-time job with the understanding and belief that [Ms. Ralston] had agreed that [Ms. Tseklenis] could obtain other employment.”

In sum, we are persuaded that Ms. Ralston’s agreement to Ms. Tseklenis’s pursuit of a full-time job outside of HKPO, participation in and encouragement of Ms. Tseklenis’s job search, review of Ms. Tseklenis’s job opportunities, and suggestion that HKPO counsel review employment contracts free of cost to Ms. Tseklenis were acts that were “inconsistent with an intention to insist upon enforcing” the full-time requirement within the Operating Agreement. *Hovnanian Land Inv. Grp.*, 421 Md. at 122 (quotation marks and citation omitted).¹ Accordingly, the judgment shall be affirmed.

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

¹ Because we agree that the full-time requirement was waived, we need not consider the parties’ claims regarding the term’s ambiguity.